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; Final Rule

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

ACTION: Final rule.

SUMMARY: The Departments of Education (ED) and Labor (DOL) (or, collectively, Departments) issue this Joint Final Rule to implement jointly administered activities authorized by title I of the Workforce Innovation and Opportunity Act (WIOA) signed into law on July 22, 2014 (hereafter ''Joint WIOA Final Rule''). Through these regulations, the Departments implement workforce education and employment system reforms and strengthen the nation's public workforce development system to provide increased economic opportunity and make the United States more competitive in the 21st century evolving labor market. This Joint WIOA Final 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 dependency on public benefits, increasing economic opportunity, and enhancing the productivity and competitiveness of the nation.

DATES: This final rule is effective October 18, 2016.

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SUPPLEMENTARY INFORMATION: This Joint WIOA Final Rule reflects changes made as a result of public comments received to the joint Notice of Proposed Rulemaking that was published on April 16, 2015, at 80 FR 20574.

WIOA strengthens the alignment of the public workforce development system's six core programs by compelling 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, local, and tribal levels to ensure a streamlined and coordinated service delivery system for job seekers, including those with disabilities, and employers. These regulations lay the foundation, through coordination and collaboration at the Federal level, for implementing the Departments' vision and goals of WIOA.

In addition to this Joint WIOA Final Rule, the Departments are issuing separate final rules to implement program-specific requirements of WIOA that fall under each Department's purview. The DOL is issuing a Final Rule governing program-specific requirements under titles I and III of WIOA (hereinafter ''DOL WIOA Final Rule''). The ED is issuing three final rules: One implementing program-specific requirements of the Adult Education and Family Literacy Act (AEFLA), as reauthorized by title II of WIOA; and two final rules implementing all program-specific requirements for programs authorized under the Rehabilitation Act of 1973, as amended by title IV of WIOA. The Department-specific final rules are published elsewhere in this issue of the **Federal Register**. Developing and issuing all five WIOA final rules collaboratively reinforces WIOA's heightened emphasis on coordination and collaboration to ensure an integrated and seamless service delivery system for job seekers and employers.

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I. Executive Summary

Purpose of This Regulatory Action: President Barack Obama signed WIOA into law on July 22, 2014. WIOA is 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 strengthens and improves our nation's public workforce system and increases economic opportunities for individuals in the United States, especially youth and individuals with significant barriers to employment, to secure and advance in employment. 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 supports innovative strategies to improve coordination among the six core programs and other Federal programs that support employment services, workforce development, adult education and literacy, and vocational rehabilitation (VR) activities.

In WIOA, Congress directed the Departments to issue regulations implementing statutory requirements to ensure that the public workforce system operates as a comprehensive, integrated, and streamlined system to provide pathways to prosperity and continuously improve the quality and performance of its services to job seekers and to employers. Therefore, the Departments are issuing this Joint WIOA Final Rule to implement jointly administered activities authorized under WIOA, specifically those related to the Unified and Combined State Plans, performance accountability, and the one-stop delivery system. In an effort to promote collaboration and coordination at the State and local levels among the core programs and other Federal partner programs, the Departments have collaborated extensively with the Department of Health and Human Services (HHS) and other Federal agencies in developing this Final Rule.

The Departments are publishing this Joint WIOA Final Rule to implement those provisions of WIOA that affect all of the six core programs, specifically the: Adult, dislocated worker, and youth programs authorized under title I and administered by DOL; AEFLA program authorized under title II and administered by ED; Employment Service program authorized under the Wagner-Peyser Act, as amended by title III, and administered by DOL (Wagner-Peyser Act Employment Service program); and VR program, authorized under title I of the Rehabilitation Act of 1973, as amended by title IV, and administered by ED. The requirements in these joint final regulations will be jointly administered by both Departments. The regulations contained in this Final Rule also impact other Federal programs that participate in the one-stop system and/or are identified as partner programs in a State's Combined State Plan if a State elects to submit such Plan rather than a Unified State Plan.

A critical part of the implementation of WIOA is the collection and reporting of accurate, timely information about individuals who receive services through the programs authorized under the law. Such information is critical to inform public policy and support analysis of effective strategies. In keeping with the Paperwork Reduction Act (PRA), the methods for collecting such information are provided to the public for comment through information collection requests (ICRs). The Joint WIOA Final Rule had two accompanying requests to support the performance and planning aspects of these rules. Soon after publication of the Notice of Proposed Rulemaking (NPRM) (80 FR 20574, April 16, 2015), the Departments published a notice in the **Federal Register** announcing the joint ICR for the WIOA Performance Management, Information, and Reporting System (80 FR 43474, July 22, 2015) and requested comments on this ICR during a 60-day public comment period (hereinafter ''WIOA Joint Performance ICR'') (see *https://www.regulations.gov/#!docketDetail;D=ETA-2015-0007*). On September 1, 2015, DOL solicited comments on its own WIOA performance accountability ICR to require the following programs to report on a standardized set of data elements through the WIOA Workforce Performance Accountability, Information, and Reporting System: WIOA adult, dislocated worker, and youth, Wagner-Peyser Act Employment Service, National Farmworker Jobs Programs (NFJP), Trade Adjustment Assistance, YouthBuild, Indian and Native American (INA) grantees, and the Jobs for Veterans' State Grants (80 FR 52798) (hereinafter ''DOL Performance ICR'') (see *https://www.regulations.gov/#!docketDetail;D=ETA-2015-0008*). On April 16, 2015, ED solicited comments on its ICR related to the VR program Case Service Report (RSA–911) to require VR agencies to report data required under sec. 101(a)(10) of the Rehabilitation Act, of 1973, as amended by WIOA, as well as performance accountability data under title I of WIOA (hereinafter ''RSA–911''). The Departments received 112 public comment submissions in response to the WIOA Joint Performance ICR, DOL received public comments on the DOL Performance ICR, and ED received public comments on the RSA–911 (respectively).

On August 6, 2015, the Departments, together with the Departments of Health and Human Services, Agriculture, and Housing and Urban Development (HUD), proposed a new information collection regarding required elements for submission of the Unified or Combined State Plan and Plan modifications under WIOA (hereinafter ''State Plan ICR'') (80 FR 47003) (see *https://www.regulations.gov/#!docketDetail;D=ETA-2015-0006*). The State Plan ICR received a total of 16 public comments. These public comment submissions informed the development of the final State Plan ICR, which the Office of Management and Budget (OMB) approved on February 19, 2016. Most provisions in titles I through III of WIOA took effect on July 1, 2015, the first full program year after enactment; however, the new State Plans and performance accountability system requirements in the statute will take effect on July 1, 2016. Title IV took effect upon enactment unless otherwise indicated.

Section V. Rulemaking Analysis and Notices, D. Paperwork Reduction Act provides summary information about the public comments on the Joint Performance ICR and the State Plan ICR.

In addition to this Joint WIOA Final Rule, the Departments are publishing, in separate regulatory actions published in the **Federal Register**, four agency-specific final rules that implement the provisions of WIOA that are administered separately by the Departments—one published by DOL implementing the agency-specific provisions of title I, and three published by ED implementing the agency-specific provisions of titles II and IV. Readers should note that there are a number of cross-references in this Joint WIOA Final Rule to the agency-specific final rules. Finally, the Departments structured this Joint WIOA Final Rule so that the Code of Federal Regulations (CFR) parts will align with the CFR parts in the agency-specific final rules.

To implement those provisions of WIOA that affect the WIOA programs and which will be jointly administered by both Departments, these regulations implement a number of improvements that WIOA makes to the public workforce system. These include improvements to:

- Ensure that workforce education and employment services are coordinated and complementary by requiring a single, 4-year strategic State Plan for achieving the workforce goals of the State. Additionally, States may conduct, along with the core programs, collaborative planning with other Federal education and training programs specified in WIOA;
- Ensure that Federal investments in education, employment, and training are evidence-based, data-driven, and accountable to participants and taxpayers by establishing a common performance accountability system for the core programs, requiring other authorized programs to report on the common performance indicators, and providing easy-to-understand information to consumers and the public about training providers and

program performance to help inform their decision-making; and

• Enhance services provided to all job seekers and employers through the one-stop delivery system, also known as the American Job Center system, by: Requiring the colocation of the Wagner-Peyser Act Employment Service program; adding the Temporary Assistance for Needy Families (TANF) program as a required partner; providing for State-established certification to ensure high-quality American Job Centers; requiring partners to dedicate funding for allowable infrastructure and other shared costs that are commensurate to the partner's proportionate use and relative benefit received by the program; and promoting the development of integrated intake, case management, and reporting systems.

Changes From the Notice of Proposed Rulemaking

The Departments published a Joint WIOA NPRM on April 16, 2015 at 80 FR 20574. The Final Rule supports the tenets expressed in the NPRM. In response to comments received and to strengthen the intent of the law, the Departments have made numerous revisions, including but not limited to changes to the following areas:

• *State Plans:* The Joint WIOA Final Rule text, among other things: (1) Clarifies the expected involvement of stakeholders, core programs, and the State Workforce Development Boards (WDBs) in the State Plan development; (2) ensures consistency by requiring a description of joint planning and coordination across core programs, required one-stop partners, and other programs and activities included in the Unified and Combined State Plans; (3) requires States to provide an opportunity for public comment on and input into the development of Unified and Combined State Plans prior to their submission, and (4) clarifies requirements for Unified and Combined State Plan modifications. The preamble responds to suggestions regarding certain Unified and Combined State Plan requirements, as well as provides further guidance and clarifications with regard to certain regulatory requirements governing the Unified and Combined State Plans.

• *Performance Accountability:* The Joint WIOA Final Rule clarifies certain definitions, primary indicators of performance, and sanctions. Changes in the Final Rule text include, among others: (1) Revising the definitions of ''participant,'' ''exit,'' and ''State;'' (2) clarifying the credential attainment rate indicator; (3) adding the types of gain that are included in the measurable skill gains indicator; (4) clarifying the difference between the ''adjusted level of performance'' that is agreed upon at the time the Unified or Combined State Plan is approved and the ''adjusted level of performance'' that is determined at the end of the program year; and (5) adding a phased-in approach for sanctions due to failure to achieve adjusted levels of performance and a transition period for complete WIOA data to be available. The preamble explains intent to phase in implementation of the ''effectiveness in serving employers'' indicator and to implement a uniform, national customer satisfaction survey that is not tied to accountability provisions or the determination of sanctions. The preamble also provides further guidance and clarification regarding changes made to the Final Rule text, including the inclusion of outlying areas (American Samoa, Guam, Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, and, as applicable, the Republic of Palau) for purposes of the performance accountability system.

• *One-Stop Governance and Operations:* The Joint WIOA Final Rule includes changes to the operational aspects of one-stop operations including, among others: (1) Revising coverage of multiple program services and staff coverage in one-stop affiliate sites; (2) revising infrastructure funding regulations, and emphasizing partners' responsibilities towards infrastructure costs; (3) providing detailed information about career services; (4) clarifying the involvement of the TANF programs as one-stop partners; (5) simplifying provisions governing Memoranda of Understanding (MOU) negotiations; (6) emphasizing the need to conduct an open competition for one-stop operator selection; (7); changing the requirements related to hours of operation outside normal business hours; (8) emphasizing both physical and programmatic accessibility; (9) clarifying when the State funding mechanism is triggered for the funding of the one-stop system, including the funding limits applicable to the State funding mechanism; and (10) establishing a deadline to conform to the new common one-stop identifier.

As noted throughout this Final Rule, the Departments will be issuing guidance to help our regulated communities understand their rights and responsibilities under WIOA and these regulations. Consistent with the Administrative Procedure Act's exemption from its notice and comment requirement for general statements of policy, interpretations and procedural instructions, this guidance will provide interpretations of many of the terms and provisions of these regulations and more detailed procedural instructions that would not be appropriate to set out in regulations. The Departments will also be issuing guidance to provide information on current priorities and initiatives, suggested best practices, and in response to stakeholder questions.

The Departments also made a number of non-substantive changes to correct grammatical and typographical errors to improve the readability and conform the document stylistically that are not discussed in the analysis below.

II. Acronyms and Abbreviations

AEFLA Adult Education and Family Literacy Act
ABAWD Able-Bodied Adults Without Dependents
ABS Adult Basic Skills
APA Administrative Procedure Act
BFET Basic Food Employment and Training
BLS Bureau of Labor Statistics
CBO Community-based organization
CEO Chief elected official
CFR Code of Federal Regulations
CHIP Children's Health Insurance Program
CMS Case Management System
CRIS Common Reporting Information System
CRO Community Rehabilitation Organization
CSBG Community Services Block Grant
CTE Career and Technical Education
DOL U.S. Department of Labor
DSA Designated State Agency
DSU Designated State Unit
ED U.S. Department of Education
EEOC Equal Employment Opportunity Commission
EFL Educational Functioning Level
E.O. Executive Order
ESEA Elementary and Secondary Education Act of 1965
ESL English-as-a-second-language
ETA Employment and Training Administration
ETP Eligible training provider
FEDES Federal Employment Data Exchange System
FEIN Federal employer identification number
FERPA Family Educational Rights and Privacy Act
FY Fiscal Year
GED General Education Diploma
GPA Grade Point Average
GS General Schedule
HHS Department of Health and Human Services
HSE High School Equivalency
HUD Department of Housing and Urban Development
ICR Information Collection Request
INA Indian and Native American
INAP Indian and Native American Programs
IPE Individualized Plan for Employment
IT Information technology
ITA Individual Training Account
JVSG Jobs for Veterans State Grants

LMI Labor market information
LSAL The Longitudinal Study of Adult Learning
MOU Memorandum of Understanding
NAICS North American Industry Classification System
NASWA National Association of State Workforce Agencies
NFJP National Farmworker Jobs Program
NIST National Institute of Standards and Technology
NPRM Notice of Proposed Rulemaking
MIS Management Information System
OCTAE Office of Career, Technical, and Adult Education
OJT On-the-job training
OMB Office of Management and Budget
ORR Office of Refugee Resettlement
PII Personally identifiable information
PIRL Participant Individual Record Layout
POP Period of Participation
PRA Paperwork Reduction Act of 1995
PY Program Year
RFA Regulatory Flexibility Act
RFP Request for Proposals
RHY Runaway and Homeless Youth
RIA Regulatory Impact Analysis
RSA Rehabilitation Services Administration
SBA Small Business Administration
SBREFA Small Business Regulatory Enforcement Fairness Act of 1996
SCSEP Senior Community Service Employment Program
sec. Section of a Public Law or the United States Code
SLDS Statewide Longitudinal Data System
SNAP Supplemental Nutrition Assistance Program
SRC State Rehabilitation Council
SSA Social Security Administration
SSN Social Security Number
SWA State Workforce Agencies
TAA Trade Adjustment Assistance
TAG Technical Assistance Guide
TANF Temporary Assistance for Needy Families
TDD Telecommunications Device for the Deaf
TEGL Training and Employment Guidance Letter
UI Unemployment insurance
U.S.C. United States Code
VETS Veterans' Employment and Training Service
VEVRAA Vietnam Era Veterans' Readjustment Assistance Act
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. Public Comments Received on the Notice of Proposed Rulemaking

The Departments published five NPRMs related to WIOA on April 16, 2015. The first NPRM is the Joint Rule for Unified and Combined State Plans, Performance Accountability, and the One-Stop System Joint Provisions (80 FR 20574) (hereinafter ''the Joint WIOA NPRM''); the second NPRM is the Workforce Innovation and Opportunity Act (80 FR 20690); the third NPRM is the Programs and Activities Authorized by the Adult Education and Family Literacy Act (Title II of the Workforce Innovation and Opportunity Act) (80 FR 20668); the fourth is the State Vocational Rehabilitation Services program; State Supported Employment Services program; Limitations on Use of Subminimum Wage (80 FR 21059); and the fifth is the Workforce Innovation and Opportunity Act, Miscellaneous Program Changes (80 FR 20688).

During the 60-day public comment period, the Departments received a total of 546 public comments on the Joint WIOA NPRM. In addition to these comments, the Departments also considered relevant public comments on the DOL and ED program-specific NPRMs.

General Comments

Comments: The Departments received many comments supporting these regulations. For example, the Departments received comments supporting cross-program data and performance measurement, the increased focus on adult education and services to immigrants, improved alignment between Federal initiatives and State and local needs, increased matching of apprenticeships with employers, as well as support for other provisions discussed in the section-by-section analysis below. Additionally, the Departments received comments commending the collaboration on joint regulations and encouraging additional coordinated guidance. Also, several commenters expressed support for the enactment of WIOA, noting the law will decrease unemployment, make the United States more competitive, lead to higher wages, and facilitate entry into the middle class.

A few commenters generally opposed the rulemaking, in part because they disagreed with the role WIOA assigns to the Federal government concerning covered programs. Others suggested that the NPRM itself was excessive, overly cumbersome, and not understandable to the layperson, needed clarification, and was inconsistent with the plain and simple language of WIOA.

Departments' Response: The Departments acknowledge these comments, but do not address them further in the Final Rule since they do not request specific changes to the regulatory text. However, the Departments note that the section-by-section analysis is drafted to provide additional clarity on complicated provisions, such as those related to the definitions used in the performance accountability regulations, requirements for the State funding mechanism for the one-stop system, and requirements for Unified and Combined State Plan modifications. Furthermore, revisions were made to various sections in the regulatory text to improve readability. Additionally, the Departments will continue to provide guidance and technical assistance, as needed, to assist States in implementing WIOA.

Accessibility of the Public Workforce System to Individuals With Disabilities

Comments: The Departments received many comments related to increased access to workforce services for individuals with disabilities, both in support of legislative changes and expressing concern that the regulations need to hold the public workforce system fully accountable to implement such changes. Several commenters noted that, under WIOA, individuals with disabilities will have greater access to workforce training programs and be able to take advantage of the benefits resulting from their training. However, one commenter asserted that the rule must do more to consider the unique needs of individuals with disabilities, who may take longer than others to achieve employment. Another commenter expressed concern that her organization would not have enough resources to provide pre-employment transition services to potentially eligible students with disabilities. A commenter encouraged efforts to improve the ability of the one-stop system to serve customers with disabilities through existing services and programs, and another urged the Departments to include specific requirements for training and access to text-to-speech and speech-to-text technologies for people with dyslexia and print disabilities.

Departments' Response: WIOA includes numerous provisions intended to increase employment opportunities for individuals with disabilities, and these regulations reinforce those statutory provisions. There are numerous discussions throughout part 678 reiterating the Departments' intent to ensure access to needed employment and training services to all individuals.

The Department has published a Final Rule to implement sec. 188 of WIOA, which prohibits discrimination against WIOA participants, by making technical changes only to its existing regulation implementing WIA (*i.e.,* (1) replicating at part 38 the rule from part 37, and (2) replacing references to the ''Workforce Investment Act of 1998'' or ''WIA'' with ''Workforce Innovation and Opportunity Act'' or ''WIOA'' to reflect the proper

statutory authority). *See* 80 FR 43,871 (July 23, 2015).

In addition, on January 26, 2016, DOL proposed updating these regulations to better align with the Americans with Disabilities Act Amendments Act of 2008, Public Law 110–325, sec. 2(b)(1), 122 Stat. 3553 (2008) and the relevant implementing regulations and guidance issued by the Department of Justice (28 CFR parts 35 and 36), as well as the final regulations and guidance issued by the Equal Employment Opportunity Commission (29 CFR part 1630, 76 FR 16978 (Mar. 25, 2011) (Equal Employment Opportunity Commission regulations implementing Americans with Disabilities Act title I)). *See* 81 FR 4493 (January 26, 2016). The proposed WIOA sec. 188 rule would ensure that the definition of ''disability'' is consistent with the Americans with Disabilities Act Amendments Act and current case law, which will enable more individuals with disabilities to be effectively served within the public workforce system. That NPRM also addresses accessibility requirements (such as those for information and electronic technologies) and service animals. The Departments encourage commenters to review carefully the provisions of part 678 in this Joint WIOA Final Rule, as well as the proposed WIOA sec. 188 rule.

With respect to the commenter's concerns about pre-employment transition services, the Departments acknowledge that the provision of these services is a new requirement imposed on the VR program under sec. 113 of the Rehabilitation Act of 1973, as amended by title IV of WIOA. States must reserve at least 15 percent of their VR allotment to provide these services to students with disabilities. The ED provides detailed discussions regarding this requirement in the VR program-specific final regulations published elsewhere in this issue of the **Federal Register**.

Requests To Extend the Comment Period

Comments: A few commenters requested a 60-day extension of the comment period. The commenters cited the size and complexity of the five proposed NPRMs implementing WIOA.

Departments' Response: While the Departments recognize that the issues addressed in the NPRM are complex and important, the Departments concluded that the 60-day comment period was sufficient to provide the public a meaningful opportunity to comment, and this conclusion is supported by the hundreds of complex and thoughtful comments received. Additionally, the NPRM was available to the public for a preliminary review on the **Federal Register** Web site upon submission of the NPRMs to the **Federal Register**, which was several weeks prior to publication, thereby providing stakeholders additional time prior to the publication date.

Conclusion

These final regulations provide the critical framework for the implementation of WIOA. However, achieving the goals of WIOA will take visionary leadership and coordination at the State, regional, and local levels, and partnerships across many programs. It will require investment and innovation to develop new information technology that supports this important work, and make the most of this investment of public funds. The Departments will support these activities through program funding, on-going technical assistance and the provision of guidance to all levels of the American Job Center system.

IV. Section-by-Section Discussion of Public Comments and the Final Joint 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 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 (WIOA title I); the AEFLA program (WIOA title II); the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III (Wagner-Peyser Act Employment Service); and the VR program authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV (VR program). States must submit, at a minimum, a Unified State Plan, which encompasses the six core programs under WIOA. However, States are encouraged to submit a Combined State Plan, which must include the six core programs of the Unified State Plan, plus one or more Combined State Plan partner programs, as described at § 676.140(d): (1) Career and Technical Education (CTE) programs authorized under the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 *et seq.*); (2) 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 1965 (42 U.S.C. 3056 *et seq.*); (9) Employment and training activities carried out by HUD; (10) Employment and training activities carried out under the Community Services Block Grant Act (CSBG) (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). When a State elects this option, the Combined State Plan will take the place of the Unified State Plan for that State. Coordination across multiple Federal programs provides a wider range of coordinated and streamlined services to the customer.

This 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 and Education, or other Secretaries, as appropriate.

State WDBs are responsible for the development, implementation, and modification of the plan, and for convening all relevant programs, 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 WDBs and chief elected officials (CEOs), businesses, representatives of labor organizations, community-based

organizations (CBOs), adult education providers, institutions of higher education, other stakeholders with an interest in the services provided by the six core programs, and any Combined plan partner program included in a Combined Plan, as well as the general public, including individuals with disabilities. Other stakeholders include, but are not limited to, youth education and workforce development providers, disability advocates and service entities, youth-serving programs, and other advocacy organizations relevant to the programs covered by the Unified or Combined State Plan.

As noted in the NPRM, the Departments have chosen not to include all of the specific planning elements in the regulation. Instead, comprehensive State Plan requirements for both Unified and Combined State Plans are detailed in the WIOA Unified and Combined State Plan and Plan Modifications ICR, entitled ''*Required Elements for Submission of the Unified or Combined State Plan and Plan Modifications under the Workforce Innovation and Opportunity Act*,'' under the OMB Collection Number 1205–0522 (hereafter ''WIOA State Plan ICR''). ICRs must be renewed every 3 years. In future years, the WIOA State Plan ICR may undergo revisions. Throughout this preamble, ''WIOA State Plan ICR'' refers to the WIOA State Plan ICR as published on February 19, 2016. The WIOA State Plan ICR went through two rounds of public comment before being finalized and future revisions will be subject to public comment as well, as required under the PRA. In addition, the Departments jointly have issued guidance explaining the mechanics of how a State must submit its State Plan, through TEGL No. 14–15, Policy Directive RSA–PD–16–03, and Program Memorandum 16–1, all entitled *Workforce Innovation and Opportunity Act (WIOA) Requirements for Unified and Combined State Plans*, which were issued in March 2016. States must use the WIOA State Plan ICR to develop and submit the WIOA Unified or Combined State Plan and in accordance with instructions described in the jointly issued State Plan guidance.

In the section-by-section discussions of each Unified and Combined State Plan provision below, the heading references the DOL CFR part and section number. However, ED has identical provisions at 34 CFR part 361, subpart D (under its State VR 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 provision. When the regulations are published in the CFR, these joint performance regulations will appear in each of the CFR parts identified above.

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

Section 676.100 describes the principal purposes of the Unified and Combined State Plans, which communicate the State's vision for the State public workforce system and serve as vehicles for developing, aligning, and integrating the State public workforce system across Federal programs. Section 676.100(b) explains 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; direct 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. The Departments received a few comments on this section, none of which necessitated substantive changes to the regulatory text. Section 676.100, as discussed below, remains unchanged from the NPRM except for minor technical edits.

Comments: Several commenters supported the Departments' stated purpose of the Unified and Combined State Plans. A commenter said the regulation should require that State WDBs be provided with regular (*e.g.*, quarterly) program information and data, and at least annual analysis of the State's progress toward State Plan goals.

Departments' Response: The Departments considered these comments and concur that regular receipt and review of program information, data, and analysis will better enable effective decision-making by the State WDB. Section 677.160 of the joint performance regulations requires States to report data annually for all six core programs; however, some programs will report data quarterly, specifically the WIOA title I programs, the Wagner-Peyser Act Employment Service program, and the VR program, in accordance with part 677 of this Joint WIOA Final Rule. The State's quarterly and annual reports are publicly available, and State and Local WDBs are encouraged to review this information regularly. Therefore, the Departments have concluded that it is unnecessary to amend the final regulations to require that data be provided to the WDBs regularly as the commenter recommended.

Comments: A commenter requested confirmation that the references to ''relevant'' and ''job-driven'' education and training, in proposed § 676.100(b)(2) and (3), refer to ''evidence-based'' strategies identified in the Job-Driven Checklist (from Vice President Biden's report ''Ready to Work: Job-Driven Training and American Opportunity'' and the study of ''What Works in Job Training: A Synthesis of Evidence''). The commenter urged the Departments to provide clarification on how to, and encourage States to, use the joint State planning process to ensure that these evidence-based strategies are incorporated into their newly energized workforce development systems.

Departments' Response: The Departments agree that evidence- based strategies are important for the strategic planning required by this section. Paragraph (b)(2) of § 676.100 requires, as part of the description of the purpose of the Unified and Combined State Plans, that the plans direct investments to economic, education, and workforce training programs that focus on providing relevant education and training. Section 676.100(b)(3) further requires that plans apply strategies for job-driven training consistently across Federal programs. The references to ''relevant'' and ''job-driven'' education and training, in § 676.100(b)(2) and (3), include the ''evidence-based'' strategies identified in the Job-Driven Checklist from Vice President Biden's report ''Ready to Work: Job-Driven Training and American Opportunity'' and the study of ''What Works in Job Training: A Synthesis of Evidence.'' Through the issuance of joint Departmental guidance and instructions, the Departments offered further clarification and encouragement to States regarding how the joint planning process can ensure that evidence-based strategies are incorporated throughout the workforce development system, including the priorities of the job-driven checklist. No change to the regulatory text was made in response to this comment.

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

Section 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 public 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 workforce development system rather than a plan that discusses the State's approach to operating each core program individually.

Section 676.105(a) explains that Unified State Plans must be submitted in accordance with § 676.130 and sec. 102(c) of WIOA as explained in joint planning guidelines issued by the Secretaries of Labor and Education, with instructions to States on how to submit Unified State Plans.

Section 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. The Departments made an editorial change under § 676.105(b) to clarify that at a minimum States must satisfy the requirements of a Unified State Plan to be eligible to receive funding for the workforce development system's six core programs. However, if a State submits a Combined State Plan then it will, by including all the requirements of a Unified State Plan as mandated by the regulation, also satisfy the requirements of a Unified State Plan. WIOA sec. 103(b)(1) and § 676.140(e)(1) of this regulation state that a Combined State Plan must include all of the requirements of a Unified State Plan. Therefore, if a State submits a complete Combined State Plan, it also will satisfy all the requirements of a Unified State Plan.

Section 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). Paragraph (c) of § 676.105 remains unchanged from that proposed in the NPRM.

Section 676.105(d), which implements sec. 102(b) of WIOA, describes the strategic and operational planning elements that must be included in the Unified State Plan. The final regulation, consistent with that proposed in the NPRM, concerns major structural elements rather than enumerating all the statutory State planning requirements. States still must comply with each of the statutory requirements, regardless of whether they are repeated in regulation. In addition to minor technical edits throughout, the Departments made two substantive changes to § 676.105(d)(3). First, in § 676.105(d)(3)(iv), the Departments specifically mention the assurance that the lead State agencies responsible for administering the core programs reviewed and commented on the appropriate operational planning of the Unified State Plan and approved those elements as serving the needs of the individuals served by the programs. Second, the Departments added a new paragraph (d)(3)(v) that requires the Unified State Plan to include a description of the joint planning and coordination across the core programs and other required one-stop partners and other programs in the workforce development system. While these provisions are new in these final regulations, they do not represent new requirements on the States because each of these requirements are contained in sec. 102(b) of WIOA and were applicable to the States regardless of whether they were mentioned in the NPRM.

In these final regulations, the Departments have added § 676.105(e) to make clear that all of the requirements of part 676 (which implements the Unified or Combined State Plan requirements of secs. 102 and 103 of WIOA) apply to the outlying areas. As a result, the outlying areas must submit a Unified or Combined State Plan to receive funding for all of the core programs. This regulatory change is discussed at greater length below.

Outlying Areas

Comments: The Departments received several comments related to the applicability of Unified or Combined State Plan requirements to outlying areas. In the NPRM, the Departments sought comments specifically related to this issue and provided two options: Either (1) require outlying areas to submit Unified or Combined State Plans or (2) exempt outlying areas from the Unified or Combined State Plan requirement as a prerequisite for receiving funds for core programs. The commenters were unanimous in their support of explicitly requiring outlying areas to submit Unified or Combined State Plans as a prerequisite for receiving funding for all core programs. In so doing, these commenters said this approach would ensure consistency and a unified planning process, increase the relevance and validity of national program comparisons, and contribute to a fair and equitable distribution of funds. These commenters also noted that this approach would avoid the concern that outlying areas would submit Unified or Combined State Plans that include only the adult education and VR programs, since titles II and IV of WIOA require the submission of such plans as a prerequisite to receive funding.

While supporting the approach that would require outlying areas to submit a Unified or Combined State Plan as a prerequisite to receive funding for all core programs, one commenter expressed concern that ED permits outlying areas to receive adult education program funds under title II through the Consolidated Grant to Insular Areas application process (Consolidated Grant process). The commenter recommended that if ED continues to permit the award of adult education funds through the Consolidated Grant process, the Departments should require that outlying areas choosing to go through the Consolidated Grant process include title II activities as part of the planning process for the Unified or Combined State Plan, even though their funding is awarded through the Consolidated Grant.

Another commenter expressed concern that, if the outlying areas were not required to submit Unified or Combined State Plans for all core programs, a situation could exist in which the VR program would be the only component of such a plan if any of the outlying areas opted to include adult education program funds in its Consolidated Grant application process. The commenter suggested that, in such a situation, the Departments should ensure that outlying areas are not penalized and denied funding for the VR program, which is one of the six core programs under WIOA.

Other commenters expressed general support for requiring outlying areas to submit Unified or Combined State Plans, and one commenter noted that the inconsistency in the definitions of ''State'' and ''outlying areas'' in WIOA raised questions as to congressional intent on the issue of whether the Unified or Combined State Plan requirements should be applicable to the outlying areas. A commenter suggested, if the intent of differing definitions was to treat outlying areas differently than States, a more comprehensive delineation should be provided. In particular, the delineation should specify more than just a ''competitive process'' for the title I programs since outlying areas have historically received funding for these programs on a formula basis. The commenter suggested that the requirement for competitions is inconsistent with the need for a Unified or Combined State Plan because, under

a competition, funds would come into question every year. The commenter further suggested that if outlying areas are not going to be treated differently for purposes of the State planning requirements, a reconciliation of terms should be provided by Congress, thereby eliminating all ambiguity and restoring formula funding for the outlying areas through submission of a Unified or Combined State Plan.

Departments' Response: The Departments agree that applying the Unified or Combined State Plan requirements to the outlying areas is most consistent with the vision under WIOA for all six core programs to provide an integrated and coordinated workforce development system.

The Departments want to make clear that the State Plan requirements in WIOA secs. 102 and 103 apply to outlying areas, not just to States. To that end, the Departments have added clarifying language in § 676.105(e) of these final regulations. The Departments have concluded that requiring the outlying areas to submit Unified or Combined State Plans that incorporate all of the core programs as a prerequisite to receive funding under any of the core programs is most consistent with the plain meaning of WIOA's planning and allocation of funds requirements when both are read together. Further, it is the only interpretation that gives full meaning to the unified strategic planning required across all core programs.

In resolving the apparent inconsistency and potential for confusion regarding the definitions of ''State'' and ''outlying area,'' as it was explained in the NPRM preamble, the Final Rule relies on the Secretary of Labor's general authority to regulate at sec. 189 of WIOA, and applicable provisions of titles II and IV of WIOA. In so doing, the Departments ensure that all core programs—and all grantees under each of those programs—are treated similarly, thereby achieving the vision of WIOA as an integrated and coordinated one-stop delivery system and a unified, strategic planning process encompassing all core programs.

The Departments also agree with the commenter that the option, which has existed for ED, for outlying areas to include the adult education program as part of a Consolidated Grant application, raises some unique concerns with regard to the Unified or Combined State Plan requirements of WIOA. When an outlying area submits a Consolidated Grant application, pursuant to 48 U.S.C. 1469a, the application is submitted in lieu of any other State Plan required by any of the programs included in the Consolidated Grant application. The Departments have considered the suggestion made by the commenter; however, resolution of this particular concern goes beyond the scope of these joint regulations. The ED will take the recommendation under advisement and will address this issue more fully in its administration of the Consolidated Grant to Insular Areas.

The Departments recognize that this interpretation raises additional questions with regard to the competition provisions that apply to the title I core programs in WIOA sec. 127(b)(1)(B). The DOL will address this issue in guidance.

Joint Planning Guidelines

Comments: Proposed § 676.105(a) is, in the NPRM, the first mention of joint planning guidelines to be issued by the Secretaries of Labor and Education. A number of commenters questioned whether the joint guidelines would be subject to public comment, and a few commenters challenged whether, in issuing the joint guidelines, the Departments would be in compliance with the Administrative Procedures Act (APA).

Departments' Response: The Departments' joint planning guidelines, issued March 2016, complied with the APA. The APA does not require notice and comment for interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice. *See* 5 U.S.C. 553(b)(A). The planning guidance falls under these exceptions, and thus, was not subject to notice and comment rulemaking. Specifically, the guidance includes procedural rules explaining the mechanics of how a State must submit its State Plan, as well as interpretive rules as needed to explain the applicable statutory and regulatory requirement.

Comments: One commenter supported the inclusion of adult education as a core program in the Unified State Plan in § 676.105(b)(2), as well as the requirement that those who administer adult education programs be represented on State and Local WDBs. Multiple commenters asserted that any grant programs under the jurisdiction of DOL ETA and operated through the State Workforce Agency (SWA) or the one-stop delivery system should be required to be part of the State's Unified or Combined plan. As an example, the commenters said there should not be a separate planning process for the Jobs for Veterans' State Grant (JVSG) or Foreign Labor Certification. Another commenter said non-WIOA core program partners should be allowed to participate in the strategic portion of the planning process, even if they cannot fully align their program budgets and operational plans with a 2- or 4-year operational plan.

Departments' Response: The Departments acknowledge the commenter's support for inclusion of those who administer adult education programs on the State and Local WDBs in the regulation as proposed. State and Local WDB requirements, and related comments, are discussed in sections of the DOL WIOA Final Rule preamble, which is published elsewhere in this issue of the **Federal Register** (*see* 20 CFR 679.110(b)(3)(iii)(A) and 679.320(d)).

Regarding comments in support of including additional programs in the Unified State Plan, sec. 102(a) of WIOA and § 676.105(b) make clear that only the core programs (as defined in sec. 3(12) and (13) of WIOA) are to be included in such plan. Paragraph (b) of § 676.105 is consistent with the six core programs identified throughout WIOA. States may submit a Combined State Plan that could include the programs mentioned by commenters. If a State chooses to submit a Combined State Plan, the plan must include the six core programs and one or more of the Combined State Plan partner programs and activities described in sec. 103(a)(2) of WIOA, and § 676.140(d). The JVSG is a Combined State Plan partner program which States may include in a Combined State Plan as described under WIOA sec. 103 and § 676.140(d). Foreign Labor Certification is not a Combined Plan partner program under WIOA sec. 103; however, a State may include a description of Foreign Labor Certification in its State Plan among its description of other programs and activities.

Regarding the inclusion of non-WIOA core program partners in the strategic portion of the planning process, WIOA sec. 102(b)(2) requires State Plans to discuss alignment *among* core programs and the employment and training services within education and human services programs which operate in partnership with the one-stop delivery system, including those not authorized by WIOA. Although not described in the regulation for State Plans, this requirement is reflected in the WIOA State Plan ICR. The Departments agree that coordination with program partners and stakeholders to the fullest extent possible is vital for successful joint planning. In addition to the changes made to § 676.105(d)(3) as described above and relevant to these comments, the Departments revised § 676.140 regarding Combined State Plans, which

will be discussed in more detail below in connection with that section. Further comments regarding the importance of public comment, review, input and coordination in development of the plan are discussed in this preamble in § 676.130(c) and (d)(1) for Unified State Plans and under §§ 676.140(e)(4) and 676.143(b) and (c) for Combined State Plans.

Comments: A couple of commenters responded to the authority granted to the Secretaries by WIOA sec. 102(b)(2) to create additional operational planning requirements beyond those already detailed in statutory language. These commenters requested that the Secretaries, in their discretion, keep to a minimum any additional planning requirements to reduce the burden placed on States and to provide States with ample opportunity to comply with statutorily established planning elements.

Departments' Response: The Departments have considered these comments and agree. WIOA contains a detailed description of planning requirements, and the Departments have chosen not to include all of the specific planning elements in the regulation. However, as made clear in the NPRM and this preamble, States must comply with all State planning requirements set forth in WIOA regardless of whether the requirements are repeated in these regulations. Comprehensive State Plan requirements for both Unified and Combined State Plans are detailed through the WIOA State Plan ICR. The Departments have endeavored to keep additional planning requirements to a minimum, while also attempting to ensure that the WIOA reform principles of program integration and alignment, job-driven training, accountability and transparency are reflected in the State Plans.

Comments: The Departments received a number of comments that requested plan requirements be added. In response to these suggestions, described in more detail below, the Departments have made no change to the regulatory text but have indicated whether the particular suggested requirements are indeed already included in the applicable WIOA State Plan ICR, published on February 19, 2016. In future years, the WIOA State Plan ICR may undergo revisions. The level of detail of the plan requirements suggested by the following comments is more appropriately addressed in the WIOA State Plan ICR than in the regulatory text. The Departments have declined to incorporate the following suggested changes in the regulatory text, but the discussion of the following comments points to various provisions of the WIOA State Plan ICR and other places in the regulation that are pertinent to the commenters' concerns.

Some commenters asserted that the regulation should require that States address priority of service for covered veterans, and for those veterans with service connected and non-service-connected (condition not as a result of military service) disabilities.

Departments' Response: The Departments have reviewed these comments. The WIOA State Plan ICR requires that States describe in their Unified or Combined State Plans how they will implement and monitor the priority of service provisions for all veterans in accordance with the requirements of 38 U.S.C. 4215. This provision applies to all employment and training programs funded in whole or in part by DOL. In addition, the WIOA State Plan ICR requires States to explain the referral process for veterans determined to have a significant barrier to employment, including certain disabled veterans, to receive services from the JVSG program.

Comments: One commenter said the Departments should unify the definition of ''supportive services'' across programs, thereby aligning adult education and literacy activities with other core programs and with one-stop partners. The commenter noted the disparity between the definition of ''supportive services'' under sec. 3(59) of WIOA and the definition of ''other services'' under career pathways programs. The commenter concluded that the quality and type of wraparound services offered should not be dependent on the program in which individuals participate, and the Departments should encourage States to develop comprehensive wraparound services that are available to adults, youth, dislocated workers, and adult education students whenever possible.

Departments' Response: WIOA sec. 3(59) provides a definition of ''supportive services;'' this definition applies to, and remains consistent across, all core programs. The WIOA State Plan ICR, which implements the statutory and regulatory requirements for Unified and Combined State Plans, requires States to describe how the entities carrying out the programs involved in the Unified or Combined State Plan including the core programs, any applicable Combined State Plan partner programs, and any mandatory and optional one-stop partner programs, will coordinate activities and resources to provide comprehensive, high-quality, customer-centered services. This requirement includes the provision of supportive services. However, the determination of need for, and the extent to which there is a need for, supportive services is within the State WDB's discretion, consistent with each of the individual program's authorizing statutes.

Comments: One commenter, in response to § 676.105(d)(1), said the Departments should ensure that consistent data definitions and comparable data are used to assess respective labor market areas.

Departments' Response: The WIOA State Plan ICR emphasizes the use of economic analysis and labor market information throughout and also addresses alignment of labor market information systems. The Departments encourage States to use a variety of accurate, reliable, and timely labor market information on which to base analyses in the State Plan. However, consistent with WIOA, the Departments will not require States to use a particular dataset and will leave the choice of data sources to the States' discretion, thereby allowing each State to meet its own unique needs and circumstances.

Addressing the Needs of Individuals With Barriers to Employment

Comments: A commenter suggested that the Departments require States to provide additional information regarding how they will address the needs of people with disabilities. Another commenter stated that WIOA requires that State and local planning efforts be informed by an analysis of various data, including data that include the education and skill levels of individuals with barriers to employment. A commenter said it would be helpful if the Departments explicitly required that States determine the number of individuals employed under 14(c) special wage certificates as part of the ''analysis of the current workforce, employment and unemployment data, labor market trends, and the educational and skill levels of the workforce, including individuals with barriers to employment (including individuals with disabilities), in the State'' pursuant to WIOA sec. 102(b)(1)(B). This commenter also stated that the strategic planning elements obligate the State to examine the specific employment related characteristics in their State and that this would be a valuable opportunity to gather information on employment statistics for individuals with disabilities.

Departments' Response: Consistent with WIOA and these final regulations, multiple sections of the WIOA State

Plan ICR require the State to address the needs of individuals with barriers to employment. The term ''individual with a barrier to employment,'' as defined in sec. 3(24) of WIOA, encompasses the following groups of people: Individuals with disabilities, including youth with disabilities; displaced homemakers; low-income individuals; Indians, Alaska Natives, and Native Hawaiians; older individuals; ex-offenders; homeless individuals, or homeless children and youths; youth who are in or have aged out of the foster care system; individuals who are English language learners, individuals who have low levels of literacy, and individuals facing substantial cultural barriers; farmworkers (as defined at sec. 167(i) of WIOA and Training and Employment Guidance Letter No. 35–14); individuals within 2 years of exhausting lifetime eligibility under the TANF program; single parents (including single pregnant women); and long-term unemployed individuals. Therefore, States are required to address the needs of individuals with disabilities in the Unified or Combined State Plan.

Consistent with sec. 102(b)(1)(B) of WIOA and these final regulations, the WIOA State Plan ICR requires that State analysis related to individuals with barriers to employment include employment and unemployment, labor market trends, education, and skill levels of the workforce and any apparent gaps between the skills in demand by employers and the skill levels of the workforce. State and local planning efforts are informed by this analysis. Based on this analysis of workforce and labor market information required under sec. 102(b)(1)(B) of WIOA, § 676.105(d) and the WIOA State Plan ICR require State Plans to describe State's strategic vision and goals for developing its workforce and meeting employer needs in order to support economic growth and economic self-sufficiency. To that end, the State must describe its goals for preparing an educated and skilled workforce, including preparing youth and individuals with barriers to employment and other populations. Further, the WIOA State Plan ICR requires the State to assure that the State obtained input into the development of the Unified or Combined State Plan and provided an opportunity for comment on the plan by primary stakeholders, including organizations that provide services to individuals with barriers to employment and that the Unified or Combined State Plan is available and accessible to the general public.

Additionally, the Departments agree that the number of individuals employed under 14(c) special wage certificates may be helpful as part of the analysis by the State of workforce needs. However, the benefit of requiring the collection of sufficient data elements to satisfy the needs of every program must be balanced with the burden such a requirement would impose on State program operators and participants. For this reason, the Departments are not regulating such a requirement. While the collection of this data element will not be required of States, comparable data is publicly available. When an employer applies for a sec. 14(c) certificate from the Department of Labor's Wage and Hour Division, the employer is required to report on their application the number of workers with disabilities they employed at subminimum wages during their most recently completed fiscal year. The Department of Labor's Wage and Hour Division posts on its Web site (*http://www.dol.gov/whd/workerswithdisabilities/*) lists of all employers who hold sec. 14(c) certificates and certain data elements reported on their applications, including the number of workers with disabilities who were paid subminimum wages.

Finally, the Departments agree that the strategic planning elements requirements present a valuable opportunity to gather information on employment statistics for individuals with disabilities, so long as States are mindful of Federal and State law protecting personally identifiable information (PII).

Comments: A couple of commenters said States should be required to include the following information in their State Plans: (1) Explicit activities focused on how they will work to ensure ''low-level learners'' and hard-to-serve populations are served by the State Plan, and (2) a report on the diversity of programs funded and the actions taken to ensure broad participation at the local level. A commenter urged the Departments to encourage States and localities to build activities into their State Plans specifically directed at raising awareness about older workers and dispelling stereotypes. This same commenter also urged the Departments to encourage States to create plans that ensure engagement of all players to help employers connect with older workers.

Departments' Response: The Departments have reviewed these comments. As noted above, States must address in their Unified or Combined State Plans the needs of ''individuals with barriers to employment,'' as defined in sec. 3(24) of WIOA, in the State's workforce analysis, goals for the public workforce system and in the State's stakeholder input and public comment assurances. As described above, the term ''individual with a barrier to employment'' includes individuals who have low levels of literacy and older workers. However, the Governors and State WDBs will determine the explicit activities appropriate for their individual States. For this reason, the Departments are not requiring in these regulations specific activities to satisfy these requirements, though we acknowledge that some states may elect to do so. In developing their Unified or Combined State Plans, States must conduct a thorough analysis of labor market statistics, which will address the needs of specific populations. The Departments do not have authority under WIOA to require a report on the diversity of programs funded and the actions taken to ensure broad participation at the local level, as recommended by commenters.

Comments: A few commenters recommended that the Departments encourage WDBs to establish effective operational partnerships with Continuum of Care bodies and State councils focused on homelessness. A couple of commenters also suggested that the Departments encourage State Plans to include specific strategies for using employment to prevent and end homelessness. One commenter provided examples of specific strategies for using employment to prevent and end homelessness, including HUD support for public housing residents, individuals with housing vouchers, and housing and community development projects. Lastly, this same commenter urged the Departments to work with HUD and other national experts and initiatives to identify and promote promising examples of where and how homeless services systems and workforce systems are working together for the benefit of increasing employment and economic opportunity for job seekers.

Departments' Response: The Departments have reviewed these comments. The Departments encourage State and Local WDBs to partner with appropriate entities to address the needs and concerns of individuals who are homeless or at risk of homelessness, including Continuum of Care bodies, State councils focused on homelessness, and programs administered by HUD. These are appropriate strategies for a State Plan in States with significant issues related to individuals who are homeless or at-risk of homelessness. As noted above, in developing its Unified or Combined State Plan, the State must

address the needs of individuals with barriers to employment in the State's workforce analysis, goals for the public workforce system and in the State's stakeholder input and public comment assurances. An ''individual with a barrier to employment'' in WIOA sec. 3(24) includes homeless individuals. Because each State's needs and circumstances are unique, the Departments have not imposed the additional planning requirements suggested by commenters in these final regulations. The Departments agree with the commenter about the need for increased collaboration at the Federal level and, to that end, the Departments have collaborated with other Federal agencies, including HUD, in developing the WIOA State Plan ICR and will continue to do so to ensure full implementation of WIOA.

Comments: A few commenters stated that WIOA represents a substantial shift from the WIA because it increases the amount of title I youth funding dedicated to out-of-school youth to 75 percent (up from the prior 30 percent under WIA) and expands the age range to include those between 16 and 24 years old. The commenters said immigrants represent more than 1 in 10 youth in this age range nationwide. The commenters urged the Departments to explore ways to encourage States and Local WDBs to review their program design and recruitment strategies to ensure that they are reaching and effectively serving eligible immigrants and youth in their communities who are English language learners.

Departments' Response: Some guidance has already been released by DOL related to the change in the percentage of youth program (title I) formula dollars that must be spent on out-of-school youth, (see TEGL No. 23–14), and DOL plans to issue further guidance and technical assistance focused on strategies for complying with this requirement. The Departments agree that States should address their strategies for serving out-of-school youth in State Plans. The WIOA State Plan ICR requires States to describe the strategies the State will use to achieve improved outcomes for out-of-school youth as they are defined in WIOA sec. 129(a)(1)(B), including how it will leverage and align the core programs, any Combined State Plan partner programs included in this plan, required and optional one-stop partner programs, and any other resources available. In developing their Unified or Combined State Plans, States must address the needs of individuals with barriers to employment in their workforce analysis, goals for the public workforce system and in stakeholder input and public comment assurances. Under WIOA sec. 3(24), individuals with barriers to employment include youth with disabilities, homeless children and youths, youth who are in or have aged out of the foster care system, individuals who are English language learners, individuals who have low levels of literacy, and individuals facing substantial cultural barriers. In their Unified or Combined State Plan, States also must describe how the one-stop delivery system will ensure that each one-stop center is able to meet the needs of English language learners. The Departments encourage States with eligible immigrants and youth in their communities to revisit their program design and strategies to ensure that they are reaching and effectively serving these populations.

Comments: A couple of commenters recommended that the Departments require that State Plans provide for access for English language learners to all title I-funded services. If any title I-funded programs in a State or locality are not explicitly expected to provide access to English language learners, the commenters continued, the Departments should require that the State or locality demonstrate how it is complying with Federal anti-discrimination provisions and providing equitable access to title I services for English language learners.

Departments' Response: The Departments have reviewed these comments and agree that providing for the needs of English language learners through title I services, as well as other services, should be a component of all Unified and Combined State Plans. Sec. 102(b)(2)(C)(vii) of WIOA requires States to describe how the one-stop delivery system (including one-stop center operators and the one-stop delivery system partners) will comply with sec. 188 of WIOA. In addition, the WIOA State Plan ICR requires States to describe how the one-stop delivery system (including one-stop center operators and the one-stop delivery system partners) will ensure that each one-stop center is able to meet the needs of English language learners, such as through established procedures, staff training, resources, and other materials.

The Departments agree with the importance of ensuring that States address the needs of the specific populations mentioned by the commenters. As noted above, States must address, in developing their Unified or Combined State Plans, the needs of individuals with barriers to employment in their workforce analysis, goals for the public workforce system, and in stakeholder input and public comment assurances. It also should be noted that WIOA grant recipients are subject to all of the requirements of the sec. 188 WIOA Nondiscrimination and Equal Opportunity Regulations (29 CFR part 38).

Suggestions for State Plan Requirements

Section 676.105(d)(3)(i) through (v) lists the operational planning elements that must be included in a Unified or Combined State Plan. Section 676.105(d)(3)(ii) states that operational planning elements must include State operating systems, including data systems, and policies that will support the implementation of the State's strategy.

Comments: In response to these requirements, a commenter requested guidance on where to focus State efforts in technology planning. Specifically the commenter asked whether the State strategic plan can describe a schedule for developing a comprehensive technology plan and how States should prioritize investments in technology as funds become available. Another commenter requested guidance on the Departments' expectations regarding the States' development of a common intake system among one-stop partners.

Departments' Response: The Departments have considered these comments and agree that additional guidance regarding the operational planning elements contained in a State Plan is appropriate. The Departments plan to issue joint planning and operational guidance regarding the technology planning and data systems to be used for reporting and intake systems. Further, States are encouraged to utilize the Departments' available technical assistance.

Comments: A commenter recommended that the Departments require States to include and address the following five topics in their Unified State Plan: (1) Priority of Service, (2) Career Pathways, (3) Criteria for Selecting Employers for Work-based Training, (4) Youth Committees, and (5) Measurable Skill Gains. The commenter went on to detail how States should address each of the enumerated topics in the State Plans. Specifically, with regard to Priority of Service, the commenter recommended requiring that Unified State Plans include a description of how the Governor will ensure priority of service for title I adult career and training services for recipients of public assistance, individuals who are basic skills deficient, and other low-income individuals. Regarding career pathways, the commenter said Unified State Plans should be required to explain: How the

WIOA definition of a career pathway will be applied to the programs in their State that align with industries in the regional economy; how the State will make accessible secondary and postsecondary education; how the State will include individual education and career counseling services; how the State will include integrated education and training; how the State is organized for acceleration; how the State will make available high school equivalency and at least one postsecondary credential; and how the State will promote career advancement. The commenter also recommended that Unified State Plans be required to demonstrate how they will track career pathway participants whose service happens not within one particular Federal program and funding stream, but across these programs through co-enrollment. In addition, this same commenter urged 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 the criteria they will use for selecting employers. Regarding youth committees, the commenter recommended that the Departments require States to explain in their State Plans the State-directed format for local areas youth committee elections. Lastly, to ensure the effective implementation of the measurable skill gains indicator, the commenter recommended 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.

Departments' Response: The Departments considered this comment but did not revise the regulatory text. Many of the concerns are already addressed by sec. 102 of WIOA, these regulations, and the WIOA State Plan ICR. The WIOA State Plan ICR, consistent with sec. 134(c)(3)(E) of WIOA, requires States to address, in developing their Unified or Combined State Plans, priority in the delivery of career and training services to individuals who are low income, public assistance recipients, or basic skills deficient. With regard to the commenter's concern about career pathways, the WIOA State Plan ICR, consistent with secs. 101(d)(3)(B) and 102(b)(2)(B)(ii) of WIOA, includes requirements for the State to describe both its sector and career pathways strategy. Further comments regarding career pathways are discussed in detail below. With regard to the commenter's concerns about work-based training, the WIOA State Plan ICR requires States to address work-based learning approaches as a part of adult, dislocated worker, and youth activities under title I–B of WIOA. However, the Departments decline to require a specific policy on employer criteria because the description of the State's approach will provide sufficient information to the Departments and stakeholders. Regarding youth committees, WIOA eliminates the requirement for Local WDBs to establish a youth council; however, the Local WDB may choose to establish a standing youth committee, as described at 20 CFR 681.110 (*see* DOL WIOA Final Rule). States with Local WDBs that have chosen to form standing youth committees may describe this as a part of the State's operational planning elements, which are required in the WIOA State Plan ICR. However, the Departments have declined to require that States address standing youth committees because the creation of standing youth committees is determined by Local WDBs and the appropriateness of including such committees in the State Plan will vary from State to State. The DOL has issued guidance on standing youth committees, in TEGL No. 23–14 and in TEGL No. 8–15. Lastly, measurable skill gains is a required performance indicator under WIOA and it is defined in part 677 of this Joint WIOA Final Rule. That part further defines the specific allowable skill gains. The Departments addressed the data collection necessary to sufficiently measure skill gains and identify other indicators in the WIOA Joint Performance ICR. The Departments also provided further guidance on this particular issue. Therefore, the Departments decline to revise the regulatory text in response to the concerns discussed above.

Comments: Some commenters said the Departments should require the States to include in their Unified or Combined State Plans a demonstration of how they will ensure that eligible providers have direct and equitable access to apply and compete for grants or contracts.

Departments' Response: In response to this concern, the Departments direct the commenters to the WIOA State Plan ICR, which requires States to describe, with regard to the distribution of funds for title II programs in particular, how the eligible agency will ensure direct and equitable access to all eligible providers to apply and compete for funds. This provision in the WIOA State Plan ICR is consistent with sec. 231(c) of WIOA requiring direct and equitable access for all eligible providers under title II. Further, the WIOA State Plan ICR requires States to describe how the eligible agency will ensure that it is using the same grant or contract announcement and application procedure for all eligible providers. The guidance sufficiently addresses the commenters' concerns; no changes to the regulatory text were made in response to these comments.

Comments: One commenter remarked that throughout the ''Career Services'' section of the law, there are references to the ''assistance'' provided by the one-stop center or its contractor as it relates to financial aid eligibility and filing for unemployment compensation. Due to the significant decline in resources, the commenter requested that State Plans address how statewide resources will be utilized to ensure local areas have enough staff to meet this demand, including how the State will allocate funding and merit staff.

Departments' Response: The Departments have considered this comment and concluded that adopting a requirement such as that would result in substantial burden to the States. The purpose of WIOA is best served if the States retain flexibility to determine the best use of staff resources to deliver workforce services in the State.

Industry and Sector Partnerships

Comments: Several commenters recommended that the Departments require States to describe in the Unified State Plan how they will carry out the requirements under WIOA sec. 101(d)(3)(D) relating to the development of industry or sector partnerships. One of these commenters made several recommendations with regard to industry or sector partnerships. First, require regional plans to clarify the relationship between regional sector initiatives and any industry or sector partnerships in the regional planning area. Second, establish a new subpart H covering Industry or Sector Partnerships that, at a minimum, (a) describes the purposes of industry or sector partnerships, (b) reiterates the required partners for an industry or sector partnership as set forth in WIOA, (c) clarifies the role of Local WDBs in industry and sector partnerships, (d) identifies the ways in which States and local areas can evaluate the effectiveness of industry or sector partnerships, and (e) eliminates the current references to industry or sector partnerships in proposed § 678.435, which generally describes the business services that must be provided through the one-stop delivery system.

Additionally, as noted in the portion of the DOL WIOA NPRM preamble addressing 20 CFR 675.300, commenters recommended that the Departments define the terms ''Industry and Sector Partnership'' and ''Sector Strategy'' and suggested specific components to include in such definitions.

Departments' Response: The WIOA State Plan ICR requires States to describe the strategies they will implement, including industry or sector partnerships related to in-demand industry sectors and occupations and career pathways, as required by WIOA sec. 101(d)(3)(B) and (D). It also requires States to address industry sectors and occupations throughout the analyses required in the State Plan. Additionally, WIOA sec. 3(26) defines ''industry or sector partnership.'' Due to the changing needs of the workforce and employers, and in order to maximize States' flexibility to develop strategies to address these changing needs, the Departments decline to change the regulation to be more prescriptive through changing the definition of ''industry or sector partnership,'' defining the term ''sector strategy,'' or adding a new subpart H on industry or sector partnerships. The Departments have provided technical assistance on sector strategies and plan to continue to do so while also issuing further guidance on industry and sector partnerships. Lastly, regional planning requirements are addressed in 20 CFR 679.510 (*see* DOL WIOA Final Rule published elsewhere in this issue of the **Federal Register**).

Comments: One commenter recommended that special emphasis be placed upon highlighting the importance of credentialing within industry and sector partnerships, especially for new high-growth industries. Specifically, the commenter recommended the following: (1) Funds be specifically allocated and used for State and local credentialing efforts within industry or sector partnerships, (2) DOL link credentialing to industry or sector partnerships and amend the proposed State Plan requirements to require States to use explicit language to clarify how they will integrate credentialing into the development of new industry or sector partnerships, where applicable, and (3) States should be required to explain their efforts to find industry-driven credentials as part of their Unified State Plans while providing a list of those credentials to DOL.

Departments' Response: The Departments agree that credentialing as a part of industry or sector partnerships is important. The WIOA State Plan ICR supports the inclusion of credentialing and its role in sector and career pathways strategies. Specifically, the WIOA State Plan ICR, consistent with sec. 102(b)(2)(B)(vi) of WIOA, requires States to describe how their strategies will improve access to activities leading to recognized postsecondary credentials, including registered apprenticeship certificates. The requirement in the WIOA State Plan ICR further includes credentials that are industry-recognized certificates, licenses, or certifications, and that are portable and stackable. The WIOA State Plan ICR also requires States to describe the strategies the State will implement, including industry or sector partnerships related to in-demand industry sectors and occupations and career pathways, as required by WIOA sec. 101(d)(3)(B) and (D). Such strategies may include the use of credentials or industry-recognized certificates. The Departments have concluded that these requirements adequately address the States' use of credentials within industry or sector partnerships. The Departments have declined to require States to use explicit language regarding how they will integrate credentialing and the State's efforts to fund industry-driven credentials, or to require that States provide a list of those credentials to the Departments to reduce planning burdens on States. Lastly, funding allocations for State credentialing efforts are outside the authority of this rule.

Career Pathways

Comments: Several commenters were pleased that WIOA sec. 3(7) codifies a definition of ''career pathways'' in Federal law, but they expressed concern that the rule includes little guidance on how career pathways are to be implemented. These commenters recommended that the Departments require States to describe how they will carry out the requirements under WIOA relating to the development of career pathways.

Departments' Response: The Departments considered the commenters' support for the WIOA definition of career pathways and the recommendation that States be required to describe how they will carry out the development of career pathways in the State Plan. Career pathways are designed to serve a diverse group of learners, including youth, dislocated workers, veterans, individuals with disabilities, individuals who have low levels of literacy or English proficiency, new immigrants, women, and minorities. Career pathways programs provide opportunities for more flexible education and training, allow people to earn industry-recognized credentials, and support the attainment of marketable skills that transfer into work for all. The Departments are choosing not to regulate further regarding the implementation of career pathways in order to promote maximum flexibility at the State and local level, and the Departments will continue to support career pathways programs locally and regionally through comprehensive technical assistance.

Comments: A number of commenters recommended that the rule clarify the minimum requirements that a Local WDB must satisfy in order to demonstrate successful implementation of career pathways.

A few commenters encouraged the Departments to use a forthcoming Career Pathways and Credentials Toolkit to amplify and build awareness of States' and localities' requirements for career pathways under WIOA.

Another commenter encouraged the Departments to expand the use of career pathways, especially for racial minorities and women, and to provide support to States and localities as they implement plans to improve career pathways available locally and regionally.

One commenter said the Departments should offer more specific guidance for operationalizing career pathways, such as acceptable strategies for braiding funding streams from titles I and II of WIOA and ways to identify and improve career pathways programs, with a particular focus on how to integrate wraparound services successfully into career pathways programs.

One commenter provided the following recommendations:

- Unified State Plans should be required to demonstrate how to track career pathway participants whose service happens across Federal program and funding streams 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 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.
- The Joint WIOA Final Rule should 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.
- Unified State Plans should 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.

Departments' Response: Consistent with sec. 101(d)(3)(D) of WIOA, the WIOA State Plan ICR includes requirements for the State to describe the career pathways strategies. The WIOA State Plan ICR, consistent with secs. 101(d) and 102(b)(2) of WIOA, also requires States to describe how such activities will be aligned across the core programs and Combined State Plan partner programs included in the State Plan and among the entities administering the programs, including using co-enrollment and other strategies, as appropriate. States have the option of including strategies that address TANF recipients as well as the option of including TANF as a Combined State Plan partner program in a Combined State Plan. Because career pathways, co-enrollment, and TANF recipients already are reflected in guidance, the Departments decline to regulate planning requirements regarding career pathways further. Regarding commenters' suggestions for specific strategies around implementation and requests for guidance, the Departments agree that additional guidance is necessary to describe WIOA requirements for incorporating career pathways into the State's strategies, although the Departments have concluded that additional regulatory text on career pathways is not necessary. The Departments are working in partnership with other Federal agencies to provide additional guidance on the implementation of career pathways in WIOA, and the Departments continue to take steps to incorporate career pathways approaches into a wide range of program investments, evaluation and research activities, and technical assistance efforts.

Combined State Plan Partner Programs

Paragraph (d)(2) of § 676.105 specifically requires that Unified State Plans include strategies for aligning the core programs with Combined State Plan partner programs and other resources to support the State's vision and goals (WIOA sec. 102(b)(1)).

Comments: A few commenters noted that the term ''optional programs'' is not used in WIOA sec. 102(b)(1), but the commenters also acknowledged that from the context it is apparent that the Departments intended to refer to the programs described at sec. 103(a)(2) and proposed § 676.140(d). The commenters supported this language, but they encouraged the Departments to clarify this intent explicitly by amending proposed § 676.105(d)(2) to include ''as described in § 676.140(d)'' after the words ''optional programs.'' One commenter stated that while the use of the term ''optional programs'' for other workforce development programs is understood to be in reference to the fact that they are not required to be part of Unified Plans, there is the danger that the term could inadvertently send a message about the value of these programs. The commenter recommended that guidance should clarify that ''optional'' only refers to the planning requirements and does not imply that other programs beyond the WIOA ''core'' programs are any less essential to workforce development.

Departments' Response: The Departments have reviewed these comments and agree that the term ''optional program'' was unclear. The term ''optional,'' as used in the NPRM, referred to the State's option of including these partner programs in a Combined State Plan. The Departments also agree that Combined State Plan partner programs are a valuable part of the workforce development system and the Departments encourage States to maximize the involvement of these programs in developing the State's strategies, goals, and vision for the one-stop delivery system in each State. The Departments revised § 676.105(d)(2), by replacing the term ''optional programs'' with ''Combined State Plan partner programs'' and also applied the suggested edit cross-referencing the term to § 676.140. The sentence now reads as ''Strategies for aligning the core programs and Combined State Plan partner programs as described in § 676.140(d), 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.'' Throughout this preamble to the Joint WIOA Final Rule, the Departments have generally used the term ''Combined State Plan partner program'' to refer to what were called ''optional programs'' in the NPRM.

Coordination in Plan Development

Comments: A number of commenters expressed concern about having an adequate voice and input into the State Plan development process. One commenter requested that the Departments issue a stronger or clearer regulation addressing which entities must be involved in the process.

Departments' Response: The Departments reviewed these comments and agree that the regulation would benefit from a more explicit statement regarding the role of core programs in the planning process. In response to these comments, the Departments have added a new paragraph (d)(3)(v) to § 676.105 to clarify that operational planning elements must include a description of joint planning methods across core programs and required one-stop partner programs and other programs and activities in the Unified Plan. Due to this addition, proposed § 676.105(d)(3)(v) has been redesignated as § 676.105(d)(3)(vi) in this Joint WIOA Final Rule. The Departments also have added a new paragraph (c) to § 676.130 to explain how stakeholder and core program providers should be involved in plan development, as well as the role of the State WDB in plan development. The Departments have made parallel revisions to §§ 676.140 and 676.143 for Combined State Plans, all of which will be discussed in connection with each of these provisions.

Comments: Several commenters supported the unified planning process in general but expressed concern about the lack of oversight and enforcement mechanisms regarding the requirement that the development of the plan is collaborative. The commenters urged the Departments to remind all the core programs that they must truly collaborate if WIOA is to succeed.

Similarly, a commenter said the rule's strategic approach will require constant collaboration between Federal, State, and local governments, as well as other community partners, but the willingness to collaborate among these actors must be present. This commenter said other challenges include resistance to change within the workforce system, procurement requirements in a single State area, and conflicting performance requirements from different funding streams.

Another commenter said research has shown that bundling multiple services leads to more successful outcomes in the workforce development field, and the workforce system provides an ideal platform to integrate financial capability services because they both are focused on ensuring individuals have the tools to participate in, contribute to, and benefit from the mainstream economy.

Departments' Response: The Departments issued this Final Rule jointly to lay the foundation, through coordination and collaboration at the Federal level, for implementing the vision and goals of WIOA. One of WIOA's principal areas of reform is to require States to plan across 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. The Departments considered these comments and recognize the challenges mentioned by the commenters. 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. The WIOA State Plan ICR, consistent with the statutory and regulatory requirements, reinforces the importance of collaboration in the development of State Plans. However, to further address these comments and others relating to the issue of collaboration and stakeholder involvement, the Departments have added new paragraph (d)(3)(v) to § 676.105 to clarify that operational planning elements must include a description of joint planning methods across core programs and required one-stop partner programs in the Unified Plan. The WIOA statute and the WIOA State Plan ICR require the State to assure that core programs have ''reviewed and commented on the appropriate operational planning elements of the Unified State Plan, and approved the elements as serving the needs of the populations served by such programs.'' The Departments have amended § 676.105(d)(3)(iv) to emphasize this statutorily required assurance.

Lastly, the Departments note that some of the stated challenges, such as procurement requirements, are not relevant to the regulation of State Plans. Regarding the challenges cited by commenters regarding differing reporting requirements, WIOA has addressed this challenge by requiring the six core programs to report performance outcomes against the primary indicators of performance. The core programs will all use the same definitions and data elements. The Departments agree that aligning performance outcomes is a significant step toward aligning programs. WIOA sec. 116's performance requirements are addressed in the WIOA State Plan ICR Appendix 1, as well as the WIOA Joint Performance ICR and part 677 of this Joint WIOA Final Rule.

The Role of State Workforce Development Boards in Plan Development

Comments: Several commenters requested clarification about the role of the State WDB in approval of State Plans. One commenter said the Departments should require the State WDB to review and approve the State Plan before submission. This same commenter asked if core programs were required to sign off on the plan, or if their representation on the State WDB would serve that purpose. A commenter asked about the authority of a State WDB over specific programs' plans, specifically requesting clarification on whether the Board can, in effect, veto a portion of the plan.

Departments' Response: The Departments reviewed these comments and agree that the Joint WIOA Final Rule should provide additional clarification about the role of the State WDB in approval of State Plans. Accordingly, the Departments revised §§ 676.130(c) and 676.143(b) to clarify expected roles during plan development. More detail will be provided in the discussions related to these particular sections below. The Departments expect the States to recognize the importance of an inclusive and collaborative process in developing the State Plan. The Departments also have revised § 676.105(d)(3)(iv), which implements an assurance required by sec. 102(b)(2)(E) of WIOA. Under § 676.105(d)(3)(iv), States are required to assure that the lead State agencies responsible for the administration of the core programs review and comment on the appropriate operational planning sections of the Unified State Plan and approve that each element serves the needs of the population served by such programs.

Comments: A commenter requested clarification on the processes of State, regional, and local planning. Specifically, this commenter wondered how much direct influence local workforce boards will have in their State's respective State Plans. The commenter requested greater assurances that Local WDBs be systematically included in the State planning process. Similarly, a commenter recommended that Governors must have Local WDB and CEO consent before taking actions impacting Local WDBs, stating that most of the best innovations are developed based on local relationships. Another commenter recommended regulatory language that enables local areas to meet the needs of the State WDB in meeting their responsibilities under WIOA for statewide planning, but encourages and allows local areas to provide their own input, feedback, and strategies within the local plan.

Departments' Response: The Departments agree with the commenters that it is important for the Governor to include Local WDBs and CEOs in the State planning process. Section 679.110 of 20 CFR requires that State WDB membership include two or more CEOs (*see* DOL WIOA Final Rule published elsewhere in this issue of the **Federal Register**). The Governor has the flexibility to appoint more local elected officials to the State WDB as he/she sees fit. The Departments encourage the Governor to use this authority, which may include increasing the representation of CEOs, to ensure accurate representation of the interests of job seekers and businesses in the State and also to ensure the involvement of these local representatives in the State planning process. WIOA does not require that Governors must have Local WDB and CEO consent before taking actions impacting Local WDBs. However, the Departments do expect engagement of Local WDBs in the development of the State Plan through public comment and input. This is further discussed below at § 676.130(d). The requirements for local plan development and input are discussed in 20 CFR 679.550 (*see* DOL WIOA Final Rule published elsewhere in this issue of the **Federal Register**).

Section 676.110 What are the program-specific requirements in the Unified State Plan for the adult, dislocated worker, and youth programs authorized under Workforce Innovation and Opportunity Act title I?

Section 676.110 indicates that program-specific requirements for the adult, dislocated worker, and youth workforce investment activities in the Unified State Plan are described in sec. 102(b)(2)(D)(i) of WIOA. Additional planning requirements may be explained in joint planning guidelines issued by the Secretaries of Labor and Education.

Proposed Additional Title I Program-Specific Requirements to State Plans

Comments: One commenter agreed with the proposed program-specific requirements in §§ 676.110 through 676.125. Another commenter stated that this section provides insufficient direction and accountability to ensure that the needs of individuals with a barrier to employment or who have priority of service are adequately included and addressed in a Unified or Combined State Plan. The commenter recommended that the Departments require that State and local planning efforts utilize the most current Census and administrative data available to develop estimates of each priority service population in their planning efforts, and update these data year to year. The commenter said these data should be utilized in Federal reviews of State Plans to ensure that system designs and projected investments are

equitably targeted to service-priority populations. The commenter further stated that the data also should be used to benchmark system performance in actual implementation of the priority of service from year to year.

Departments' Response: The Departments have considered these comments. The WIOA State Plan ICR, consistent with WIOA requirements for title I–B programs, requires States to address priority in the delivery of career and training services to individuals who are low income, public assistance recipients, or basic skills deficient. WIOA sec. 134(c)(3)(E) prioritizes these groups for the receipt of individualized career services and training services. The Departments encourage States to use a variety of accurate, reliable, and timely labor market information on which to base analysis and priority of service. Indeed, priority for use of adult funds can be made using a variety of available data, in addition to the use of Census data. However, to minimize the burden for each individual State, the Departments will not require States to use a particular dataset, leaving it to the discretion of the States to choose the appropriate data sources.

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

Section 676.115 explains the additional planning requirements to which the AEFLA program is subject. Section 676.115 contains three specific program requirements. First, § 676.115(a) restates the statutory requirement that the eligible agency must explain in its Unified or Combined State Plan how it will align its adult education content standards with its State-adopted challenging academic content standards under the Elementary and Secondary Education Act by July 1, 2016. Second, § 676.115(b)(1) addresses the requirement that States describe the methods and factors the State will use to award multi-year grants on a competitive basis to eligible providers. Third, § 676.115(b)(2) requires that States describe the methods and factors used to provide direct and equitable access to funds using the same grant or contract announcement or application procedure. Based on comments, and as discussed further below, the Departments have deleted proposed regulatory text at § 676.115(c) concerning a requirement to describe the interoperability of data systems. Deletion of paragraph (c) is the only substantive change made to this regulatory provision from that proposed in the NPRM.

Timing of Plan Acceptance and Open Competitions

Comments: Many commenters expressed concern that States may have to issue requests for proposals (RFPs) for funds before the plans have been approved. Several commenters said that this would result in an RFP process that does not address the objectives of the State Plan. Some commenters asked that the Departments provide an additional transition year in order to allow for the time necessary for States to receive State and local plan approval and begin the implementation of the approved plans, after which the States could run their competitions in alignment with the approved plans.

Departments' Response: The Departments agree with the commenters' concerns and recognize the time that is required for State procurement processes. The ED understands that it would create difficulties to require States to issue RFPs prior to the State Plan being approved when the RFPs are intended to be based on the approved State Plan. Additionally local plans must be in place before the RFP can be issued so applications for subgrants can be aligned with local plans. The ED has issued guidance regarding the process for awarding subgrants to eligible providers authorized under title II, which provides information regarding the timing of competitions and their alignment with State and local plans. It is not necessary to address this concern in the regulation and the regulation is not revised in response to these comments.

Alignment With State Elementary and Secondary Education Act Standards

Comments: Numerous commenters stated that most States have adopted the College and Career Readiness Standards for adult education and will demonstrate in their State Plans how the College and Career Readiness Standards for adult education align with the standards that State established under the Elementary and Secondary Education Act of 1965, as amended (ESEA). These commenters also expressed concern regarding the unavailability of standards for adult education that focus on English Language Acquisition. Additionally, commenters raised concerns about the absence of assessments that measure performance on the College and Career Readiness Standards for adult education and recommended that the Departments provide a 3-year transition period during which States are held accountable based on the available assessments instruments. A commenter also recommended that the Departments integrate the English language descriptors into the current adult education National Reporting System Educational Functioning Levels descriptors. Finally, another commenter recommended that the Departments adjust accountability measurements to reflect separate English Language Acquisition tables in the National Reporting System from the standard adult basic education (ABE) standards.

Departments' Response: The Departments have reviewed the commenters' concerns related to having adequate time to establish English Language Acquisition content standards, as well as the lack of assessment mechanism to measure adult education content standards. The ED recognizes that English Language Acquisition content standards do not yet exist. The ED acknowledges that there are currently no National Reporting System-approved assessment instruments by which to measure student progress and achievement in relation to College and Career Readiness standards. However, based on our review of the comments, it appears that some commenters might have misunderstood the proposed requirement pertaining to content standards. The final regulations require the eligible agency to describe in the Unified State Plan how, by July 1, 2016, it will align its content standards for adult education with State-adopted challenging academic standards under the ESEA. The regulations do not require that the State implement those standards by July 1, 2016, or that the State implement assessments aligned to the standards by July 1, 2016. The ED intends to issue guidance pertaining to the alignment and implementation of standards; the standards for English language acquisition; and the aligned assessments for accountability in adult education. Finally, although the Departments reviewed the comments about the integration of the English Language Acquisition descriptors into the National Reporting System and the separation of the accountability measures in the English Language Acquisition table from the ABE tables, the Departments concluded that they do not have the statutory authority to address these in the final regulations. No changes to the regulatory text were made in response to these comments.

Interoperability of Data Systems

Comments: Numerous commenters sought clarification on the definition of

''interoperability.'' Several commenters stated that there is a national data integration workgroup at the Federal level; and recommended that, rather than each State expending time and funds to create an interoperable system, the Departments give the States the option to await the results of the national data integration workgroup before creating their State interoperable system.

Commenters stated that, due to the variety in State data systems, regulations that attempt to implement a ''one size fits all'' approach are impractical. These commenters recommended that the Departments convey expectations for interoperability via non-regulatory guidance (including guidance highlighting existing solutions and offering States options for reporting this data). A commenter recommended that DOL work with other Federal agencies to establish minimum national standards for how integrated data systems should be designed and interface with existing public systems to support the employment needs of adults and youth facing barriers to employment. The commenter also urged DOL to work with other Federal agencies to ensure that integrated data systems align with existing data being collected on employment, education, and training services across Federal programs.

A commenter said the requirement for a description of how the State will ensure interoperability of data systems in the reporting on core indicators of performance and performance reports is listed only under the AEFLA title II specific section (§ 676.115); however, in the law, the requirement for such information is listed under sec. 102(b)(2)(C) State Operating Systems and Policies of WIOA. Therefore, the commenter suggested § 676.115(c) should be moved to § 676.105, General Requirements. Another commenter said the regulations place the responsibility of ensuring interoperability of data systems on the title II adult education programs, which is not feasible because the various data systems are governed under different programs and frequently by different agencies. The commenter also said the rule seems to place the burden of supporting the cost of interoperability on title II adult education programs, which is not equitable because there will likely be a significant cost to creating such interoperability. The commenter recommended that the Departments restate this in regulation as a joint requirement of core programs and any programs included in a Combined State Plan.

Departments' Response: The Departments agree with commenters' concerns regarding the complexity of integration, including the amount of time, planning, and resources necessary to achieve such integration. The Departments agree with the commenters that the integration and interoperability of data systems is not limited to title II of WIOA. The Departments understand that performance and accountability data collection and systems integration is a long-term process that will involve additional costs and resources for all programs. The Departments will review reports from the national data integration workgroup, as well as information from the planning descriptions provided by States in the initial State Plan, to inform possible policy decisions and the development of guidance on this topic. The Departments also will look into similar data collection and system integration across Federal agencies that provide employment, education, and training services.

As a result of these concerns, the Departments have removed the language proposed in § 676.115(c), and instead have included in the WIOA State Plan ICR, consistent with sec. 102(b)(2)(C) of WIOA, a general requirement that States address fiscal and management accountability information system planning across all of the programs included in a Unified or Combined State Plan, as required by sec. 116(i)(1) of WIOA.

Direct and Equitable

Comments: Regarding § 676.115(b)(2), which specifies that all eligible agencies ''will provide direct and equitable access to funds,'' several commenters said that there is no specific mention of this requirement in § 676.140, which governs the Combined State Plan. One commenter sought clarification on whether this was intentional or an oversight.

Departments' Response: The Departments have reviewed these comments and agree that the omission of the requirement related to direct and equitable access of funds in the Combined State Plan was an error. The Departments have revised § 676.140(e)(1) to include this requirement in the regulations that address the Combined State Plan.

Request for Guidance

Comments: Several commenters said States should be required to identify the guidance they will provide to eligible providers for nominating an adult education representative to the Local WDB that would represent all eligible providers in the region as well as communicate board activities.

Departments' Response: The Departments have reviewed the comments supporting a requirement that States issue guidance for adult education representation on the Local WDB. States have the authority to issue such guidance and it is not necessary to revise the regulations to address this specific need.

Section 676.120 What are the program-specific requirements in the Unified State Plan for the Employment Service program authorized under the Wagner-Peyser Act, as amended by Workforce Innovation and Opportunity Act title III?

Section 676.120 states that Wagner-Peyser Act Employment Service programs are subject to the requirements in sec. 102(b) of WIOA, including any additional requirements imposed by the Secretary of Labor under secs. 102(b)(2)(C)(viii) and 102(b)(2)(D)(iv) of WIOA. This section requires States to include any information the Secretary of Labor determines is necessary to administer the Wagner-Peyser Act Employment Services programs. The Departments have provided additional information through jointly issued planning guidance and the WIOA State Plan ICR. Except for the addition of a reference to WIOA sec. 102(b)(2)(D)(iv) and other minor technical edits, this provision remains substantively the same as that proposed in the NPRM. WIOA sec. 102(b)(2)(D)(iv) refers to Wagner-Peyser Act program-specific requirements.

Proposed Additional Wagner-Peyser Act Program-Specific Requirements for State Plans

Comments: A commenter agreed with the proposed requirements specific to Wagner-Peyser Act Employment Services programs. One commenter stated that homeless persons should be a prioritized group for employment services, including those with no income or work history, and those with a criminal background. Also, this commenter recommended that serving higher barrier persons be incentivized.

Departments' Response: The Departments agree with the importance of ensuring that States address the needs of very low income and homeless populations in the State Plan. As discussed under § 676.105, the WIOA State Plan ICR, consistent with WIOA, requires that Unified and Combined State Plans address the needs of individuals with barriers to employment. As defined in sec. 3(24)(G) of WIOA, an ''individual with a barrier

to employment'' includes homeless individuals or homeless children and youths. However, employment services under the Wagner-Peyser Act are universal and available to all; the Departments do not have the authority to prioritize use of Wagner-Peyser Act funds for specific populations.

Comments: Several commenters said the regulation should require State workforce agencies to include a clearly defined management reporting structure for State merit-based employees as part of the State Plan for each one-stop center to minimize confusion and protect the systemic integrity of Wagner-Peyser Act services.

Departments' Response: While the Departments recognize the importance of adhering to merit staffing requirements for Wagner-Peyser Act services, the Departments decline to require a reporting structure for merit staff in the regulation or in the WIOA State Plan ICR because it imposes an unnecessary burden on States. However, a State may elect to develop such a policy and include it in its State Plan.

Section 676.125 What are the program-specific requirements in the Unified State Plan for the State Vocational Rehabilitation program authorized under title I of the Rehabilitation Act of 1973, as amended by Workforce Innovation and Opportunity Act title IV?

Section 676.125 requires States to submit a VR services portion as part of the Unified State Plan that complies with all State Plan requirements set forth in sec. 101(a) of the Rehabilitation Act of 1973, as amended by title IV of WIOA. All submission requirements of the VR Services portion of the Unified State Plan are in addition to the jointly developed strategic and operational content requirements prescribed by sec. 102(b) of WIOA. Except for minor technical edits, this provision remains substantively the same as that proposed in the NPRM.

Individuals With Disabilities in the VR Program

Comments: A commenter agreed with the requirements specific to the VR program.

Some commenters stated that there should be greater emphasis on the VR program in the State Plans. The commenters encouraged Governor-mandated appointment of disability service providers on State WDBs to ensure proper representation for the development of this section of the plan. Similarly, other commenters urged the Departments to encourage greater inclusion of stakeholders within the disability community in the development, review, and implementation of the plans. One commenter further encouraged the Departments to issue guidance that will ensure that State executives will not ignore or under-represent the workforce development needs of people with disabilities in the strategic and operational planning outline in either the Unified or Combined State Plan.

Departments' Response: In response to the first concern, the Departments refer commenters to the WIOA State Plan ICR where the VR program is addressed at length in Section VI Program-Specific Requirements for Core State Plan Programs. This section overviews the descriptions and estimates that must be included in the VR Services Portion of a State Plan, as required by sec. 101(a) of the Rehabilitation act of 1973, as amended by WIOA, and sec. 102(b)(2)(D)(iii) of WIOA. State WDB membership requirements are addressed in 20 CFR 679.110 (*see* DOL WIOA Final Rule published elsewhere in this issue of the **Federal Register**). The Departments also note that beyond these requirements, the constitution of State WDBs and their membership has been left to the States. Although State Plans must include a State WDB Membership Roster and a list of Board activities as described in sec. III(b)(3)(B) of the WIOA State Plan ICR, the Departments have concluded that it is unnecessary to include additional regulatory text. With regard to greater stakeholder involvement in the review and implementation of State Plans, §§ 676.130(d) and 676.143(c), already require that States provide an opportunity for comment on and input into the development of a State Plan from representatives of Local WDBs and CEOs, businesses, labor organizations, 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. Thus, stakeholders with disabilities are required to have opportunity to engage in the development of State Plans. Finally, sec. 102(b) of WIOA and the WIOA State Plan ICR require the State to address the needs of individuals with barriers to employment within the State Plan's Strategic Vision and Goals and Operational Planning Elements. According to WIOA sec. 3(24), the term ''individual with a barrier to employment'' includes individuals with disabilities, including youth who are individuals with disabilities.

Interagency Cooperation

Comments: A commenter said the Departments should make explicit the importance of including State developmental disabilities agencies in cooperative agreements regarding individuals eligible for home and community-based waiver programs. Another commenter stated that, in addition to the cooperative agreement between VR and the State developmental disabilities agency, State Plans should be required to contain a cooperative agreement between Medicaid and the State mental health agency in order to promote effective collaboration between State agencies.

Departments' Response: While not stated in the regulation itself, the WIOA State Plan ICR describes how a State will incorporate interagency cooperation between VR and other State agencies providing assistance to or serving individuals with disabilities. In the WIOA State Plan ICR, consistent with sec. 101(a)(11) of the Rehabilitation Act, as amended by title IV of WIOA, the VR agency must describe the collaboration between the responsible State agency administering the State Medicaid plan, the State agency serving individuals with developmental disabilities, and the State agency responsible for providing mental health services. Nothing in this requirement restricts collaboration between agencies, as the goal is to develop opportunities for competitive integrated employment to the greatest extent possible. A more detailed discussion of the collaboration between the VR agency and other agencies serving individuals with disabilities is provided in ED's Final Rule related to the VR program published elsewhere in this issue of the **Federal Register**.

VR Program's Order of Selection

Comments: One commenter referenced a proposal to give State VR agencies operating under an Order of Selection the option to indicate that they will serve eligible individuals with disabilities outside the Order of Selection who have an immediate need for equipment or services to maintain employment. The commenter requested clarification in determining what services or equipment is allowed to be provided if identified as an immediate need if the individual is in jeopardy of losing his or her job.

Departments' Response: Section 101(a)(5)(D) of the Rehabilitation Act of 1973, as amended, indicates that State Plans shall, under an Order of Selection, permit the State, in its discretion, to elect to serve eligible individuals who

require specific services or equipment to maintain employment. The WIOA State Plan ICR allows for the VR program to identify whether it will serve eligible individuals with disabilities outside the Order of Selection who has an immediate need for equipment or services to maintain employment. Services or equipment provided to eligible individuals under these circumstances must be determined on an individual basis according to the employee's need required to maintain employment, consistent with the Individualized Plan for Employment. A much more detailed discussion of this issue is provided in ED's Final Rule covering the VR program published elsewhere in this issue of the **Federal Register**.

Records and Data Collection

Comments: A commenter said the Departments should identify ways to allow State VR agencies to gain ready access to Federal employment data, such as the data that are available through the Federal Employment Data Exchange System funded by DOL.

Departments' Response: The Departments addressed this issue through the WIOA State Plan ICR process. Section III(b)(6)(A) of the WIOA State Plan ICR states that State agencies responsible for the administration of core programs (such as the VR program) shall describe plans to align and integrate available workforce and educational data systems for the core programs, unemployment insurance (UI) programs, and education through postsecondary education. This directive provides sufficient identification of the opportunities available to States to incorporate both State and Federal data into their State programs. For this reason, no changes to the regulatory text were made in response to this comment.

Independent Living for Older Individuals Who Are Blind Program

Comments: A couple of commenters opposed eliminating a requirement in the State Plan for the Independent Living for Older Individuals who are Blind program, stating that this elimination constitutes a great disservice to older persons with vision loss. The commenters recommended that an Independent Living for Older Individuals who are Blind section be added to the VR section of the Unified or Combined State Plans.

Departments' Response: The Independent Living for Older Individuals who are Blind program is covered under title VII of the Rehabilitation Act of 1973, as amended by WIOA, and is not among the six core programs that must submit a Unified State Plan pursuant to sec. 102 of WIOA. The VR services portion of the Unified or Combined State Plan is similar in content to the standalone VR State Plans that were submitted prior to the passage of WIOA and covers only the VR program requirements of title I of the Rehabilitation Act, as amended by WIOA. The Independent Living for Older Individuals who are Blind program requires submission of an application with assurances every 3 years that complies with the requirements for that program as set forth in title VII of the Rehabilitation Act, as amended by WIOA. A detailed discussion of the Independent Living Services for Older Individuals Who are Blind program (34 CFR part 367) is provided in ED's Final Rule of WIOA Miscellaneous Programs published elsewhere in this issue of the **Federal Register**.

Section 676.130 What is the development, 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, this section requires the Unified State Plan to be submitted to the Secretary of Labor, according to the procedures established in sec. 102(c) of WIOA, which are clarified and explained through joint planning guidelines. Likewise, the Departments, upon receipt of a Unified State Plan, follow procedures established by this section. Section 676.130 also explains requirements for transparency, public comment, and submission, as well as the terms for approval of plans by the Secretaries of Labor and Education.

Section 676.130(a) requires that the Unified State Plan be submitted in accordance with the procedures set out in the joint planning guidelines, issued by the Secretaries of Labor and Education, which explains the submission and approval process described in sec. 102(c) of WIOA.

Sections 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 Departments. The Departments developed a process for submission of Unified State Plans to ensure that ED receives the entire Unified State Plan submission concurrently. WIOA secs. 102(c)(1)(A) and 103(b)(1) require States to submit the initial Unified or Combined State Plan no later than 120 days prior to the commencement of the second full program year after the date of enactment (*i.e.,* July 1, 2016), making the statutory submission date for the initial Unified or Combined State Plan March 3, 2016. However, pursuant to the orderly transition authority in sec. 503 of WIOA, the Departments considered the initial Unified or Combined State Plans timely if submitted by April 1, 2016.

Section 102(c)(1)(B) of WIOA requires subsequent Unified State Plans to be submitted not later than 120 days prior to the end of the 4-year period covered by the preceding Unified State Plan. In other words, WIOA Unified State Plans cover 4-year periods, and the subsequent plan must be submitted no later than 120 days before existing plan's 4-year period ends. The Departments have made clarifying edits to the regulatory text in § 676.130(b)(2) to more clearly align it with these statutory requirements. The Departments anticipate that the second Unified State Plans will need to be submitted in the spring of 2020. The official submission dates for the plans will be announced in the joint planning guidelines.

Section 676.130(b)(3) clarifies that, consistent with current practice for many of the core programs, a program year runs from July 1 through June 30 of any year. This clarification is particularly important, in this context, for the VR program since that program operates on a Federal fiscal year basis and will continue to do so, in accordance with title I of the Rehabilitation Act of 1973, despite the fact that the VR services portion of the Unified State Plan will align, for submission and performance purposes, with the other partners on a program year basis.

In order to more accurately reflect the content of § 676.130, the Departments have made a change to the title to include the word ''development.'' Additionally, in response to comments, described below, requesting clarity regarding the role of the State WDB, core program administrators and required one-stop partners, the Departments have added § 676.130(c). This additional paragraph explains the statutory requirement that the Unified State Plan must be developed with the assistance of the State WDB and must be developed in coordination with administrators with optimum policy-making authority for the core programs and required one-stop partners. The term ''optimum policy-making authority'' is defined in 20 CFR 679.120 as ''an individual who can reasonably be expected to speak affirmatively on behalf of the entity he or she represents and to commit that entity to a chosen course of action.'' *See* DOL WIOA Final

Rule published elsewhere in this issue of the **Federal Register**. Accordingly, § 676.130(c) through (h) have been renumbered at § 676.130(d) through (i). Other than these changes to paragraph (b)(2), the addition of paragraph (c), and the edit to paragraph (h) discussed below, no changes to the regulatory text have been made.

Deadlines

Comments: The Departments received a comment that supported the timeline for developing initial Unified State Plans. Several commenters requested clarification about the definition of program year, specified in § 676.130(b)(3), as it applies to VR, noting that the VR program operates on a Federal fiscal year. A couple commenters said the specified program year may put additional administrative burden and costs, especially in the startup, on State VR agencies. A commenter said the VR agencies should continue to report as they currently do. Due to the difference in fiscal year versus program year, one commenter recommended that the VR program be transferred to DOL to ensure seamless coordination of workforce activity at the Federal and State level and to ensure that the States operate unified, integrated programs. However, other commenters said it is unclear whether the change in program will be a burden for State VR agencies. In fact, one commenter anticipated a benefit for aligning State match, fiscal planning, and managing funds. One of these commenters said that ED should survey State VR agencies to see if this will prove to be a burden or an issue for administration of the State Plan.

A commenter remarked that performance data and plans will be on the program year basis and that Federal awards and reporting will remain on the fiscal year basis. The commenter sought clarification as to how reporting and performance timeframes will be integrated.

Departments' Response: The Departments acknowledge the concerns expressed by commenters. The VR program will utilize a program year, according to the § 676.130(b)(3) definition, for the purposes of reporting performance and identifying its goals and priorities as part of the VR portion of the Unified or Combined State Plan. Since data will be collected quarterly, RSA will have the flexibility to report performance data for each of the VR agencies for both the program year and the fiscal year. The Departments have not concluded that this will cause any additional burden to the VR agencies for the development of the VR portion of the State Plan, in particular, to establish and evaluate the State's performance measures. Further guidance about performance reporting for VR agencies will be provided in the final ICR for the RSA–911 report. Fiscally, the VR agencies will continue to operate on a Federal fiscal year basis as required statutorily pursuant to secs. 110 and 111 of the Rehabilitation Act of 1973, as amended. The WIOA State Plan ICR Appendix 1 clarifies what performance information States must include in the State Plan. The Departments provided further instructions through the WIOA Joint Performance ICR, the WIOA State Plan ICR, and related joint guidance. Finally, WIOA does not authorize the VR program to move to DOL.

Stakeholder Involvement

Comments: Numerous commenters expressed concern about having adequate voice and input into the State Plan development process, and a number of commenters requested stronger or clearer regulation on who must be involved in the State Plan development process. Commenters said the Departments should require a role in the planning process for core programs, one-stop partners, State and Local WDBs, and CEOs, among other entities.

Departments' Response: Although WIOA requires an inclusive planning process, and there are many references to inclusiveness in planning and program implementation throughout the Joint WIOA Final Rule, the Departments considered these comments and agree. The Joint WIOA Final Rule will continue to emphasize inclusiveness in planning and program implementation and will further benefit from a more explicit statement of the entities required to participate in the development of Unified State Plans. In response to the comments, the Departments have added regulatory text in a new paragraph (c) to § 676.130 to clarify that Unified State Plans must be developed with the assistance of the State WDB and in coordination with administrators with optimum policy-making authority for the core programs and required one-stop partners. In addition, to ensure consistency, the Departments have added regulatory text in a new paragraph (d)(3)(v) of § 676.105, discussed above, requiring that the Unified Plans include a ''description of joint planning and coordination across core programs, required one-stop partner programs and other programs and activities included in the Unified Plan.'' The Departments also have revised the title of § 676.130 to include the word ''development'' to clarify that this section describes the development of the Unified State Plan, as well as submission and approval. These changes are reflected in the WIOA State Plan ICR.

Collaboration and Input Into the Plan Process

Comments: A couple of commenters recommended that States should include title II adult education partners, as well as other immigrant-serving organizations, in their WIOA planning. A few commenters suggested that refugee programs and service providers be included in planning at the State and Local level and that the Departments should emphasize in the regulation's discussion of local governance the importance of providing expertise in serving linguistically and culturally diverse populations. Some commenters noted several organizations should have input into the development of State Plans, including: quality credentialing organizations, immigrant-serving organizations, State and local human service agencies, community and technical colleges, nonprofit community-based and nontraditional service providers, and State Departments of Education.

Departments' Response: The Departments considered these comments and note that collaboration in the planning process for Unified and Combined Plans is required of title II adult education program partners as they are among the core programs included in all plans. The WIOA State Plan ICR enables States to include human services, faith- and community-based organizations, and educational institutions in the State Plan, as well as other Federal programs, particularly as part of a discussion of innovative partnerships with the one-stop delivery system. These types of organizations may include immigrant-serving organizations and refugee programs. No change to the regulatory text was made in response to these comments.

Public Comment and Availability of Information

Comments: One commenter said the rule should reaffirm that, as one of its responsibilities, the State WDB must provide an environment for State Plan development that is conducive to participation and receptive to input. Further, this commenter stated that States should be required to describe how they will make this process accessible to individuals with disabilities.

Departments' Response: The State must provide an opportunity for comment and input into the State Plan. Furthermore, the Departments agree that

the public comment process must be accessible to all concerned organizations and individuals, including individuals with disabilities. As described in § 676.130(d)(1), the State must provide an opportunity for public comment on and input into the development of the Unified State Plan prior to its submission which includes an opportunity for comment by representatives of Local WDBs and CEOs, 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. Further, as discussed earlier, the WIOA State Plan ICR, consistent with WIOA, requires the State to address the needs of individuals with barriers to employment including the needs of English language learners.

Comments: Several commenters stated that the consultation requirement should accommodate Single States that have only a volunteer State WDB and no Local WDB to consult.

Departments' Response: Although single-area States have no Local WDB to consult, they still have stakeholders, including CEOs. In accordance with § 676.130(d)(1), single-area States must provide an opportunity for comment by CEOs and other stakeholders as a part of the opportunity for public comment on State Plans, which includes local officials and local stakeholders.

Comments: A couple commenters recommended a minimum notice period of 90 days for the opportunity for public comment on the development of the Unified State Plan. A commenter urged the Departments to require that States publicly post the plan electronically and that the Departments themselves create an electronic database where States, policy makers, advocates, and the general public can access all of the plans.

Departments' Response: The Departments have reviewed these comments and decline to set a number of days for public comment of Unified State Plans, leaving the decision of schedules for public comment and posting plans electronically to the discretion of the States. Many States' laws require a minimum number of days for public comment, and many States use online posting as a way of making the plans available for public comment. While the Departments are not adding a regulation regarding an electronic database, the Departments provide a centralized online access point for completed State Plans.

Review and Approval of Unified State Plans

Comments: A commenter stated that WIOA indicates that approval of the Unified State Plan will occur within 90 days after submission, but the NPRM stated that it will occur within 90 days of receipt. The commenter recommended a revision to the language making the terminology for establishing the timeframe for review and approval of plans be consistent and that a definition be provided for determining that start date.

Departments' Response: The Departments decline to change the regulatory text and retain the use of the word ''receipt'' in the renumbered § 676.130(h) in order to allow the Departments to have a full 90 days to review the plan in the event of any delay in transmission of the plan from the State to the Departments. However, the Departments have replaced the words ''by the appropriate Secretary'' in paragraph (h) with ''the Secretary of Labor,'' to clarify that the 90-day review period begins upon receipt of the plan by the Secretary of Labor. This wording is more closely aligned with the statute, at WIOA sec. 102(c)(1). As stated in paragraph (e) of this section, immediately upon receipt of a Unified State Plan from a 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. At that point, the Secretaries will begin their review.

Comments: Several commenters said States whose Unified State Plans are rejected should be given detailed reasons why in writing so those States can focus on areas that need improvement.

Departments' Response: As a part of the approval process, the Departments intend to provide States with detailed reasons in writing if a plan is not approvable.

Comments: A few commenters asserted that there was lack of clarity in the NPRM regarding whether the Unified Plan submission process will change. These commenters recommended that DOL issue a TEGL on the submission process of the Unified Plan. Similarly, a commenter said more guidance is needed to understand how this process will work and differ from previous Unified Plan submissions.

Departments' Response: The Departments considered these comments and agree that additional guidance will assist States in understanding the submission and approval process for Unified State Plans. The Departments issued joint guidance, which describes the submission process in greater detail. This joint guidance included TEGL No. 14–15, ''*Workforce Innovation and Opportunity Act (WIOA) Requirements for Unified and Combined State Plans,*'' issued to DOL grantees, a Program Memorandum issued to AEFLA grantees, and a Policy Directive issued to VR program grantees, all of which contained identical content.

Rehabilitation Services Administration Approval of Plan

The renumbered § 676.130(g) states that before the Secretary of Labor and the Secretary of Education approve the Unified State Plan, the VR portion of the Unified State Plan must be approved by the Commissioner of the Rehabilitation Services Administration (RSA).

Comments: Several commenters requested clarification on whether the 90-day approval timeframe for the entire plan starts when the VR portion of the Unified State Plan is approved by the RSA Commissioner or when it is subsequently forwarded to the ED and DOL Secretaries for approval. A commenter suggested that the regulation require a timeline for the Commissioner of RSA to approve or disapprove the VR portion of the Unified State Plan.

Departments' Response: The 90-day review timeframe, which begins upon receipt of the State Plan by DOL, includes RSA Commissioner review and approval. The VR program is an ED program, and ED's and DOL's reviews of plan submissions are concurrent. However, the approval of the VR services portion of the plan by the RSA Commissioner must occur first, after which the plan, if it complies with all of the other requirements, will be officially approved by the Secretaries of Labor and Education. The Secretaries of Labor and Education have developed a process to ensure that both Departments receive the entire Unified State Plan submission concurrently to ensure timely review. The Departments have concluded that the existing regulatory text and preamble place adequate emphasis on the timely concurrent reviews of the plans by the Departments and no changes to the regulatory text were made in response to these comments.

Comments: Some commenters asked whether it is the responsibility of the State VR agencies or the Secretaries of Labor and Education to obtain approval from the RSA Commissioner. One of these commenters stated that placing the responsibility on VR agencies to ensure that this review is done

(especially before submission of the plan to the Secretaries by the States) would be an unfair burden to place on VR agencies and States. This commenter further asked when the deadline is for the submittal of the VR portion of the State Plan to the RSA Commissioner, if it is the responsibility of State VR agencies to submit and obtain approval of the VR portion of the plan by the RSA Commissioner prior to submission to the Secretary of Labor.

Departments' Response: It is not the State VR agencies' responsibility to submit and obtain approval of the VR portion of the State Plan prior to submitting the Unified Plan to the Departments. Rather, the entire Unified State Plan, including the VR services portion of that Plan, should be submitted to the Departments, and the review and approval by the RSA commissioner will take place following that submission as a part of the 90-day Federal review of the plan. The ED, including RSA, and DOL will work together to ensure the timely review and approval of all portions of the State Plans, including the VR services portion. The Departments have developed a process for submission of Unified State Plans to ensure that the Departments of Labor and Education, including the RSA Commissioner, receive the entire Unified State Plan submission concurrently. The Departments have concluded that the existing regulatory text and preamble place adequate emphasis on the timely concurrent reviews of the plans by the Departments.

Comments: Some commenters requested clarification on what happens to the full Unified State Plan if the RSA Commissioner does not approve the VR portion of the State Plan.

Departments' Response: Approval of the Unified State Plan requires that the requirements of all core programs are met, including the requirements for the VR portion of the State Plan. No change to the regulatory text was made in response to these comments.

Guidance on Submission and Approval Process

Comments: Several commenters provided suggestions for potential joint guidance from the Departments and how the guidance should influence the submission and approval process for Unified State Plans. Some commenters recommended that the Departments issue guidance that provides recommendations for how States can develop appropriate outreach and engagement strategies for stakeholders. One commenter said the Departments should issue guidance that addresses whether the VR agency should hold separate public meetings on their portion of the State Plan or schedule a unified public meeting for the entire State Plan. One commenter welcomed guidance from the Departments that advises State and local areas on whether to submit workforce plans that cover additional workforce related programs besides the six core programs.

Numerous commenters requested that any guidance from the Departments that provides further details on the submission of the State Plans be released as early as possible. A few commenters said States may be waiting for guidance from the agencies before beginning their planning processes in earnest, which may cause some States to bypass key opportunities for stakeholder engagement or forgo pursuing a Combined State Plan in an effort to meet the statutory deadlines for plan submission.

A commenter said it would be useful if the Departments provided a template for the Unified and Combined State Plans, ideally several months before the plan is due. The commenter also said ensuring that the templates are available at least several months ahead of the submission deadline would make the process of completing the plan much more efficient for States.

Departments' Response: The Departments issued joint planning guidelines that address these and other topics regarding State Plan development, submission, and approval and the requirements of the WIOA State Plan ICR. For example TEGL No. 14–15, ''*Workforce Innovation and Opportunity Act (WIOA) Requirements for Unified and Combined State Plans,*'' was issued on March 4, 2016. The ED issued identical guidance to its grantees via Program Memorandum OCTAE 16–1 (*http://www2.ed.gov/about/offices/list/ovae/wioa-16-1.pdf*) and RSA–PD–16–03 (*http://www2.ed.gov/policy/speced/guid/rsa/pd/2016/pd-16-03.pdf*) on March 9, 2016. VR agencies must still meet the requirements for public participation prior to the submission or amendment of a State Plan in accordance with 34 CFR 361.20. Although not commonly referred to as a template, the WIOA State Plan ICR is a detailed and comprehensive set of requirements for developing and submitting State Plans. In addition to the written joint guidance, the Departments also have presented multiple webinars on the development and submission of the State Plans. No change to the regulatory text was made in response to these comments.

Section 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 other specific circumstances, examples of which have been included in this section. States may choose to submit a State Plan modification at any time during the life of the plan. Section 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.

Except for minor technical edits, such as corrections to cross-references to other sections that have been renumbered and edits to conform with changes to part 677 on the performance accountability system, this section remains substantively the same as that proposed in the NPRM.

Timeframe for Unified Plan Modifications

Comments: One commenter supported the 2-year timeline for modifying initial Unified State Plans specified in § 676.135(a). Another commenter said Federal agencies should use the State Unified Plan timeframe for submitting mandatory modifications to review the regulatory framework and other guidance under which WIOA is initially implemented. The Departments, this commenter continued, should use this time to review how the challenges and opportunities involved in WIOA's implementation have evolved.

Departments' Response: The Departments considered this comment and agree. The Departments intend to update existing and future regulations, ICRs, and guidance as appropriate and as needed for the continued effective implementation of WIOA.

Unified State Plan Modification Requirements

Comments: Regarding proposed § 676.135(b), several commenters stated that modifications to State Plans only should be necessary in the event of significant or substantial changes in labor market and economic conditions or other factors significantly affecting implementation of the plan.

Departments' Response: The Departments recognize the balance between the benefit of periodic modifications of State Plans and the potential burden of submitting State Plan modifications beyond those required at the end of the first 2-year period. The Departments agree that periodic review of State Plans aids in the continual update and improvement of State policies and that State Plan modifications other than those required at the end of the first 2-year period should be required only in the event of substantial changes impacting the plan. Paragraph (b) of § 676.135, which is consistent with WIOA, requires States to submit modifications at the end of the first 2-year period, and these modifications must reflect changes in labor market and economic conditions. Other than this 2-year modification, States are required to submit modifications only 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 changes in the statewide vision, strategies, policies, State negotiated levels of performance (*see* § 677.170(b) of this Joint WIOA Final Rule), 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 WDB or alternative entity, and similar substantial changes to the State's workforce investment system.

Public Comment on Unified State Plan Modifications

Comments: Several commenters stated that the VR regulations in 34 CFR part 361 already address when public comments are needed in the State Plan modification process. Specifically, any change to the VR portion of the State Plan that directly affects the provision of services, such as Order of Selection or the imposition of a financial needs test, would require public review and input before such a change is made. These commenters recommended that the Joint WIOA Final Rule here reflect the same high threshold for public comments on State Plan modifications for the other five core programs.

Departments' Response: Paragraph (c) of § 676.135 contains the same public review and comment requirements for all modifications to Unified State Plans as those for the development of initial Unified State Plans specified in § 676.130(d). In addition, States must adhere to any program-specific requirements for the core programs included in the State Plan, such as sec.101(a) of the Rehabilitation Act of 1973, as amended, and its implementing regulations under 34 CFR 361.10 and 361.20. The Departments do not require that the entire plan be subject to the program-specific public comment requirements of the VR rules in 34 CFR part 361. However, the Departments plan to issue further guidance regarding State Plan modifications.

Comments: Some commenters said States should have the flexibility to define what constitutes a major change, as plan modifications necessitated by minor changes are burdensome and expend valuable resources. One commenter stated that there was no definition of ''substantial change'' provided in the NPRM and suggested that the threshold for ''substantive change'' in proposed 34 CFR 361.20(a)(2) be used in the Joint WIOA Final Rule. Another commenter said ''substantial change'' should be defined as a change that involves a substantive change to service delivery or participating partners or substantial fiscal impact.

Departments' Response: The Departments agree that State Plan modifications other than those required after the first 2-year period for State Plans should be limited in order to avoid undue burden. However, the Departments also want to ensure State Plans are up to date and that States periodically review State Plans. Sections 676.135(b)(2) and (3) describe the circumstances where a Unified State Plan modification is required (other than at the first 2-year period). States are required to modify State Plans 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 changes in the statewide vision, strategies, policies, State negotiated 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 WDB or alternative entity, and similar substantial changes to the State's workforce development system. The Departments have not defined the term ''substantial change'' in this regulation and have instead outlined in the regulation the specific situations where modifications of Unified State Plans are required.

Section 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 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 Combined State Plan partner 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, the Departments strongly encourage States to submit Combined State Plans.

Section 676.140 specifies the general requirements for submitting a Combined State Plan. Paragraph (a) of § 676.140 states that a State may choose to develop and submit a 4-year Combined State Plan in lieu of the Unified State Plan. The Departments have edited § 676.140(a), as well as § 676.140(e)(1), to correctly cite references to Unified State Plan requirements that must be included in a Combined State Plan. Paragraph (e) of § 676.140 specifies the information that a Combined Plan must contain. Paragraph (e)(2) of § 676.140 has been edited to include the words ''and activities,'' to clarify that the Combined Plan must provide the required information for any programs and activities included in the State Plan. Section 676.140(e)(3), consistent with WIOA, has been revised to expand the required description of joint planning and coordination to include core programs, required one-stop partner programs and other programs and activities included in the State Plan. Section 676.140(i) is a new paragraph that requires States that submit employment and training activities carried out by HUD under a Combined State Plan to submit any other required planning documents for HUD programs directly to HUD, according to the requirements of Federal law and regulations. Except for the changes described here, this section remains unchanged from that proposed in the NPRM.

Comments: One commenter said planning and implementation must be a thoughtful process, and system transformation cannot be rushed. This same commenter also said there should be increased interagency collaboration between the Departments. Specifically,

the commenter stated that there should be more incentives for programs within the two Departments to be included in a Combined State Plan.

Departments' Response: The Departments considered these comments but did not make changes to the regulatory text based on them. The Departments agree that planning and implementation must be thoughtful processes and that system transformation is an ongoing process. WIOA does not authorize incentives for States submitting a Combined State Plan. However, the Departments encourage States to be as inclusive as possible in their State Plans because joint planning across programs, including between those in the two Departments, fosters greater alignment and coordination of services.

Planning Cycles

Section 676.140(a) allows States to choose to develop and submit a 4-year Combined State Plan in lieu of the Unified State Plan. In the NPRM, the Departments note that the Combined Plan's 4-year plan development and implementation cycle, with a 2-year modification deadline, is inconsistent with the planning cycles governing many Combined State Plan partner programs. The Departments sought comment on how to reconcile differing planning cycles across Combined State Plan partner programs that do not align with the 4-year planning required by WIOA. In response, commenters provided various recommendations.

Comments: A few commenters said an approved Combined State Plan should suffice to meet the planning requirements of Combined State Plan partner programs and that Federal agencies should address the issues of differing planning cycles at the Federal level through executive actions. Another commenter said the Departments should require Combined State Plan partner programs to describe their planning cycles for the upcoming 4 years, and to include when during the next 4 years they may need to submit modifications to their part of the Combined State Plan. Similarly, two commenters suggested that the Combined State Plan report on the progress of the mid-cycle plan submitted by the Combined State Plan partner program(s) and include language on how the Combined State Plan partner program's submitted plan includes integration with WIOA programs.

Departments' Response: WIOA does not authorize the Departments to change the planning requirements, including submission deadlines that are under other authorizing legislation. However, WIOA gives the States the ability to apply the 2-year WIOA modification provisions to the Combined State Plan partner programs included in the plan in addition to any modification timeline or interval required by the statute governing the Combined State Plan partner program *as long as they do not overwrite those programs' required timelines.* The Departments have concluded that for any Combined State Plan partner program included in the plan with a different planning cycle from WIOA, States should submit program-specific modifications that align with the natural planning cycles for that specific program, unless the 2-year WIOA modification cycle can accommodate that program's planning and modification cycle. For example, if a State chooses to include CTE programs under the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins Act), as a part of its Combined State Plan, the State would submit plan modifications annually to align with Perkins' annual State Plan cycle. As another example, the TANF authorizing statute requires a State to have submitted a plan within 27 months of the end of the first fiscal quarter in order to receive TANF funds for that fiscal year. Accordingly, adopting the more frequent 2-year WIOA cycle for modifications should accommodate TANF's cycle, allowing a State to make all changes to each portion of the Combined State Plan concurrently. The State must submit such modifications to the relevant Secretary for that program, as well as to the Departments of Labor and Education. Special instructions apply to UI State Quality Service Plan and to JVSG as described below. The Departments have developed a process for submission of Combined State Plans that ensures that all relevant Secretaries receive the plan concurrently and, as part of this system, the Departments anticipate that State Plan modifications will be housed in an accessible format with that State's original State Plan. The State may choose to describe the planning cycles of the Combined State Plan partner programs that are included in the State Plan, and the State also may describe intentions to submit future modifications to comply with those planning cycles; however, in order to minimize burden, the Departments have chosen not to require these descriptions through regulation or through the WIOA State Plan ICR.

States that include, in their Combined State Plan, UI programs (UI Federal-State programs administered under State unemployment compensation laws in accordance with applicable Federal law) carried out under title III, sec. 302, of the Social Security Act including secs. 303(a)(8) and (9) which govern the expenditure of funds, should submit their UI State Quality Service Plan following the cycle, according to UI State Quality Service Plan Planning and Reporting Guidelines.

The JVSG programs, carried out under chapter 41 of title 38 of the U.S. Code, require both a JVSG State Plan and a separate annual application for funding. States that include the JVSG programs in their Combined State Plan must submit the JVSG State Plan information in their Combined State Plan, and submit their funding applications annually as required by current Veterans' Employment and Training Service guidance.

Comments: One commenter said the bifurcated nature of the WIOA State Plans 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 2- or 4-year operational plan. A commenter suggested that the Departments issue guidance on how States can incorporate existing and aligned planned activity with WIOA funded programs, as well as other related programs. The commenter concluded that several agencies that administer the Combined State Plan partner programs permitted have plans that align with partners outside of the six core programs, and States and local areas need a method of aligning existing effective plans. A commenter recommended adding Social Security Administration's Ticket to Work as a workforce program in the Combined State Plan. A commenter urged DOL to work closely with the Department of Justice to outline additional recommendations and considerations within guidance for working specifically with the Second Chance Act partners and State Departments of Corrections.

Departments' Response: The Departments received similar comments, in response to § 676.130, regarding the inclusion of program partners beyond the core programs and required one-stop partners in the development of the Unified Plan. As already discussed in the context of Unified Plans in the preamble section that discusses § 676.130, the WIOA State Plan ICR, consistent with secs. 102 and 103 of WIOA, allows States to include programs beyond the core programs, required one-stop partners, and Combined State Plan partner programs in a Combined State Plan. This is particularly true in the context of a discussion of innovative partnerships with the one-stop delivery

system. These partners and programs could include human services, faith- and community-based organizations, educational institutions, and Federal programs not listed among the Combined Plan programs. These programs may be incorporated into the strategic portion of the planning process. As mentioned in the introduction, the Departments issued joint guidance to facilitate the inclusion of innovative partnerships and to foster alignment across partner programs outside of WIOA's core programs. States also are encouraged to utilize technical assistance, as the specific dynamics across program partners within States will vary. Because sec. 103 of WIOA provides an exclusive list of Combined State Plan partner programs, the Departments do not have the authority to expand the statutory list of Combined State Plan partner programs for inclusion in Combined State Plans.

Comments: One commenter said the Departments should keep the approval of the core programs separate from the approval of Combined State Plan partner programs, such that the implementation of what would otherwise be an approved Unified State Plan is not impacted or held up by decisions on Combined State Plan partner program cycles.

Departments' Response: The Departments agree with this comment and have added text to § 676.143(h) to clarify that approval or disapproval of Combined State Plan portions covering Combined State Plan partner programs does not impact approval of the common sections of the plan which cover the core programs. This change will be discussed in more detail in the preamble related to that section. The portions of the Combined State Plan related to the core programs are subject to the same approval requirements applicable to the Unified State Plan (WIOA sec. 102(c)). The Secretaries of Labor and Education's written determination of approval or disapproval of the portion of the plan for the six core programs may be separate from the written determination of approval, disapproval, or completeness of the program-specific requirements of Combined State Plan partner programs and activities described in § 676.140(d) and included the Combined State Plan. For example, if all the common planning elements and program-specific requirements for the core programs are met, approval and funding may proceed regardless of specific issues that may be identified in the program-specific sections for any Combined State Plan partner programs.

Temporary Assistance for Needy Families

Section 676.140(d)(2) specifies that TANF, authorized under part A of title IV of the Social Security Act, is a Combined State Plan partner program that may be included in the Combined State Plan.

Comments: One commenter said it appears that as a Combined State Plan partner program in a Combined State Plan TANF would be subject both to its own current statutory participation rate requirements and to the six performance measures specified in WIOA. The commenter stated that the performance accountability sections in both WIOA and the NPRM consistently refer to the six performance measures in relation to the core programs only and it is the core programs' funding alone that is tied to performance on these measures. The commenter requested that an exception be made such that when a State includes TANF as part of its Combined State Plan, TANF training and employment activities not be subject to WIOA required performance measures. The commenter requested that TANF training and employment activities only be subject to the performance measures under TANF, the same way that performance measures for CSBG employment and training activities are only those under CSBG.

Departments' Response: The Departments have reviewed this comment but did not make a change to the regulatory text. WIOA sec. 103 does not require the Combined State Plan partner programs to report on the WIOA sec. 116 primary indicators of performance. WIOA sec. 103(b)(1) only requires the Combined State Plan partner programs, which include TANF, to include the requirements, if any, applicable to that program or activity under the Federal law authorizing the program or activity. This means those portions of the plans related to training and employment. An explicit exemption for TANF is not required in these regulations. In referring to CSBG and to HUD employment and training activities, WIOA sec. 103(a)(2) does not refer to a specific program within those agencies but to employment and training activities in general. In contrast, WIOA sec. 103(a)(2) refers to TANF as a whole and does not limit this to the employment and training activities under TANF.

Comments: A commenter asked whether a separate TANF State Plan would be required even if the State opts to submit a Combined State Plan. If a separate TANF State Plan is required, the commenter asked what the advantage would be for a TANF entity in combining their State Plan with the WIOA Unified Plan. A commenter said the Departments should 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.

Departments' Response: If the State opts to submit a Combined State Plan under this rule that includes a TANF State Plan, the State would not be required to submit a separate TANF State Plan to HHS. Instead, HHS will receive the Combined State Plan under this rule. 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 that Plan. The Combined State Plan takes the place of the individual State Plans for the Combined State Plan partner programs that are covered by the plan and replaces the Unified State Plan. In this way, the Combined State Plan is meant to promote integrated planning across State programs in addition to the integration among the core programs that would occur under a Unified State Plan. While no additional plan is required, § 676.140(f) stipulates that each Combined State Plan partner 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. Finally, a 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.

Perkins/Career and Technical Education Programs

Comments: Several commenters did not support the use of a Combined State Plan because, according to these commenters, the current Federal funding is essential for local CTE programs; the current Unified Plan model is working well by allowing local control of Perkins funds; the workforce board should not dictate course offerings or the curriculum provided; and the reporting/performance requirements for both WIOA and Perkins would conflict.

Another commenter stated that schools should have the ability to develop programs that align with each other and the resources to support

program development. The commenter said Office of Superintendent of Public Instruction should be given the control to direct funds to support CTE program development and oversee the implementation of the Programs of Study.

Departments' Response: The Departments considered these comments. States have the option of including postsecondary programs, including programs of study described in sec. 122 (c) under the Perkins Act, as a part of their Combined State Plan. However, even if Perkins postsecondary programs are included as a part of a State's Combined State Plan, there will be no impact on the amount of Perkins postsecondary funds that are distributed at the local level, unless the State formally amends its Perkins Act State Plan to change its secondary and postsecondary split of funds pursuant to sec. 112(a)(1) of the Perkins Act. In the case where there is a change in the split, the formula established in sec. 132 of the Perkins Act, or the alternative formula established in sec. 133 of the Perkins Act, still applies.

In addition, under WIOA, Local WDBs cannot dictate course offerings or curricula. Local recipients retain the ability to develop programs and align resources to meet students' needs. Finally, as discussed above, WIOA sec. 103 does not require the Combined Plan partner programs to report on the WIOA sec. 116 primary indicators of performance. WIOA sec. 103(b)(1) only requires the Combined State Plan partner programs to include the requirements, if any, applicable to that program or activity under the Federal law authorizing the program or activity.

Comments: One commenter stated that the regulation should account for WIOA's statutory requirement that Combined State Plan partner programs remain subject to their original authorizing statutes. This is particularly important, according to the commenter, in instances where the Perkins eligible agency does not fall under the direct line of authority or control of the Governor. It is imperative to assure the Perkins eligible agency that it has full authority to carry out the responsibilities under sec. 121 of the Perkins Act when part of a WIOA Combined State Plan. The Perkins eligible agency is ultimately subject to the Federal government fiscal and accountability reporting requirements under Perkins regardless of whether the Perkins State Plan is separate or part of a WIOA Combined Plan.

Departments' Response: Reference to the original authorizing statutes and their requirements are made throughout the Joint Rule with respect to Combined State Plan partner programs included in Combined State Plans. There is no intention of removing or minimizing the authority of the Perkins eligible agency to carry out its Perkins' responsibilities under WIOA.

Comments: A commenter made the following remarks about the submission of a Perkins State Plan as part of the Combined State Plan:

- The NPRMs do not address a reconciliation of the two separate and distinct submission requirements (2-year versus annual).
- If a State submits the annual Perkins Plan separate from the Combined State Plan, the rules are not clear if the Perkins Plan must be approved by the State WDB.
- The rules require two agencies to negotiate the level of performance on the core indicators of WIOA but do not indicate if the two agencies must negotiate the level of performance on the Perkins indicators.
- The Perkins State levels of performance are dependent on local negotiations and levels of performance but the NPRMs do not indicate how the integrity, validity, and reliability of the local Perkins negotiations can be retained.

Departments' Response: As discussed previously, WIOA gives the States the ability to apply the 2-year WIOA modification provisions to the Combined State Plan partner programs included in the plan in addition to any modification timeline or interval required by the statute governing the Combined State Plan partner program *as long as they do not overwrite those programs' required timelines.* The Departments have concluded that for any Combined State Plan partner program included in the plan with a different planning cycle from WIOA, States should submit program-specific modifications that align with the natural planning cycles for that specific program. Section 676.140(f) stipulates that each Combined Plan partner 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.

If a State chooses to include Perkins as part of its Combined State Plan, the State will submit Perkins State Plan modifications annually, consistent with the Perkins annual State Plan cycle. If the Perkins State Plan modifications affect only the administration of Perkins and have no impact on the Combined State Plan as a whole or the integration and administration of the core and Combined State Plan partner programs, then such modifications may be submitted only to the Secretary of Education consistent with § 676.145(c)(2). Modifications to a Perkins State plan that impact the Combined State Plan as a whole or the integration and administration of the core and Combined State Plan partner programs are subject to the same public review and comment requirements that apply to the development of the original Combined State Plan. Under the Perkins-specific procedures, hearings may or may not be required depending on the specific facts presented.

In response to the commenters who raised concerns regarding performance negotiations, the Departments are clarifying that sec. 103 of WIOA does not require Combined State Plan partner programs to report on the primary indicators of performance in sec. 116 of WIOA. Section 103(b)(1) of WIOA only requires the Combined State Plan partner programs, which include Perkins, to include the requirements, if any, applicable to that program or activity under the Federal law authorizing the program or activity. Perkins program inclusion in a State's Combined State Plan will not impact the annual Perkins performance indicator negotiation process. See sec. 676.143(i). The WIOA State Plan ICR Appendix 1 clarifies what performance information States must include in the State Plan. The Departments provided further instructions through the WIOA Joint Performance ICR, the WIOA State Plan ICR, and related joint guidance. The Departments issued operational guidance on both performance and State Plan submission guidelines following the finalized Performance and WIOA State Plan ICRs.

Inclusion of Combined State Plan Programs Not Under Governor's Authority

Section 676.140(e)(4) requires States to provide assurance that all of the entities responsible for planning or administering an eligible program described in a Combined State Plan have a ''meaningful opportunity to review and comment'' on all portions of the plan.

Comments: Several commenters recommended strengthening the language in the regulation to ensure that States give assurances that all of the entities responsible for planning or administering a program described in a Combined State Plan have approved the inclusion of the programs in a Combined Plan, especially where such

programs do not fall under the direct control of a Governor. According to these commenters, as the language currently stands, it could be interpreted as leaving this decision of whether to include a Combined State Plan partner program in the Combined State Plan up to the sole discretion of the Governor.

One commenter stated that, based on sec. 121 of the Perkins Act, the Perkins eligible agency should have the authority to determine whether CTE programs authorized under the Perkins Act are included in a State's Combined Plan. Section 121 of the Perkins Act states, in relevant part, that each ''eligible agency . . . shall prepare and submit to the Secretary a State plan . . .'' As mentioned above, the Perkins eligible agency maintains authority to carry out the responsibilities under sec. 121 of the Perkins Act under a Combined State Plan.

A few commenters said the Joint WIOA Final Rule should state the intent that the TANF program should have a meaningful influence in all stages of plan development and be a voting member of the State WDB.

Departments' Response: The Departments have concluded that no change to the regulatory text at § 676.140(e)(4) is necessary in response to these comments. The Departments have modified § 676.140(e)(3) to require States to describe joint planning methods in the Combined State Plan among the core programs, and with the required one-stop partner programs and other programs and activities included in the State Plan. The Departments acknowledge that not all programs identified in WIOA for potential inclusion in the Combined State Plan fall under the purview of the Governor. For some, the Federal funds go directly to local entities, such as several HUD programs administered by Public Housing Authorities. Others, such as the Reintegration of Ex-Offenders, are competitive grants that may be awarded to community-based organizations. Perkins funds flow directly to a State eligible agency by formula. In some States the Perkins State eligible agency is an independent agency not under the authority of the Governor. The Departments expect the Governor to work in collaboration with any Combined State Plan partner programs included in the plan and with the agencies that administer those programs consistent with these regulations and sec. 103(b)(3) of WIOA. The Departments expect that the State's joint planning methods across these programs ensure that the State has full cooperation from any such programs and agencies included in the Combined State Plan. Finally, in response to the comment that the TANF program should be a voting member of the State WDB, State WDB membership requirements are addressed in 20 CFR 679.110 (*see* DOL WIOA Final Rule).

Other Comments

Comments: Two commenters sought clarification on the primary indicators of performance relative to the inclusion of those partners beyond the core programs. If a State should choose the Combined State Plan option, one commenter asked whether all partners would be held to the standards of performance accountability identified in WIOA.

Departments' Response: WIOA sec. 103 does not require the Combined Plan partner programs to report on the WIOA sec. 116 primary indicators of performance. WIOA sec. 103(b)(1) only requires the Combined State Plan partner programs to include the requirements, if any, applicable to that program or activity under the Federal law authorizing the program or activity. The WIOA State Plan ICR Appendix 1 clarifies what performance information States must include in the State Plan. The Departments provided further instructions through the WIOA Joint Performance ICR, the WIOA State Plan ICR, and related joint guidance.

Comments: A commenter requested that the Departments ensure that partner programs will not have to submit additional or separate standalone plans.

Departments' Response: Partner programs, except for those carrying out employment and training activities carried out under CSBG, HUD programs, and the Food and Nutrition Act of 2008, will not be required to submit additional or separate standalone plans. Paragraph (h) and new paragraph (i) of § 676.140 explain the additional submission requirements for CSBG and HUD programs. Under paragraphs (h) and (i), the regulation explicitly limits the Combined Plan requirements for CSBG and HUD programs to ''employment and training activities.'' However, these activities are only a subset of a broad range of antipoverty activities provided under these two programs. In the case of CSBG programs, under § 676.140(h), the State would submit the remainder of the State Plan for CSBG (*e.g.*, those parts that apply to the other antipoverty activities provided by CSBG that are not ''employment and training activities'') to the Federal agency that administers the program. New paragraph (i) clarifies that, like the requirements under paragraph (h) for CSBG programs, only the components of the individual plans for HUD programs that pertain to employment and training should be submitted with the Combined State Plan. The State must submit any other required planning documents for HUD to the Federal agency that administers the respective program. The language in this new paragraph creates a consistent approach for the Combined State Plan partner programs that WIOA sec. 103(a) identifies by activities rather than by a specific program name. This change also makes the regulatory text relating to HUD consistent with instructions in the WIOA State Plan ICR for submission requirements for Combined State Plans.

For employment and training programs and work programs authorized under the Food and Nutrition Act of 2008, including those under secs. 6(d)(4) and 6(o), the State would similarly submit to the Departments of Labor and Education only the Supplemental Nutrition Assistance Program Employment and Training programs (SNAP E&T). The Departments declined to regulate an exception for SNAP E&T because State Plans for SNAP E&T, as described under 7 CFR 273.7(c)(8), are generally not comingled with the State Plans for the remaining activities under SNAP.

Comments: A commenter expressed concern that proposed § 676.140 does not require States to identify populations for Priorities of Service, though this is required at the local level. The commenter recommended that the regulation be revised to require that States identify populations for priority of service, and provide explanation of why those populations are named.

Departments' Response: As discussed earlier under § 676.105, in the title I-specific requirements, the WIOA State Plan ICR requires the State to address its policy for ensuring adult program funds provide a priority in the delivery of career and training services to individuals who are low income, public assistance recipients, or basic skills deficient. Otherwise, as with the Unified Plan Requirements, the Departments have chosen not to regulate the specifics of State Plan requirements, as these are explained in comprehensive detail in the WIOA State Plan ICR.

Section 676.143 What is the development, submission, and approval process for the Combined State Plan?

Section 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 at § 676.130, with added considerations for review and approval by the Federal agencies that oversee the Combined State Plan partner

programs. The heading for § 676.143 has been modified to include the word ''development,'' to more accurately reflect the content of this section. In response to comments, discussed earlier, regarding the role of State WDB, core programs, required one-stop partners, and other stakeholders in the development of the State Plan, the Departments have made several revisions to § 676.143 to mirror the requirements for Unified Plans related to coordination, public comment and input. A new paragraph (b) has been added to include information similar to the newly added § 676.130(c), clarifying that the Combined State Plan, just as the Unified State Plan, must be developed with the assistance of the State WDB and must be developed in coordination with administrators with optimum policy-making authority for the core programs and required one-stop partners. New § 676.143(c)(1) and (2) have been added to include information similar to § 676.130(d)(1) and (2) requiring that the State must provide an opportunity for public comment and input on the development of the Combined State Plan prior to its submission, and that these requirements apply to the portions of the plan that cover the core programs. Finally, § 676.143(c)(3) has been added to further clarify that the portions of the Combined State Plan that cover the Combined State Plan partner programs are subject to any applicable public comment requirements for those programs. Proposed § 676.143(b) has been renumbered to § 676.143(d), and remaining sections have been renumbered accordingly. Renumbered § 676.143(e)(1) has been revised to clarify that, before the Secretaries of Labor and Education approve the Combined State Plan, the VR services portion of the Combined State Plan must be approved by the RSA Commissioner. In response to comments requesting clarity around Combined State Plan approval, new § 676.143(h) states that the Secretaries of Labor and Education's written determination of approval or disapproval of the portion of the plan for the six core programs may be separate from the written determination of approval, disapproval, or completeness for program-specific requirements of Combined State Plan partner programs at § 676.140(d). Except for the changes described here, this section remains unchanged from that proposed in the NPRM.

Submission of Combined State Plan

Section 676.143(d) requires a State to submit to the Secretaries of Labor and Education and, if applicable, to the Secretary of the agency with responsibility for approving the program's plan or for deeming 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.

Comments: A couple of commenters stated that, to reduce the burden on States, the Secretaries of Labor and Education should be responsible for distributing the plans to other appropriate Federal entities. One of these commenters said the Secretaries of Labor and Education may want to consider taking all of the Combined State Plans and submitting them as a batch to the other appropriate Federal entities.

Departments' Response: The submission process set forth in WIOA sec. 103(a)(1) for Combined State Plans requires that they be submitted to the ''appropriate Secretaries,'' which differs from the submission process for the Unified State Plan set forth in WIOA sec. 102(a). However, similar to what is required by § 676.130(e) for the submission of Unified State Plans, the Departments developed a process for the single electronic submission of Combined State Plans that allows for concurrent review of, and immediate access to, the plans by all the relevant Federal entities. As discussed in the introduction, the Departments issued guidance that explains the submission process for Combined State Plans, which is intended to streamline State submission of plans. No change to the regulatory text was made in response to these comments, but the Departments have issued further guidance regarding State Plan submission.

Timelines for Review and Approval

Section 676.143(e) stipulates the timelines for review and approval by the Secretary of Labor or Secretary of Education, or another appropriate Secretary.

Comments: A couple of commenters requested clarification on the different timelines for the review and approval of the Combined State Plan (90 days for core programs and 120 days for Combined State Plan partner programs).

Departments' Response: The Departments considered these comments and are implementing the regulation to reflect the statutory requirements. As required by WIOA sec. 103(c)(3), Combined State Plan partner programs that fall under an authority other than the Secretary of Labor or Secretary of Education have an approval timeline of 120 days, rather than 90 days. This additional time allows for review and approval of Combined State Plan partner programs that are administered outside the Departments of Education and Labor, such as programs administered by U.S. Department of Agriculture, HHS, and HUD. These are statutory requirements not subject to regulatory change.

Rehabilitation Services Administration Approval of Combined State Plans

Comments: Several commenters requested clarification on whether the VR portion of a Combined State Plan must be approved by the RSA Commissioner prior to the full Combined State Plan being approved by the Secretaries of Labor and Education, as the Unified State Plan process description explicitly states in § 676.130(g).

Departments' Response: The Departments considered these comments and agree that the rule needed to provide additional clarification regarding this requirement. Just as required for Unified State Plans, the RSA Commissioner must approve the VR services portion of the Combined State Plan prior to approval of the full Combined State Plan by the Secretaries of Labor and Education. The Departments have added regulatory text to clarify this requirement at § 676.143(e)(1).

Comments: One commenter said ensuring review by the RSA Commissioner should be the responsibility of the Secretaries, not VR agencies, and asked if this review would be part of the 90-day review timeframe.

Departments' Response: The Departments worked together to ensure the timely review of all State Plans, including the VR services portion of each plan. As discussed under § 676.130 for Unified Plans, it is not the State VR agencies' responsibilities to submit and obtain approval of the VR services portion of the State Plan prior to submitting the Combined State Plan to the Departments. Rather, the entire plan should be submitted to the Departments and review by the RSA commissioner will take place following that submission as a part of the 90-day Federal review of the plan. The Departments developed a process for submission of State Plans to ensure that all Departments, as appropriate, receive the entire submission concurrently. The Departments have concluded that the existing regulatory text and preamble place adequate emphasis on the timely concurrent reviews of the plans by the Departments.

Review, Approval, and Disapproval of Combined State Plans

Section 676.143(f) provides specifics on the approval process for Combined State Plans.

Comments: A few commenters stated that there appears to be little incentive for States to pursue a Combined State Plan. One commenter said States need assurances that the Departments will handle the Combined State Plan review in a manner different from how the Departments handled the Unified State Plan review under WIA, which was largely superficial in nature. The commenter recommended that the review process not only enforce statutory requirements but also consider the plan in a coordinated, cross-agency approach. The commenter said States need additional clarity on how the Federal agencies will manage the review process and make approval determinations, particularly when the statutes provide mixed or conflicting direction.

Departments' Response: Although States only are required, at a minimum, to submit a Unified State Plan that encompasses the six core programs under WIOA, the Departments encourage States to submit a Combined State Plan that includes additional Combined State Plan partner programs as described at § 676.140. Development of a Combined State Plan allows for coordination across multiple Federal programs, cross-program strategic planning, increased alignment among State programs, and improved service integration, which provides a wider range of coordinated and streamlined services to the customer. WIOA offers an expanded opportunity for States to create and implement a shared vision and strategy for the public workforce system within the State. The Departments have added language to § 676.143 in paragraphs (e)(1) and (h) to further clarify the review process for Combined State Plans. Review of Combined State Plans will take into consideration the strategic coordination, program alignment, integration, and cross-agency joint planning that is reflected in the Combined Plan. The Departments worked together to create a robust review process across all partner agencies and consider this review process to be integral to effective joint planning and implementation. The Departments have added regulatory text at § 676.143(h) to clarify that the Secretaries of Labor and Education's written determination of approval or disapproval of the portion of the plan for the six core programs may be separate from the written determination of approval, disapproval, or completeness of the program-specific requirements of Combined State Plan partner programs and activities included in the Combined State Plan.

Comments: One commenter requested guidance (1) that allows States to develop a Combined State Plan without the threat of a loss of funds if elements of the individual programs are not specifically identified, and (2) on how accountability metrics and reporting requirements for those programs included in the plan will not be a disincentive for inclusion. A commenter said it is not clear what benefit exists for the State or local Perkins recipients to attempt to address indicators that are not pertinent to their purpose of operation as outlined in State regulation as well as the ''Federal Perkins regulation.'' The commenter said if the Combined State Plan partner programs are not required to report on the WIOA indicators of performance, the benefit of a Combined State Plan is not clear.

Departments' Response: Regarding concerns about funding, the joint submission, or joint review process of the Combined State Plans will not impact funding because the Departments developed a process to ensure Combined State Plans are reviewed in a coordinated and timely manner across agencies. The Combined State Plan review process is further explained at § 676.143. Combined State Plan partner programs are not subject to the six common indicators for performance under WIOA, although they may be subject to the same or similar indicators under their own authorizing statute or under State law. Regardless of whether required indicators are identical, States will find that public workforce development system customers can benefit from the results of developing a Combined State Plan that fosters program integration and alignment and optimal use of resources. The Departments' worked together to implement a robust review process across all partner agencies and consider this review process to be integral to effective joint planning and implementation. Performance issues have been addressed through the WIOA State Plan ICR, the WIOA Joint Performance ICR, and related joint guidance.

Comments: One commenter said it is unclear how the rejection of one part of a Combined State Plan would affect funding for the other programs. A commenter stated that the regulation implies that disapproval by any Secretary of their respective program will result in disapproval of the Combined State Plan as a whole, which provides incentive to submit a Unified State Plan (instead of a Combined State Plan). Similarly, another commenter said disapproval of a section of the plan pertaining to a program not considered to be a core program should not result in the disapproval of the entire plan. Another commenter requested additional guidance on the process to follow if the RSA Commissioner does not approve the VR portion of the State Plan.

Departments' Response: Per § 676.143(h), disapproval of a section of a Combined State Plan pertaining to a Combined State Plan partner program does not impact the approval for the portions of the Combined State Plan that apply to the core programs. In the process mentioned above, the common planning elements and program-specific elements of Combined State Plans are reviewed concurrently across the Departments of Labor and Education and other relevant agencies, with the approval determination by RSA occurring first, and with additional time allowed for specific Combined State Plan sections that fall within the purview of U.S. Department of Agriculture, HUD, or HHS. A determination regarding approval or disapproval for the common elements and the core programs may be issued separately from the approval determination for program-specific requirements for Combined State Plan partner programs, including those that allow 120 days for review. The Departments have added a new § 676.143(h) to clarify that the Secretaries of Labor and Education's written determination of approval or disapproval of the portion of the plan for the six core programs may be separate from the written determination of approval, disapproval, or completeness for program-specific requirements of Combined State Plan partner programs specified in § 676.140(d) in the Combined State Plan. However, the portions of the Combined State Plans that cover the core programs must be approved by all core program agencies.

Special Rule for Perkins Act Programs

Comments: Several commenters referred to § 676.143(f) in the NPRM, which has been renumbered to § 676.143(i) in the Joint WIOA Final Rule, the special regulation for programs authorized by the Perkins Act, which directs the State to come to an agreement with the Secretary of Education regarding State performance measures. One commenter requested further clarification as to what accountability measures would take

precedence under an agreement between the Secretary of Education and a State. The commenter stated that the Departments should specify that when a State chooses to include Perkins in a Combined State Plan, the State is required to include the totality of the Perkins State Plan in the Combined State Plan and cannot break off the parts relevant only to postsecondary CTE.

Departments' Response: WIOA sec. 103 does not subject the Combined State Plan partner programs to the WIOA sec. 116 primary indicators of performance. WIOA sec. 103(b)(1) only requires the Combined State Plan partner programs, which include Perkins programs, to include the requirements, if any, applicable to that program or activity under the Federal law authorizing the program or activity. The WIOA State Plan ICR Appendix 1 further clarifies what performance information States must include in the State Plan. As discussed in § 676.140 above, if a State chooses to include postsecondary CTE programs under the Perkins Act as a part of its Combined State Plan, the State would submit the entirety of the State Plan, including any annual revisions, pertaining to the CTE programs authorized under the Perkins Act. In addition, the State would submit plan modifications annually to align with Perkins' annual State Plan cycle, consistent with § 676.145.

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

Section 676.145 specifies requirements for modifying a Combined State Plan. Sections 676.145(a)(1) through (3) have been added to mirror the core program modification requirements specified for Unified State Plans in § 676.135(b). Section 676.145(a)(1) through (3) outline three instances in which a modification for the core programs is required. These instances include: (1) At the conclusion of the first 2-year period of a 4-year State Plan, (2) when changes in Federal or State law substantially affect the plan's implementation, and (3) when there are substantial changes to the State's workforce investment system. The Departments revised § 676.145(a)(3) to clarify that modifications to the Combined State Plans are required when States modify their negotiated levels of performance. This clarification was made for consistency with the changes to part 677 on the performance accountability system. The Departments have added a clarifying edit to § 676.145(c)(1) to explain that States have discretion to apply the plan modification requirements for core programs to Combined State Plan partner programs so long as it is consistent with any other modification requirements for that program. The Departments have incorporated proposed § 676.145(f) into § 676.145(c)(2) to clarify these provisions to address commenters' confusion in this area, and deleted paragraph (f). The Departments also have made technical edits at § 676.145(d). Except for the changes described here, this section remains substantively the same as that proposed in the NPRM.

Timeframe for Combined State Plan Modifications

Comments: A couple of commenters said the Departments should consider emphasizing the opportunity for States to submit Combined Plan modifications following submission of the initial plan to ensure that Combined Plan partner programs continue to be engaged in the planning and implementation process. Some commenters said the Federal agencies responsible for the Combined Plan partner programs should accept the Combined State Plan on the timeline outlined in WIOA and not prescribe more frequent updates or different timeframes for modifications and renewals. In addition, the commenters said the submission deadlines must align. These commenters also said the Departments should issue final guidance early enough that there is sufficient time to negotiate the levels of performance for State performance accountability measures before submission deadline.

Departments' Response: The Departments agree that modifications following submission of the initial plan are useful to ensure that Combined State Plan partner programs continue to be engaged in the planning and implementation process. Sections 676.135 and 676.145 enable States to continue to modify and improve the planning process of both core and Combined State Plan partner programs through Unified and Combined State Plans. The Departments are not prescribing more frequent updates beyond what is required under WIOA timeframes. However, the Departments have revised § 676.145(a) to clarify the circumstances under which a Combined State Plan must be modified for core programs, which are the same modification requirements that apply under Unified State Plans. The States have the discretion to apply these modification requirements to Combined State Plan partner programs or activities. The Departments have added regulatory text at § 676.145(c)(1) to clarify that a State may apply these modification requirements to Combined State Plan partner programs, as long as this is consistent with any other modification requirements for those specific programs. As discussed under § 676.140, the Departments do not have the authority to change the planning requirements, including submission deadlines, that are not under WIOA's jurisdiction. The Departments have provided additional clarity on the review and approval process through joint planning guidelines.

Combined State Plan Modification Requirements

Unlike § 676.135, which addresses modifications of Unified State Plans, proposed § 676.145, which addressed modifications for Combined State Plans, did not require modification of a plan when there are ''substantial changes'' to a State's workforce investment system.

Comments: The Departments received comments requesting that language similar to that in § 676.135(b)(2) and (3), requiring States to submit modifications when there are ''substantial changes,'' be added to the section pertaining to Combined State Plan modifications.

Departments' Response: The Departments considered these comments and agree. The Departments have revised proposed § 676.145(a) by adding new paragraphs (a)(2) and (a)(3) that are essentially identical to § 676.135(b)(2) and (3) to clarify that the same modification requirements that apply to the Unified Plan also apply to the portions of the Combined Plan covering the core programs. States are required to submit a modification for the portions of the Combined Plan covering the core programs when (1) changes in Federal or State law or policy substantially affect the strategies, goals, and priorities upon which the Combined State Plan is based, and (2) when there are changes in the statewide vision, strategies, policies, State negotiated 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 WDB or alternative entity, and similar substantial changes to the State's workforce investment system. Under WIOA sec. 103(b)(1), it is at the discretion of the State to decide whether to apply these modification requirements to Combined State Plan partner programs or activities, as long as this is consistent with any other modification requirements for those specific programs. The Departments

have added language at § 676.145(c)(1) to clarify this distinction.

Public Comment on Combined Plan Modifications

In the NPRM, the Departments sought comments on how to streamline the public review and comment process for Combined State Plan modifications. The Departments further sought comments in the NPRM on whether it is advisable to limit the requirement for public comment on plan modifications to significant or substantial modifications to the common planning elements and, if so, how the Departments might define ''significant'' or ''substantial changes.''

Comments: One commenter indicated that historically, in-person meetings are poorly attended, so comments in relation to § 676.145 should be allowed via other methods, such as surveys, webinars, video conferences, and phone conferences. Another commenter said public review should not exceed 30 days.

Some commenters said the Departments should limit the comment process under § 676.145 to significant or substantial modifications, such as substantive change to service delivery or participating partners, adding or removing a Combined State Plan partner program, or discretionary changes within a program that would directly affect the provision of services and its collaboration with other programs (excluding programmatic changes required due to audit findings or sanctions). One commenter said the Departments should allow public comment on the shared planning elements to streamline this process significantly, particularly for States in which core program agencies have different governance and review processes.

Departments' Response: In the Joint WIOA Final Rule, the Departments have not included requirements related to the timing, method, or other specifics related to public review and comment. The Departments leave much of the process related to public review and comment to the discretion of the State so long as regulatory requirements for public comment are met. If, based on the regulatory categories described in § 676.145, a Combined State Plan modification is required, such a plan modification is subject to the requirements for comment as described in § 676.145(d). As described in § 676.145(d), modifications to 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 § 676.143(c) except that, if the modification, amendment, or revision affects the administration of a particular Combined State Plan partner program and has no impact on the Combined State Plan as a whole or the integration and administration of the core and other Combined State Plan partner programs at the State level, a State may comply instead with the procedures and requirements applicable to the particular Combined State Plan partner program. The Departments have made a technical edit to § 676.145(c)(2)(ii) for clarity by adding the word ''other'' before Combined State Plan partner programs in the phrase ''has no impact on the Combined State Plan as a whole or the integration and administration of the core and Combined State Plan partner programs at the State level.'' The Combined State Plan partner programs being referred to here are those other than the program that is the focus of the modification. States may determine, at their discretion, if these same plan modification requirements apply to Combined State Plan partner programs included in the Combined State Plan. States can further use their own discretion to provide a reasonable period of time for public comment. Many State laws also require a minimum number of days for public comment. Likewise, States may determine the best way to streamline the public comment process while ensuring that regulatory requirements for public comment are met.

In addition to the regulatory text changes discussed above, various non-substantive changes have been made for purposes of correcting typographical errors and improving clarity that have not been necessary to note elsewhere.

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 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 workforce development system's six core programs described in sec. 116(b)(3)(A)(ii) of WIOA. These six core programs are the adult, dislocated worker, and youth programs under title I of WIOA; AEFLA program under WIOA title II; Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III (Wagner-Peyser Act Employment Service program); and VR program authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV.

The performance accountability system established in WIOA subtitle A (''System Alignment'') in sec. 116 requires that the performance accountability requirements apply across all six core programs with few exceptions. As such, the six core programs have an historic opportunity to align performance-related definitions, streamline performance indicators, integrate reporting, and ensure comparable data collection and reporting across all the core programs, while also implementing program-specific requirements.

Through this Joint WIOA Final Rule, the Departments are laying the foundation for 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 DOL-administered title I programs, specifically Job Corps, Native American programs, the Migrant and Seasonal Farmworker programs, and the YouthBuild program, to comply with the same primary indicators as the core programs (see 20 CFR part 686 and 20 CFR part 684 of the DOL WIOA Final Rule published elsewhere in this issue of the **Federal Register**). The inclusion of these additional DOL-administered programs into the common performance accountability system will better align both the core programs and other education and training programs across the public workforce system. Further, DOL is including other workforce programs under its purview in this performance-related streamlining effort, including the JVSG program as authorized by the Jobs for Veterans Act and other appropriate formula and competitive grant programs.

In the section-by-section discussions of each performance accountability regulatory provision below, the heading references the DOL CFR section number. The ED is establishing in this Joint WIOA Final Rule identical provisions at 34 CFR part 361, subpart E (under its State VR program regulations) and at 34 CFR part 463, subpart I (under a new CFR part for AEFLA regulations). Although for purposes of brevity, the section-by-section discussions for each provision appear only once—in conjunction with the DOL section number—the discussions nevertheless constitute the Departments' collective explanation and rationale for each regulatory provision. When the

regulations are published in the CFR, these joint performance regulations will appear in each of the CFR parts identified above.

2. Definitions (20 CFR 677.150; 34 CFR 361.150; 34 CFR 463.150)

Section 677.150 What definitions apply to Workforce Innovation and Opportunity Act performance accountability provisions?

Section 677.150 defines ''participant,'' ''reportable individual,'' ''exit,'' and ''State,'' which are key performance-related terms applicable to all six core programs for implementation of the performance accountability system under sec. 116 of WIOA and part 677 of these joint regulations. The definition of ''participant'' has been revised, as explained below, to distinguish clearly between participants and reportable individuals. The definitions of ''reportable individual'' and ''exit'' have been revised as explained below. The Departments also have added a definition of ''State,'' which includes the outlying areas for purposes of part 677, other than in regard to sanctions or the statistical adjustment model. These definitions establish the foundation of an integrated performance accountability system and support clarity and alignment of performance metrics and comparability among the programs, States, and outlying areas.

Definition of ''Participant'' (§ 677.150(a))

Comments: Numerous commenters responded to the Departments' solicitations for input on the joint NPRM regarding the proposed definitions of ''participant,'' ''reportable individual,'' and ''exit.'' While several commenters supported the definition of ''participant'' generally, many commenters raised multiple concerns regarding the distinction between self-service and staff-assisted service. A common concern was that the proposed definition of ''participant'' excludes self-service only individuals, which conflicts with WIOA's goal of leveraging technology to improve service delivery. Some commenters expressed concerns about the term ''staff-assisted service,'' stating that the term should either be defined or removed because it is critical to understanding the precise distinction between a ''participant'' and a ''reportable individual.'' Several commenters asserted that the Departments should remove ''staff-assisted service'' from the definition of ''participant'' because it is not defined in WIOA or regulations and can be misleading when providing upfront assessment services to youth. Other commenters encouraged the Departments to define ''staff-assisted service'' in order to provide clarification. One commenter indicated that the regulatory definition of ''participant,'' for purposes of the title I youth program, should reflect policy positions articulated by the Departments in the Joint WIOA NPRM's preamble.

Commenters also suggested additional terms and concepts that could be defined, including providing definitions for ''qualifying services,'' ''facilitated self-service,'' and ''career and training services.'' One commenter asserted that the Departments should issue timely guidance with additional definitions and clarifications or allow States to continue using definitions contained in WIA.

Departments' Response: The Departments agree that it is critical that these definitions be clear in order to ensure compliant data collection and reporting. Section 677.150(a) provides a definition of ''participant'' that applies to all six core programs because the primary performance indicators set forth in sec. 116(b)(2)(A)(i) of WIOA specifically base performance calculations on the participants in each of the core programs. The definition of ''participant'' establishes a common point at which an individual is meaningfully engaged in a core program and thus, it is appropriate for the person to be included in the primary indicators of performance. In the NPRM, the Departments attempted to distinguish ''staff-assisted services,'' which required more meaningful interaction with a core program, from ''self-services'' and information-only services and activities, where individuals engaged in these activities that require minimal interaction with the programs, by which the Departments mean minimal resources are spent on their behalf in most cases. While individuals who receive only self-service or information-only services and activities do not satisfy the definition of ''participant,'' these individuals are considered ''reportable individuals'' as defined in § 677.150(b) and discussed in more detail below.

The Departments considered each of the suggested revisions to the proposed definition of ''participant'' and have modified § 677.150 to clarify the application of this definition to requirements under WIOA. The Departments made the following changes to the definition of ''participant'' in § 677.150(a).

In § 677.150(a), the Departments replaced the phrase ''staff-assisted services'' with ''services other than those described in § 677.150(a)(3).'' In so doing, the Departments eliminate the confusion of what is meant by ''staff-assisted services'' and make clear that individuals who receive the services described in § 677.150(a)(3) will not be deemed to be ''participants'' for purposes of the performance accountability system requirements under part 677, but rather will constitute a ''reportable individual'' under § 677.150(b).

The Departments provided additional clarification in renumbered § 677.150(a)(3) to describe what does and does not constitute self-service and information-only services and activities. In so doing, the Departments have eliminated the confusion noted by commenters. Specifically, the revisions contained in § 677.150(a)(3) clarify that the difference between reportable individual and participant is the point when a reportable individual uses services other than those identified in renumbered § 677.150(a)(3). The Departments clarify what is meant by self-service and information-only services and activities, thereby avoiding use of the term ''staff-assisted services'' in this regulation, which raised concerns among commenters.

Because the Departments appreciate the concerns raised by commenters and recognize the changing landscape and advances in service delivery and design, the Departments added § 677.150(a)(3)(ii)(A) to describe self-service. The Departments recognize that not all electronic technologies are self-service and that individuals engaged in this type of service could potentially meet the definition of ''participant.'' For example, there may be some services that provide robust levels of assistance in assessing a person's skills and matching that person to a job that are provided using electronic technologies that involve one-on-one interaction with a one-stop center staff member, such as an Internet chat room, or interactive technology, such as video conferencing, that would result in the individual becoming a participant. Additionally, the Departments acknowledge how fast technology evolves and new technology emerges that could be used by States and local areas to maximize available resources and better serve job seekers, workers, and employers. The Departments will continue to assess the field and emerging innovative technologies that may provide more cost-effective services and inform the workforce system of such developments, and their allowable uses, through program guidance.

The Departments are continuing to examine staff-assisted virtual service

delivery in order to determine its potential. Paragraph (a)(3)(ii)(B) of § 677.150 clarifies that virtual services providing support above an individual's independent job- or information-seeking efforts would not qualify as self-service, thus resulting in the individual becoming a ''participant.''.

The Departments have concluded that the following revisions to § 677.150(a)(3), described in more detail below, add the clarity requested by commenters:

Self-service occurs when individuals independently access the workforce development system information and activities with very little to no staff assistance. This can be done in either a physical location, such as a one-stop center resource room or partner agency, or remotely via the use of electronic technologies, with very little to no staff assistance.

Importantly, if a service is virtual service it is not automatically a self-service. As many commenters pointed out, there have been great strides made in the area of virtual service design and delivery allowing for staff to provide support and services through a variety of in-person and virtual platforms. For example, there may be some services that are provided using electronic technologies that involve one-on-one interaction with a one-stop center staff member or interactive technology, such as video conferencing, that would trigger participation. Furthermore, individuals who receive self-service or information-only services and activities can still be participants if they receive services other than self-service or information-only activities.

Information-only services or activities are activities or services that provide readily available information that does not require an assessment by a staff member of the individual's skills, education, or career objectives. In a public workforce development setting, information activities or services may include both self-service basic career services and staff-assisted basic career services. Both are designed to inform and educate an individual about the labor market and to enable an individual to identify his or her employment strengths, weaknesses, and range of appropriate services. However, basic career services that require significant staff involvement are not considered information-only services or activities.

Applying the above guidance to determining when a reportable individual satisfies the definition of a ''participant,'' an individual is a reportable individual, but not a participant, when a staff member provides the individual with readily available information that does not require an assessment of the individual's skills, education, or career objectives, because the individual is a recipient of information-only services or activities. Such information could include labor market trends, the unemployment rate, businesses that are hiring or reducing their workforce, information on high growth industries, occupations that are in demand, and referrals other than referrals to employment. Information-only services or activities also occur when a staff member provides the individual with information and instructions on how to access the variety of other services available in the one-stop center, including tools in the resource room.

Significant staff involvement that would result in an individual qualifying as a participant includes a staff member's assessment of an individual's skills, education, or career objectives in order to achieve any of the following:

- Assist individuals in deciding on appropriate next steps in the search for employment, training, and related services, including job referral;
- Assist individuals in assessing their personal barriers to employment; or
- Assist individuals in accessing other related services necessary to enhance their employability and individual employment related needs.

The Departments also added a new § 677.150(a)(2) to align the regulatory text definition of ''participant,'' for purposes of the title I youth program, with the intent expressed in the NPRM. New § 677.150(a)(2) clarifies the definition of a ''participant'' for purposes of the WIOA title I youth program.

The Departments did not add a definition of ''staff-assisted service,'' as suggested by commenters, because the revisions to § 677.150(a) described above resulted in the removal of the term from the regulatory text. In addition, the Departments declined to add the recommended definitions of ''qualifying services'' or ''facilitated self-services,'' because the modifications made to the definition of ''participant''—particularly at § 677.150(a)(3) regarding clarifications of self-service and information-only services or activities—will address the needs of commenters. In addition, the Departments consider additional recommended definitions to fall within the scope of either the WIOA Joint Performance ICR (which identify performance calculations, definitions, and reporting parameters) or operating and programmatic guidance.

The Departments did not add definitions of ''career services'' and ''training services'' because WIOA sec. 134(c)(2) and (3) define ''career services'' and ''training services,'' respectively, and these terms are further defined at § 678.430 (''What are career services?'') in the Joint WIOA Final Rule and 20 CFR 680.200 (''What are training services for adult and dislocated workers?''), in the DOL WIOA Final Rule, both of which are published in this issue of the **Federal Register**. The WIOA Joint Performance ICR contains further specifications regarding the collection and reporting of career and training services under this section. The Departments intend to issue further clarifying programmatic guidance regarding these and other performance-related definitions in order to assist States and outlying areas in implementing them.

Comments: A commenter acknowledged the problems associated with outcome evaluations of participants who do not go through an intake process but stated that the performance metrics should give credit for the investment of resources and staff required to maintain effective self-service systems. Another commenter asserted that self-service individuals should be included in the definition of ''participant'' to allow States to fully convey the impact and return on investment for this large customer group.

Departments' Response: The Departments recognize commenters' concerns about the resources required to maintain effective self-service systems. Although performance calculations on the primary indicators of performance are limited to individuals who meet the definition of participant and do not include individuals who only use the self-service system, other information that captures resources and costs associated with those individuals served by the public workforce system at the self-service or information-only levels is collected and reported in the State annual performance reports under § 677.160, and additional elements are required through associated ICRs published by the Departments.

The Departments expect that because information about reportable individuals, including those who access self-service and information-only services or activities, will be included in the State annual performance reports and associated WIOA Joint Performance ICR or Department-specific ICRs, such investments by States and local areas will be recognized. The Departments note that the changes in the regulatory text maintain the policy expressed by

the Departments in the NPRM. Individuals who only use the self-service system or who receive information-only services or activities are not defined as ''participants.'' No change to the regulatory text was made in response to these comments.

Comments: A commenter opposed the exclusion of self-service individuals in the definition of ''participant,'' asserting that it creates a bias against rural areas where one-stop centers are less accessible.

Conversely, a number of other commenters stated that individuals receiving self-service and information-only services should not be considered participants for performance purposes, stating that participation should not begin until an individual receives a staff-assisted service. A commenter agreed that self-service individuals should be excluded from the definition of ''participant,'' but suggested that a performance analysis be conducted to assess the impact of exclusion of self-service results on performance.

Departments' Response: The Departments recognize commenters' concerns about the delivery of services in rural areas and recognize the importance of leveraging virtual services technology to improve the delivery of services in such areas. As discussed above, the Departments do not consider all services provided virtually to be ''self-service'' and reiterate that such activities, even when delivered virtually, can trigger participation and subsequent inclusion in performance calculations. The Departments developed the proposed definitions in order to maintain a level of rigor and accountability that is consistently applied across programs, while also providing a platform that is flexible enough to accommodate changes in service delivery design and advancements in technology. As stated above, no changes to the regulatory text regarding individuals who only use the self-service system were made in response to comments, as these individuals are not considered ''participants'' for purposes of the performance accountability system.

With regard to the recommendation that a performance analysis be conducted to assess the impact of exclusion of self-service and information-only services or activities, the Departments analyzed a number of factors before proposing the definition of participant, including the relative impact of self-service exclusion and inclusion, and concluded that exclusion of such services had little to no impact on performance outcomes. Therefore, as stated above, the Departments decline to change the regulation's definition of participants based on these comments.

With regard to the recommendation that participation begin only when an individual receives a staff-assisted service, the Departments have concluded that to define such a precise attachment point in regulation would prevent the performance accountability system from being able to adapt and account for all the services that the programs are providing. For example, an individual could receive staff-assisted services in the form of an assessment in the WIOA youth program, or in the form of fewer than 12 contact hours of AEFLA services, yet still appropriately be excluded from the definition of a participant.

Comments: A few commenters suggested that self-service participants should be included in Wagner-Peyser Act employment indicators or measured separately.

Departments' Response: The Departments considered collection and reporting burdens of doing so and did not revise the regulatory text to require additional collection and reporting on reportable individuals beyond the associated counts and information already required under the WIOA Joint Performance ICR. However, States should feel free to conduct additional analysis beyond what is required to be submitted to the Departments, such as an analysis on outcome of Wagner-Peyser Act self-service individuals. No change to the regulatory text was made in response to these comments.

Comments: Several commenters remarked that, under the NPRM, a youth receiving an assessment could be considered as receiving a staff-assisted service and therefore be considered a ''participant.'' These commenters further stated that this proposed regulation would conflict with the discussion in the NPRM, which had proposed that a ''participant'' for performance calculation purposes of the WIOA youth program, would be a ''reportable individual'' who was determined eligible, received an assessment, and received a program element. These commenters asserted that an assessment alone should not be considered a staff-assisted service, and that the regulation should be revised to conform to the language in the preamble of the NPRM. Another commenter expressed similar concerns, stating that an assessment alone for any individual in any program should not trigger participation.

Departments' Response: The Departments agree with the numerous commenters who asserted the NPRM text regarding the definition of ''participant,'' as applied to the WIOA title I youth programs, could potentially conflict with the stated intent in the preamble. The Departments, therefore, revised the regulatory text by adding a new § 677.150(a)(2), which reflects the intent stated in the NPRM preamble. In so doing, the Departments have made clear that a WIOA program youth is not considered a ''participant,'' and subsequently included in performance calculations, until the youth has been determined eligible, received an objective assessment, developed an individual service strategy, and received 1 of the 14 youth program elements (as outlined in WIOA sec. 129(c)(2)). The Departments have concluded that this change is consistent with the general definition of a ''participant'' in § 677.150(a), as well as the application of the definition to all core programs. This differs from the NPRM only by additionally requiring the youth participant to have satisfied the applicable program requirement for provision of services, including eligibility determination, objective assessment, and the development of an individual service strategy, as required under WIOA sec. 129(c)(1)(B).

Comments: A few commenters suggested that co-enrollees be counted as participants in all of the core programs from which they are receiving services. A few commenters discussed the benefits of co-enrollment, particularly for youth populations, and supported the idea that eligible individuals may be co-enrolled in title I youth services and title II adult education programs. One commenter requested clarification regarding how to account for individuals enrolled in multiple core programs. Another commenter remarked that differences among programs and uncertainty about reporting co-enrollees create a disincentive for co-enrollment.

Departments' Response: The Departments recognize the value of co-enrollment across the core programs and greatly encourage efforts by the core programs in States to establish the data infrastructure and partnerships necessary to facilitate seamless enrollment in one or more core programs under WIOA. The Departments encourage co-enrollment between those programs that are required partners under WIOA, such as the Jobs for Veterans State Grant Programs, the Trade Adjustment Assistance (TAA) programs, and others as outlined in sec. 121(b)(1)(B) of WIOA.

However, the Departments have concluded there is no need for revision to the regulations to address these comments since WIOA sec. 116(d)(2)(I)

and § 677.160(a)(1) require core programs to report the number of participants who are enrolled in more than one of the programs described in WIOA sec. 116(b)(3)(A)(ii), disaggregated by each subpopulation of such individuals. Therefore, individuals who are co-enrolled in more than one core program and who meet the definition of participant under each respective program must be included in each respective program's performance calculations.

These calculations, as proposed under the WIOA Joint Performance ICR, would be done independent of the participant's participation in another core program unless a State opted to implement such policies for co-enrollment that allows for a common participation or exit date based on entering any of the core programs. Under WIA title I, some States maintained similar policies. For example, under WIA title I, in those cases where an individual was initially enrolled in the Wagner-Peyser Act program and subsequently received services under another DOL-administered program, the participation date for each program was the same and the receipt of a program's service was recorded as the date of receipt for first service as named. Such practices are allowed to continue under WIOA. Irrespective of the dates for participation and exit, each program would account for the participants in its program, and would be accountable for the outcomes of such participants in their reporting. For example, a title I youth participant who is co-enrolled in a title II AEFLA program and who also meets the definition of participant under title II, would be included in the State performance report for both title I youth and the AEFLA program under title II. No change to the regulatory text was made in response to these comments.

Comments: Several commenters addressed the applicability of the ''participant'' definition to the VR program. A few of these commenters noted that the proposed definition of ''participant'' would inflate the number of individuals exiting the VR program without achieving an employment outcome. Of these, one commenter stated it is not clear how the definitions of ''participant,'' ''exit,'' and the calculation of the performance indicators that rely on quarterly wage data are being operationalized in the proposed VR ICR for the RSA–911, particularly as it relates to calculating the denominator, and numerator. Specifically, this commenter said that it appeared that quarterly earnings and Federal Employer Identification Numbers (FEINs) only should be supplied for those participants who achieve competitive integrated employment. As a result, this commenter stated this would mean a significant number of VR participants would be included in the denominator but would be automatically excluded from the numerator for performance calculations if they did not achieve a competitive integrated employment outcome, even though they received significant VR services before exiting the VR program. This commenter was concerned that this approach would not provide a consistent and equitable comparison across all core programs since the definition of ''participant'' means an individual who received staff-assisted services. For example, this commenter asserted that WIOA title I and title III (Wagner-Peyser Act Employment Service) staff-assisted services may be quite limited compared to the intensive and sustained services provided to VR customers under an individualized plan for employment (IPE), the development of which requires substantial VR counselor investment and is in itself a service that may improve employment prospects. Therefore, this commenter recommended that the denominator be likewise limited to those participants who achieved competitive integrated employment or, in the alternative, require quarterly earnings and FEINs for all participants, not just those who achieved competitive integrated employment. This commenter recommended that RSA provide the specific formula for calculating performance indicators and provide a comment period. A few commenters stated that the proposed definition of ''participant'' would exclude a potentially large number of students with disabilities who receive pre-employment transition services under the VR program. Another commenter urged the Departments to provide guidance regarding the application of the ''participant'' definition to the VR program.

Departments' Response: The Departments agree that the definition of ''participant,'' for purposes of the VR program, will include both those individuals who exit the VR program after achieving an employment outcome as well as those individuals who exit without achieving an employment outcome. While the Departments understand that this calculation is a departure from what was done by VR agencies under prior 34 CFR 361.84(c), § 677.150(a)(1) of the Joint WIOA Final Rule is consistent with the use of the term ''participant'' throughout sec. 116 of WIOA and its application to the primary performance indicators set forth in sec. 116(b)(2)(A)(i) of WIOA. Moreover, the definition of ''participant,'' for purposes of the VR program, at § 677.150(a)(1) is consistent with the definition as applied to all core programs in § 677.150(a). Specifically, the definition of ''participant'' is broad enough to account for programmatic differences but narrow enough to capture the same type of individual with respect to each of the core programs. As the commenter noted, Wagner-Peyser Act services are often characterized as self-services and information-only activities. In accordance with § 677.150(a)(3), individuals receiving those kinds of services would not meet the definition of ''participant'' and, thus, there would be no comparison in the performance calculations between these individuals and participants of the VR program. However, individuals receiving Wagner-Peyser Act services that go beyond self-services or information-only activities would meet the definition of ''participant'' in § 677.150(a). As such, there would be comparability between this participant and a participant of the VR program. The Departments recognize that VR services are provided in a much more intensive manner and for a more extended period of time than those provided by the Wagner-Peyser Act program. Such differences will be reflected in the performance levels established for each of the core programs.

With respect to performance calculations, the three employment-related indicators measure the percentage of participants who are employed in the second and fourth quarters after exit, as well as their median earnings in the second quarter after exit. The Departments provide further guidance regarding the performance calculations in the WIOA Joint Performance ICR.

The Departments also agree that students with disabilities who receive pre-employment transition services without having applied, or been determined eligible, for the VR program would not satisfy the definition of ''participant'' as set forth in § 677.150(a)(1), but rather would be tracked and reported as ''reportable individuals,'' as defined in § 677.150(b). However, if a student with a disability applies and is determined eligible for the VR program and develops an IPE that includes the provision of pre-employment transition services or any other VR service, such student would satisfy the definition of ''participant'' as

set forth in § 677.150(a)(1) and would be included in the performance calculations as such. The Departments have provided additional guidance regarding the reporting of ''participants'' in the WIOA Joint Performance ICR. No change was made to the regulation at § 677.150(a)(1) in response to the comments.

Comments: Several commenters urged the Departments to adopt consistent definitions regarding point of enrollment across titles triggered by engagement in program activity, not just initial assessment. They expressed particular concern for the youth program.

Departments' Response: The definition of ''participant'' 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, thereby focusing on the established common point in service design and delivery that an individual reaches regardless of the program. The Departments concluded that it was sufficient to revise the definition of ''participant'' for purposes of the WIOA youth program.

Comments: Several commenters sought clarification concerning the distinction between the data collected for reportable individuals and participants, particularly with regard to whether they are included in performance calculations for the primary indicators of performance.

Departments' Response: While the Departments will collect and track information on reportable individuals as well as participants, the Departments currently do not intend to require reporting of outcomes of reportable individuals. The Departments will notify States via the ICR process of any collection and reporting requirements for reportable individuals. No change to the regulatory text was made in response to these comments.

Comments: A commenter asserted that older individuals with barriers to employment may require priority in receiving staff-assisted services, since these individuals are not as likely to use self-service tools.

Departments' Response: The Departments recognize the unique challenges faced by the different populations with barriers to employment that affect both their access to and utilization of services within the public workforce system. WIOA provides for meaningful access to individuals seeking services, including individuals with multiple barriers to employment. The regulation no longer refers to staff-assisted services.

Comments: Several commenters stated that while the definition of ''participant'' is well suited for WIOA performance accountability purposes, it is not suitable for many education programs and postsecondary students. These commenters stated that postsecondary students may participate in the workforce system in ways that are not captured in the definition. For instance, students may take courses and determine a degree pathway but never officially enroll in a program of study.

Departments' Response: The definition of ''participant'' establishes a common point at which an individual is meaningfully engaged in a core program. This 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 these programs. For example, an individual who accesses postsecondary education through the VR program, as set forth in title IV of WIOA, would meet the definition of participant at the point at which the eligible individual has an approved and signed IPE. Likewise, an individual accessing a career pathway program funded through title II would meet the definition of participant once the individual has completed at least 12 contact hours. Therefore, because programmatic differences are already accounted for, including differences regarding educational programs, the Departments have made no change to this Joint WIOA Final Rule regarding the definition of ''participant'' as applied to an educational program. The Departments note that further clarity is provided through the WIOA Joint Performance ICR. No change to the regulatory text was made in response to these comments.

Comments: A few commenters stated that the definition of ''participant'' is problematic when applied to all individuals in a program of study for the purpose of the eligible training provider performance report.

Departments' Response: The Departments recognize the need for clarity on terms as they apply to the eligible training provider (ETP) performance reports applicable to the adult and dislocated worker programs. There is further discussion on this and associated issues in the preamble of § 677.230 below. The Departments do not consider all individuals in a program of study through an ETP as falling within the definition of participants as defined under § 677.150. No change to the regulatory text was made in response to these comments.

Comments: Although the Departments received no comments specifically on proposed § 677.150(a)(4), which requires that programs must include participants in their performance calculations, the Departments received comments with respect to other areas of performance accountability that highlighted the intersection between WIOA core programs and their partner programs. Some commenters addressed the general applicability of these provisions to the national programs authorized under title I, particularly with regard to those programs identified in WIOA sec. 121(b)(1)(B).

Departments' Response: The Departments reiterate that sec. 116 applies to other programs, including the national programs and the partner programs identified in WIOA sec. 121(b)(1)(B), to the extent provided for by provisions of WIOA pertaining to those programs and their authorizing statutes and implementing regulations. In some instances, these statutes or regulations invoke the performance accountability provisions of WIOA sec. 116. In other instances, a program has its own statutory or regulatory performance provisions that apply to the program. In the case of ETP programs authorized at 20 CFR part 680 and reported through § 677.230 of these joint regulations, the definitions under § 677.150 only apply to those individuals who are WIOA program participants who received training from an ETP. Where § 677.230 outlines required reporting for all individuals in a program of study, these definitions under § 677.150 do not apply. Further direction regarding the terms, calculations, and reporting is provided and discussed in the WIOA Joint Performance ICR. No change to the regulatory text was made in response to these comments.

Because of WIOA sec. 134's unique eligibility requirements, the Departments do not consider individuals who receive incumbent worker training to be participants required for inclusion in the WIOA performance indicator calculations. WIOA sec. 134(d)(4) requires the Local WDB to determine if an employer is eligible to have its employees receive incumbent worker training; there is no separate determination of the eligibility of any particular employee to receive incumbent worker training.

Definition of ''Reportable Individual'' (§ 677.150(b))

Section 677.150(b) defines ''reportable individual'' as an individual who has

taken action that demonstrates an intent to use program services and who meets specific program criteria for reporting, which may include the provision of identifying information, the use of a self-service system, or receipt of information-only services or activities. This approach requires counting as a ''reportable individual'' those who use the self-service system, or who receive only information-only services or activities, as well as those who receive other services that may occur prior to an individual meeting the definition of ''participant'' in § 677.150(a).

A key difference between ''reportable individuals'' and ''participants'' is that reportable individuals are not included in performance calculations for primary indicators of performance. Furthermore, there currently is no requirement for the collection and reporting of outcome data for reportable individuals, but the Departments may propose an amended ICR through an additional PRA notice and comment period, to require such collections and reporting in the future if determined to be appropriate. The Departments intend to issue more detailed guidance on the tracking and reporting of reportable individuals under WIOA through the WIOA Joint Performance ICR, Department-specific ICRs, guidance, and technical assistance.

The Departments revised § 677.150(b) by deleting the word ''core'' to clarify that the definition of a ''reportable individual'' is not limited to core programs, as had appeared in proposed § 677.150(b). With this change, a ''reportable individual'' is one who has taken action that demonstrates intent to use program services and who meets specific reporting criteria of the program. The Departments also revised § 677.150(b) to emphasize that the listed examples of actions taken by a reporting individual (*i.e.,* providing identifying information, using the self-service system, or receiving information-only services or activities) are neither exhaustive nor required. An individual may be properly treated as a reportable individual without having taken all of the actions identified at § 677.150(b). Similarly, an individual may take action demonstrating an intent to use program services by meeting specific program reporting criteria other than those identified at § 677.150(b).

Comments: Of the commenters who remarked on the proposed definition of ''reportable individual,'' most expressed support. Multiple commenters applauded the Departments for establishing a definition that is broad enough to cover students with disabilities who access pre-employment transition services under the VR program but do not subsequently apply for VR services.

Departments' Response: The Departments will continue to consider further clarification that can be provided in program guidance, the WIOA Joint Performance ICR, and Department-specific ICRs that support alignment and consistency of performance definitions across all programs and States. The final regulations for the VR program, which are published elsewhere in this issue of the **Federal Register,** contain specific provisions regarding the application of this definition as applied to students with disabilities receiving pre-employment transition services under the VR program.

Comments: A few commenters asserted that receipt of staff-assisted services should align with the type of activity, not the level of engagement of one-stop center staff.

Departments' Response: As discussed above with regard to the definition of a ''participant,'' the Departments modified § 677.150(a), particularly by adding § 677.150(a)(3), to explain that the point at which a person is a participant is when the person moves beyond self-service or information-only services or activities. In the NPRM, the Departments considered receipt of ''staff-assisted services'' to be the most common point across the core programs to define the transition to being a participant. However, in response to comments, the Departments modified the definition of participant to eliminate the use of the term ''staff-assisted services'' thereby aligning the definitions of ''participant'' and ''reportable individual'' and clarifying the progression from ''reportable individual'' to ''participant.''

Comments: One commenter proposed that the appropriate point of receipt of staff-assisted services should be when initial assessment and eligibility documentation is complete.

Departments' Response: As noted above, the definition of ''participant'' no longer incorporates a reference to ''staff-assisted'' services, but the definition continues to require that the individual has received certain services after having satisfied all programmatic requirements for the provision of services, such as eligibility determination. The Departments note that the definition does not explicitly require completion of an initial assessment, but it does require satisfaction of all applicable programmatic requirements—which may include an initial assessment or an eligibility determination. No change to the regulatory text was made in response to these comments.

Comments: One commenter suggested that ''reportable individuals,'' should be those individuals who have a signed and approved IEP.

Departments' Response: The Departments decline to adopt the recommendation because to do so would be inconsistent with the distinctions between the definitions of ''participant'' and ''reportable individual.'' The Departments plan to provide more detailed guidance on the tracking and reporting of reportable individuals under WIOA through the WIOA Joint Performance ICR, Department-specific ICRs, guidance, and technical assistance.

Comments: Several commenters sought clarification concerning the proposed definition of ''reportable individual.'' Of these, a few commenters requested that the Departments clarify whether a pretest is required for individuals in the AEFLA program in order to be considered reportable.

Departments' Response: A reportable individual is an individual who has taken action that demonstrates an intent to use program services and meets the specific criteria of the program. Further explanation of this definition is available through the WIOA Joint Performance ICR. A pretest has no bearing on the status of an individual being a participant or a reportable individual.

Comments: A few commenters stated that a clearer description of the point at which an individual becomes ''reportable'' would enhance comparability among States. Multiple commenters suggested that individuals become ''reportable'' when an individual provides identifying information. A commenter remarked that it is unclear how agencies should track reportable individuals. This commenter stated that an individual should not be considered reportable without providing identifying information to enable tracking.

Departments' Response: The Departments note that the regulations simply require the reporting of reportable individuals. Someone can be considered a reportable individual without providing identifying information. The Departments intend to issue further program guidance to aid States in implementing the requirement to report on ''reportable individuals.'' No change to the regulatory text was made in response to these comments.

Comments: A commenter thought that the term ''reportable individual'' may not be easily understood by the general

public and suggested ''customer'' as an alternative.

Departments' Response: The Departments have concluded that ''customer'' would not be an appropriate term for these purposes as all individuals who are served through a program would be considered customers. The terms in § 677.150 are consistent with the purposes outlined in this section and with the requirements of sec. 116 of WIOA. No change to the regulatory text was made in response to these comments.

Comments: A commenter inquired as to whether an individual could first be tracked as a participant and then tracked as a reportable individual if the person exited the program after receiving services and was subsequently determined to be ineligible.

Departments' Response: To do as the commenter suggests would be inconsistent with the definitions of ''participant'' and ''reportable individual'' at § 677.150(a) and (b). To be clear, an individual is a ''participant'' if he or she is a ''reportable individual'' who has satisfied programmatic requirements for the receipt of services, such as eligibility determination, and has received services that go beyond self-service or information-only services or activities. Therefore, once an individual crosses the threshold from ''reportable individual'' to ''participant'' by receiving such services, this does not change by virtue of the fact that the individual eventually exits the program because he or she is later determined ineligible. Neither the definition of ''participant'' nor ''reportable individual'' contain requirements related to the individual's exit from the program. Those requirements are set forth in the definition of ''exit'' at § 677.150(c), discussed in more detail below. The Departments will provide further guidance regarding the reporting of participants and reportable individuals in the WIOA Joint Performance ICR and Department-specific ICRs, as well as guidance and technical assistance. No change to the regulatory text was made in response to these comments.

Definition of ''Exit'' (§ 677.150(c))

Section 677.150(c) defines the term ''exit'' for purposes of the performance accountability system for the core programs under WIOA, as well as applicable non-core programs as described through regulation or guidance. Several of the primary indicators of performance require measuring participants' progress after they have exited from the program.

Generally for core programs, except for the VR program, ''exit'' is the last date of service. The last date of service means the individual has not received any services for 90 days and no future services are planned. For the purpose of this definition, ''services'' do not include self-service, information-only services or activities, or follow-up services. Therefore, as set forth in § 677.150(c)(1)(i), in order to determine whether an individual has exited, States will retroactively determine if 90 days have passed with no further services provided and no further services scheduled.

The definition of ''exit'' at § 677.150(c)(2) for the VR program is similar to that in § 677.150(c)(1) in that it marks the point at which the individual is no longer engaged with the program and there is no ongoing relationship between the individual and the program. However, because of specific programmatic requirements between the VR program and other core programs, it was essential that the definition of ''exit'' clarify when the individual's relationship with the VR program ends. Under the VR program, an individual is determined to have exited the program on the date the individual's case is closed in accordance with VR program requirements.

Even with this programmatic distinction, the calculations are essentially the same as with the other core programs because in all instances the ''exit'' count captures all persons who are no longer active participants in any of the core programs. In addition, for purposes of the VR program, the Departments exclude from the definition of ''exit'' those individuals who have achieved supported employment outcomes at subminimum wages. This provision is necessary to implement WIOA's heightened emphasis on competitive integrated employment. There are no substantive changes to § 677.150(c)(2).

Comments: The Departments received numerous comments, in response to both the NPRM and the proposed WIOA Joint Performance ICR, regarding whether an individual would be counted more than once in a program year if he or she met the definitions of ''participant'' and ''exit'' more than once in that same program year. The majority of these commenters opposed the Departments' position, set forth in the proposed WIOA Joint Performance ICR, which was that an individual only would count once in a program year.

Departments' Response: The Departments note that under WIA, DOL counted as an ''exit'' from its programs for performance accountability purposes each time in a program year a participant exited from a program, regardless of whether the participant exited more than once in that program year. This was referred to as calculating on a ''period of participation'' basis. Thus, the same individual could be counted as more than one ''participant'' and as having more than one ''exit'' in that same program year for the performance accountability calculations. Although States reported individuals similarly for the VR program, States reported an individual only once in a program year under the AEFLA program, regardless of whether the individual would meet the definitions of ''participant'' and ''exit,'' more than once in a program year.

The NPRM was silent as to whether ''participants'' and ''exits'' should count more than once in the same program year. However, the Departments proposed a different approach in the proposed WIOA Joint Performance ICR published on July 22, 2015 at 80 FR 43474. In the proposed WIOA Joint Performance ICR, the Departments proposed counting each individual once per program year regardless of how many times an individual met the definitions of ''participant'' and ''exit'' in § 677.150 within that same program year.

After consideration, the Departments agree with the concerns raised by commenters. In response to those comments, the Departments will include in the performance calculations each time a participant exits from a program during a program year, even though this could result in such a person being counted as more than one participant. This calculation method for performance accountability purposes maintains the reporting approach historically used by some programs, as discussed above, and by linking a set of services or interventions to outcomes for each exit during a program year, strengthens accountability.

However, the Departments will require States to provide unique identifiers for each individual ''participant'' so that the Departments will be able to calculate the number of unique participants in each core program during a program year. The Departments will provide technical assistance and guidance to States, including the WIOA Joint Performance ICR, as they take the necessary steps to modify their systems and processes to comply with these instructions.

Comments: Many commenters provided input regarding the proposed definition of ''exit'' and responded to the Departments' request for comments

on the costs and benefits of taking either a program exit approach or a common exit approach. A number of commenters expressed support for utilizing a common exit in order to support career pathways and cross-program participation that would benefit participants. One commenter supported the use of a common exit, specifically phased in over a 4-year period. Conversely, other commenters opposed the use of a common exit and stated that the Departments should maintain program exits. Commenters cited numerous reasons for maintaining program exits including that: (1) Program exits are preferable to comply with sec. 504 of WIOA, which requires States to simplify and reduce reporting burdens; (2) States should be permitted to choose whether to use a program exit or a common exit, and indicate their selection in the Unified or Combined State Plan; (3) States should have the option to use integrated periods of participation with common program exit dates for some or all core programs; and (4) a common exit would be problematic if the services provided by multiple programs are sequential.

Departments' Response: Common Measures policies that included the use of common exit as a reporting structure were developed by ETA in 2005 for use in title I programs under WIA as an acknowledgment that integrated reporting was key to integrated case management. The efforts to promote the use of a common exit across WIOA title I and Wagner-Peyser Act Employment Service programs have significantly increased the use of common exit policies across States.

The Departments have concluded that continuing common exit policies would emphasize the importance of an individual receiving and completing all program services necessary to ensure a successful attachment to the labor market. The Departments also recognize that the use of a common exit is dependent on the ability of States to exchange data effectively and efficiently across core programs in order to determine outcomes for each of the programs. The Departments considered each of the commenters' concerns and suggestions with regard to the proposed definition of exit and have revised the definition by adding § 677.150(c)(3) to allow WIOA title I and Wagner-Peyser Act Employment Service (title III) programs to utilize a common exit policy. The decision to allow a common exit date for WIOA title I and Wagner-Peyser Act Employment Service programs—and not for the AEFLA and VR programs under WIOA titles II and IV, respectively—was based on a number of factors. In particular, under WIA and continuing under WIOA, DOL encouraged co-enrollment between the title I and Wagner-Peyser Act Employment Service programs resulting in many states developing a common exit policy or co-enrollment strategies which DOL does not seek to disrupt. The ED will explore the feasibility of the use of a common exit policy for its title II and VR programs.

The concept of integrated case management and common exit has extended beyond WIOA title I core programs and Wagner-Peyser Act Employment Service programs to their DOL partner programs, such as the TAA program and the JVSG program. Paragraph (c)(3)(i) of § 677.150 provides that where a State has implemented a common exit policy, the policy may extend to those required partner programs administered by DOL. As such, DOL encourages States to implement common exit policies consistent with these joint regulations.

Since 2009, co-enrolling TAA participants with WIOA title I and Wagner-Peyser Act Employment Service programs has continued to provide participants supportive services, such as childcare and local transportation costs, that are not available under TAA. Further, due to the variable geography of TAA certified worker groups, WIOA title I program services and Wagner-Peyser Act Employment Service are often essential in providing prompt assessments and follow up services that complement the more substantial training and other services funded under TAA.

Similarly, the Veterans Employment and Training Service worked to align its programs with WIOA as a key partner program. Currently, JVSG and Wagner-Peyser Act Employment Service have a common exit in multiple States. This ensures that program participants who may be co-enrolled exit all programs at the same point, and are measured and tracked for employment outcomes based on the same point. This approach is aligned with the idea that DOL's one-stop center programs offer seamless services to participants and that, despite referral to or from partner programs, employment outcomes are not measured until services are complete. The modifications to the definition of exit in this Joint WIOA Final Rule allow for these practices to continue and also allow States the flexibility to implement and move forward with existing common exit policies for programs administered by DOL.

Comments: A few commenters cited the challenge of matching and exchanging data across agencies. Multiple commenters recommended implementing a research study to examine the use of the common exit, rather than codifying this requirement in regulation. One commenter stated that a common exit would make it very difficult to track and conduct follow up services. A commenter stated that the cost of reporting a common exit is prohibitive for that State. A commenter remarked that a common exit would be the costliest option.

Departments' Response: The Departments recognize the challenges raised by commenters with regard to infrastructure and integration of data systems that would be required under a common exit policy. Under the current regulation, the States have the discretion to choose to adopt a common exit policy for DOL-administered programs. The Departments acknowledge that certain States are at different stages and may vary in their approaches and ability to adopt a common exit across multiple programs. The Departments also note, however, that common exit supports a customer-centric design that allows programs to leverage co-enrollment for individuals who are eligible for, and need, multiple services that cross program lines without penalizing programs that may have to delay outcomes for those individuals referred to or co-enrolled in a partner program. Further, common exit policies have allowed smaller pilot, discretionary, or partner programs to access data and outcomes at a level that would not be available through their grant or program alone.

With WIOA's focus on integration, common exit is a natural progression where appropriate infrastructure, and integrated data systems exist across programs. The DOL envisions full implementation of a common exit across the States for the DOL core programs. The DOL understands this is a long-term goal and intends to support States from where they are at in terms of capacity and structure towards achieving this goal. With this in mind, the Departments will require the States to develop a plan for implementing a common exit policy and will require States to share that plan with the Departments. The Departments anticipate modifying the requirements for State Plans through the information collection request process and will require the States to share their plans for implementing a common exit policy through the State Plan and will also require the States to conduct an examination and analysis of their capacity and structures that would support a common exit policy for the DOL core programs under title I and the

Wagner-Peyser Act Employment Service program. This will allow DOL to support the States as they move towards implementing a common exit policy.

The Departments will continue to work with State and Local WDBs, one-stop center operators, and partners to achieve an integrated data system for the core programs and other programs to ensure interoperability and standardized collection of program and participant information, particularly for those States that have a common exit policy. Paragraph (c)(3) of § 677.150 allows for the use and implementation of common exit policies for DOL administered-programs. The Departments encourage the use of common exit for DOL-administered programs, but do not currently require its immediate implementation, due partially to the commenters' concerns about potential difficulties and costs in implementing common exit. The Departments have concluded that this approach is responsive to both commenters who supported common exit as well as to commenters who supported program exits and appropriately allows States flexibility to choose to continue their use of common exit or to plan for the full implementation of common exit as a policy for WIOA title I and Wagner-Peyser Act Employment Service programs. Additionally the Departments will seek to collect information through the appropriate information collection vehicles on existing common exit policies, the programs included in those common exit policies, and their impacts on program design and outcomes.

Comments: Many commenters supported the use of common exit in theory, but expressed reservations about the implementation of a common exit to title I youth programs, asserting that the use of a common exit would delay reporting of multiple performance indicators, harming the performance of the youth programs. These commenters suggested that the Departments encourage co-enrollment without a common exit, provide instruction for the identification in the participant record of individuals who are co-enrolled, and afford local programs the flexibility to use a program-specific exit or a common exit.

Departments' Response: In response to the concerns raised about common exit and its effect on the performance of WIOA youth programs, predominately concerning the short-term or self-service nature of some programs as opposed to other programs providing longer-term or more intensive services, the Departments have clarified that the definition of ''participant'' at § 677.150(a)(3)(ii) and (iii) excludes individuals who receive only ''self-service'' or ''information-only services or activities.'' As noted above, States—not individual programs within a State—are afforded the flexibility to use program-specific exit or common exit. It does not appear feasible or preferable for individual programs within a State to choose the type of exit to implement.

Comments: A number of commenters made additional suggestions specific to youth programs. One commenter stated that title I youth programs should have a defined end date, at which point participants should be considered to have exited, rather than waiting 90 days. Another commenter stated that local programs currently believe that no title I youth funds may be spent on youth once they exit, and requested clarification concerning follow-up services for youth conducted after an individual has exited. In addition, several commenters suggested that a hold status be maintained for youth who are not receiving services due to documented hardships. These commenters stated that a hold status would avoid counting these individuals as having exited if they reengage after the 90-day window.

Departments' Response: While the Departments understand the concerns raised by commenters, the Departments decline to modify the definition of ''exit'' at § 677.150(c) with regard to the 90-day period of no services. This definition maintains consistency with the definition of exit applied across other programs. Paragraph (c)(1)(i) of § 677.150 requires that 90 days of no services (except for self-service, information-only services or activities, and follow-up services) must have elapsed, and no future services, other than follow-up services, may be planned in order for a participant to satisfy the definition of ''exit.''

Conversely, § 677.150(c)(3) adds flexibility for States that have or are pursuing common exit policies and strategies for their programs under WIOA titles I and III (Wagner-Peyser Act Employment Service) as well as other required partner programs that are administered by DOL. The clarification in this Final Rule that self-service and follow-up services do not delay exit should allay the commenters' concerns regarding delayed reporting. By definition, follow-up services are provided to youth following exit and as a result, title I youth funds may be spent on participants once they exit in order to provide such follow-up services.

For the sake of clarification, such expenditures of title I youth funds on participants for follow up services after exit do not result in delaying an individual's exit from the program. Section 681.580 (*see* DOL WIOA Final Rule published elsewhere in this issue of the **Federal Register**) clarifies which youth formula program elements may be provided during follow-up. Additionally, DOL will issue guidance on providing effective follow-up services for the programs it administers. Although the Departments are not implementing a ''hold status'' as suggested by the commenters, DOL will clarify through guidance the circumstances under which a ''gap in service'' may be appropriate in order to delay exit for those States that implement a common exit strategy for DOL-administered programs.

Comments: Numerous commenters responded to the Departments' solicitation for comments regarding the effect of self-service activities on a participant's exit date. Most of the commenters asserted that self-service should not be used to delay the date of exit or count as re-enrollment in a program. However, other commenters asserted that individuals who access self-service activities should continue to qualify as participants because the use of these services indicates that participants have not completed their search for employment. One commenter suggested that self-service participants should continue to be tracked as reportable individuals.

Departments' Response: The Departments acknowledge commenters' recommendation that self-service not be used to delay the exit date or qualify as re-enrollment. With regard to individuals who continue to use self-service, the Departments note that individuals access self-service tools for a variety of reasons, but the decision to retain an exclusion of self-service from the definition of ''participant'' at § 677.150(a)(3)(ii) is consistent with the decision in the NPRM to establish a uniform program attachment point in service delivery and design from which to compare programs. See the extensive discussion regarding the definition of ''participant'' and § 677.150(a), above.

Comments: Commenters raised a number of questions regarding various aspects of the proposed definition of ''exit,'' including requests for clarification regarding whether exit means exiting a core program or exiting all WIOA services.

Departments' Response: Whether ''exit'' means from a specific program or a common exit from multiple programs depends on whether a State has implemented a common exit policy for DOL-administered programs. As discussed in more detail above, the

Departments have modified the definition of exit at § 677.150(c)(3) to allow WIOA title I and Wagner-Peyser Act Employment Service programs to apply a common exit policy. States that lack a common exit policy across title I and Wagner-Peyser Act Employment Service programs will be required to conduct an assessment and develop a plan towards implementing a common exit policy. Additionally, States that retain or develop a common exit policy across title I and Wagner-Peyser Act Employment Service programs may extend such a policy to DOL-administered required partner programs identified in WIOA sec. 121(b)(1)(B). Further, States with common exit policies that include WIOA title I core programs and Wagner-Peyser Act Employment Service programs should ensure those policies align with the criteria in § 677.150(c).

Comments: Several commenters expressed concerns regarding the definition of ''exit'' for purposes of the VR program since individuals served by VR typically require lengthier service delivery and follow-up activities than the other core programs. A few commenters also stated that a common exit would better protect individuals in the VR program from exiting the program before receiving the services they need.

Departments' Response: As other commenters have noted, the VR program typically requires lengthier period of service delivery than the other core programs. While not common, it is possible for a single VR participant to receive services for 10 years, and service durations of 3 to 5 years are not unusual. If there were a single exit, it would mean that other programs would not be able to exit these co-enrollees until the VR case was closed. The VR program is not included under the common exit provision at this time, because if they were incorporated into the common exit provision, programs under other WIOA titles would not be able to report exit achievements until the time of the VR closure, no matter how much time had elapsed since participation in those programs. With the VR program having a separate closure process, individuals are shielded from the entreaties of other programs that may wish to close the case. The ED will explore the feasibility of the use of a common exit policy for its title II and VR programs. No change to the regulatory text was made in response to these comments.

Comments: Some commenters expressed support for expanding the proposed definition of ''exit'' to reference the termination of staff-assisted services.

Departments' Response: The definition of ''participant'' at § 677.150(a) no longer references the term ''staff-assisted'' services due to concerns raised by many commenters about the confusion such term raises. Section 677.150(a) now describes the services as being those other than self-service and information-only services or activities, which are described further in § 677.150(a)(3). See the response to comments related to the definition of ''participant'' above regarding the Departments' elimination of the term ''staff-assisted'' services from the definition; therefore, it is not necessary to expand the use of that term with regard to the definition of ''exit'' as the commenters suggest.

Comments: Several commenters remarked on the application of the definition of ''exit'' to education programs, noting that the definition does not account for a transfer between institutions or participants not taking a class during the summer term that could exceed the 90-day timeframe.

Departments' Response: Section 677.150(c)(1)(i) makes clear that a participant ''exits'' a program only if 90 days of no services have elapsed *and* there are no future services planned. Please see the analysis of comments regarding § 677.230, below, for further discussion of these and other terms as they apply to eligible training providers.

Comments: Some commenters suggested the Departments revise the definition of ''exit'' at § 677.150(c) to lengthen the proposed 90-day period of no services to 120 days, citing the challenges of sporadic engagement in services in which youth cycle in and out of services. In such cases, service delays can extend an exit beyond the 90 days. One commenter suggested doubling the 90-day window to 180 days. Other commenters suggested shortening the 90-day period.

Departments' Response: Although the Departments recognize that out-of-school youth, among other examples, may be a population that is difficult to engage in continuous services, the Departments have concluded that it is important to maintain consistency across all core programs regarding the definition of exit. The 90-day period has a basis in historical application. Under WIA, the DOL-administered programs and the AEFLA program under title II used 90 days of no service as a benchmark for determining when services had ended. Similarly, prior to WIOA the VR program closed an individual's service record after services had ended and the individual had maintained employment for 90 days.

The Departments have not revised the definition of ''exit'' at § 677.150(c) since lengthening the timeframe would delay outcomes for indicators that are already lagged behind the actual time period of exit, such as employment-related primary indicators that measure a participant's employment at the second and fourth quarters after exit and the median earnings of a participant in the second quarter after exit. The Departments have concluded that the 90-day period of no service strikes the appropriate balance for knowing how the programs are performing while providing enough time to account for sporadic participation. No change to the regulatory text was made in response to these comments.

Comments: Some commenters expressed support for retaining the current ''neutral'' exits. Other commenters urged the Departments to adopt a more flexible exit policy that would allow participants who were ''negative'' exits due to loss of contact with the program, to reengage and positively exit if performance outcomes are achieved.

Departments' Response: There are a number of reasons why individuals exit from the programs in which they are enrolled. The current definition of ''exit'' allows for performance accountability that can uniformly translate across programs, while also retaining critical programmatic differences and the policy-based flexibility for States in their program engagement and design. The Departments have concluded that the definitions in § 677.150, including that for ''exit'' at § 677.150(c), are consistent with their applicability to the performance accountability system set forth in sec. 116 of WIOA.

A ''neutral'' exit, as it relates to the performance accountability provisions, allows the State to exclude certain participants from the calculation of the primary indicators. The Departments have concluded that there is sufficient statutory authority to permit certain exclusions, as appropriate, from the performance calculations for the primary indicators of performance. The Departments have implemented these exclusions through the WIOA Joint Performance ICR. The Departments have concluded that it is important to account for premature exits from the program and that modifying the definition of ''exit'' to allow neutral exits would undermine program accountability intended by WIOA. The Departments intend to provide guidance on how to calculate the primary

indicators of performance and provide guidance on other performance-related requirements through the WIOA Joint Performance ICR, programmatic guidance, and technical assistance. No change to the regulatory text was made in response to these comments.

Comments: A commenter emphasized the need for guidance regarding the transition from active programming to follow-up services, particularly as it relates to the definition of ''exit.''

Departments' Response: The Departments will provide further guidance regarding the transition from active programming to follow-up services as it relates to the definition of ''exit.''

Definition of ''State'' (§ 677.150(d))

The Departments have added a definition of ''State'' as § 677.150(d) to specify that the outlying areas are subject to the performance accountability provisions of part 677. This provides that, for purposes of part 677 other than in regard to sanctions or the statistical adjustment model, ''State'' includes the outlying areas of American Samoa, Guam, Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, and, as applicable, the Republic of Palau. In so doing, as discussed in detail immediately below regarding outlying areas, the Departments ensure that the performance accountability requirements apply to the outlying areas as well. This regulatory change is essential to ensuring consistency with the Departments' decision to require outlying areas to submit Unified or Combined State Plans which, pursuant to sec. 102 of WIOA must include expected levels of performance, thereby making the performance accountability system applicable to the outlying areas.

In the NPRM, the Departments specifically requested comments about the applicability of WIOA sec. 116 performance accountability system requirements to the core programs administered by the outlying areas, namely American Samoa, Guam, Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, and, as applicable, the Republic of Palau (80 FR 20574, 20583–20584 (April 16, 2015)). The Departments explained the ambiguity that was created by differing terms and definitions for outlying areas and States, for purposes of the title I core programs, but made clear that titles II and IV specifically subject adult education and VR grantees, including outlying areas, to the common performance accountability system set forth in sec. 116 of WIOA.

Sections 189(a) and (c) of WIOA provide the authority to impose planning and performance reporting requirements on outlying areas, which is being accomplished through this definition. The decision to treat outlying areas as States for purposes of the common performance accountability system dovetails, and is consistent with, the Departments' decision to treat outlying areas the same as States for purposes of the Unified and Combined State Plan requirements, as discussed elsewhere in this preamble with respect to part 676 of this Joint WIOA Final Rule.

Although the Departments will hold the outlying areas accountable for complying with the performance accountability system requirements of sec. 116 of WIOA and part 677, the Departments will not impose monetary sanctions against the outlying areas pursuant to sec. 116(f)(1)(B) of WIOA for two reasons. First, the sanctions are imposed against the Governor's Reserve under sec. 128(a) of WIOA, which the outlying areas do not receive. Second, the sanctions are imposed when a State fails to satisfy the adjusted levels of performance or fails to report. The adjusted performance level is based on several required factors set forth in sec. 116(b)(3)(A)(v) of WIOA, including, among other things, the use of a statistical adjustment model. The performance output data provided by the core programs in the outlying areas yield too small a sample size; thus, applying an adjustment model to the outlying areas will not yield a valid result. In addition, there are cases in the outlying areas where required data are not available to run the statistical adjustment model. Despite the fact that the Departments will not impose monetary sanctions against the outlying areas in accordance with sec. 116(f)(1)(B) of WIOA, the Departments want to make clear that the Departments will hold outlying areas accountable for poor performance or failure to report through technical assistance and the development of performance improvement plans in accordance with sec. 116(f)(1)(A) of WIOA.

3. State Indicators of Performance for Core Programs (20 CFR Part 677, Subpart A; 34 CFR 361.155 Through 361.175; 34 CFR 463.155 Through 463.175)

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

Section 677.155 implements the primary indicators of performance as set forth in WIOA sec. 116(b)(2)(A)(i). These primary performance indicators apply to the core programs described in sec. 116(b)(3)(A)(ii) of WIOA, and administered by ED's OCTAE and RSA, and DOL's ETA. These primary indicators of performance create a common language shared across the programs' performance metrics, which the Departments anticipate will support system alignment, enhance programmatic decision-making, and facilitate consumer choice. The Departments implement the requirements of sec. 116 of WIOA through this Joint WIOA Final Rule, as revised and described in this preamble.

Comments: A commenter expressed concern about the cost and time it would take to establish and operate a fiscal and management accountability information system.

Departments' Response: The Departments recognize the concerns raised with regard to the infrastructure, and resulting cost, required to implement the performance, fiscal, and management accountability information systems. No changes to the regulatory text were made in response to this comment because the performance accountability provisions outlined within sec. 116 of WIOA clearly mandate States and local areas to collect and report on the information contained in part 677. The Departments want to make clear that all core programs were required, even prior to the enactment of WIOA, to operate fiscal and management systems pursuant to WIA, former OMB Circular A–87, OMB's Uniform Guidance (2 CFR part 200), and programmatic requirements. It is important to note that WIOA's requirements for States to operate such systems are very similar to those required under WIA, which is why the Departments do not consider these to be new requirements. However, the Departments acknowledge an integration of such systems would be a departure from that required under WIA and recognize that time and resources combined with guidance and technical assistance will be necessary before an integration of fiscal and management systems could occur.

The Departments have concluded that system integration will, in the long-term, reduce administrative and reporting burden while supporting alignment and comprehensive accountability across all of the core programs. The Departments will work with State and Local WDBs, one-stop center operators, and partners to achieve an integrated data system for the programs covered by WIOA 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. Data integration may be accomplished through a variety of methodologies including data sharing, linking systems, or use of data warehouses.

Comments: A commenter urged State and local planning efforts to use the most current Census and administrative data available to develop estimates of each priority service population.

Departments' Response: The Departments note that the WIOA State Plan ICR provides guidance as to what information should be included in the analysis and the State Plan requirements. No change to the regulatory text is being made in response to this comment.

Comments: A commenter recommended creating data systems to separate participants by program and local area and allowing the progress measures to be skills based using goal setting rather than time intervals. A commenter recommended adding self-sufficiency as an indicator of performance. Commenters supported workforce system performance that addresses the needs of veterans with disabilities.

Departments' Response: Changing the primary indicators of performance to a skills-based measurement system, rather than one based on time intervals, would not be consistent with the primary indicators of performance set forth in sec. 116(b)(2)(A)(i) of WIOA, which require the measurement of employment in the second and fourth quarters after exit, the attainment of a credential during participation in the program and up to 1 year post exit, and the attainment of measurable skill gains during the program year. WIOA clearly establishes timeframes for each of these primary indicators of performance.

However, sec. 116(b)(1)(A)(ii) of WIOA and § 677.165 permit States to develop additional indicators of performance. If a State were to do so, the State could implement skills-based indicators or indicators that measure self-sufficiency or services to veterans with disabilities as suggested by commenters. The Departments encourage State and Local WDBs to work in collaboration to identify and implement additional indicators of performance that aid in the management of workforce programs in their State. No change to the regulatory text is being made in response to this comment.

Comments: In the preamble to the NPRM, the Departments requested comments on using the performance indicators identified in § 677.155 for additional programs beyond the core programs. The Departments postulated that this broader use of the six primary indicators of performance could streamline reporting on other DOL-administered programs, such as the JVSG program and other discretionary grant programs. Commenters supported the use of common metrics across education and workforce programs wherever appropriate. Commenters also raised questions about alignment with various specific programs, such as Migrant and Seasonal Farmworkers, Job Corps, Indian and Native American, Family Literacy, Integrated English Literacy and Civics Education, Wagner-Peyser Act Employment Service, Adult Education, and JVSG.

Departments' Response: The Departments acknowledge that WIOA has introduced unprecedented opportunities for alignment and as such, envision integration across workforce programs to the maximum extent feasible. The core programs, described in sec. 116(b)(3)(A)(ii) of WIOA, are covered under this Joint WIOA Final Rule and the WIOA Joint Performance ICR. National programs such as Job Corps, the National Farmworker Jobs Program, and the Indian and Native American adult and youth programs that are authorized under title I of WIOA are also aligned under this regulation, as well as their respective program regulations at 20 CFR parts 686 (Job Corps), 685 (National Farmworker Jobs Program), and 684 (Indian and Native American Program). Additionally, the Departments intend that DOL-administered partner programs authorized by statutes other than WIOA and not covered under these joint regulations, such as the JVSG programs and the TAA programs, will be aligned with the performance accountability system under WIOA through both legislative and policy guidance. The Departments recognize the variety of interactions among programs under WIOA and programs authorized by other statutes. The Departments understand the need for further guidance and clarification, which will be issued throughout the workforce development system and which will include information on how and where to report.

Comments: A commenter noted that many programs for out-of-school youth, including Job Corps, often use accredited online high school programs to provide education to youth participants. The commenter requested that any measure intended to capture progress on achieving or attaining a high school diploma or recognized equivalency degree should reflect any State-accredited standard.

Departments' Response: Details regarding accreditation are beyond the scope of this Joint WIOA Final Rule and will be addressed in guidance or in the WIOA Joint Performance ICR or DOL Performance ICR. No change to the regulatory text is being made in response to this comment.

Comments: Commenters requested guidance and examples on several subjects, such as: Measuring and reporting registered apprenticeship performance; how wages for successful and unsuccessful closures are used and measured; performance data for industry-driven credentials; students with degrees from another country; areas where net income can apply as a performance indicator; incorporating self-employment as a successful outcome; performance metrics; when enrollment occurs; operational definitions; determination of competitive wage; cross program impacts; individualized measurements of the six primary indicators as relates to VR consumers; and individual skills measurement. A few commenters asked that States be allowed flexibility in developing data sharing agreements and additional performance measures.

Departments' Response: The Departments acknowledge the need for clarification and examples to illustrate the methods that each of the core programs will use to determine performance on the primary indicators, including details regarding data collection for self-employment outcomes, as well as educational attainment and measurable skill gains. The Departments will address these issues in guidance and in the instructions for program-specific reporting requirements contained in the WIOA Joint Performance ICR.

With regard to requests for State flexibility in developing data sharing agreements and additional performance measures, sec. 116(b)(1)(A)(ii) of WIOA and § 677.165 permit States to implement, through their State Plans, additional indicators of performance and encourage States to also leverage their program collection and reporting to analyze and manage performance of their programs. With regard to data sharing agreements States have the flexibility to enter into data sharing agreements, ensuring that such

agreements meet all applicable Federal and State statutory and regulatory confidentiality requirements. No change to the regulatory text is being made in response to this comment.

Section 677.155(a)(1) identifies the six primary indicators of performance that will be applied to the core programs identified in sec. 116(b)(3)(A)(ii) of WIOA. Where practicable, DOL intends to leverage these indicators to streamline reporting for other DOL-administered programs, such as the JVSG program, TAA and other discretionary grant programs.

Section 677.155(a)(1)(i) implements the first primary indicator as described in sec. 116(b)(2)(A)(i)(I) of WIOA. This primary indicator is a measure of the percentage of program participants who are in unsubsidized employment during the second quarter after exit from the program. There are no changes to § 677.155(a)(1)(i) from that proposed in the NPRM, which mirrors the statutory requirement of WIOA sec. 116(b)(2)(A)(i)(I).

Comments: A commenter recommended that calculated employment percentages should not include individuals who never received core program services.

Departments' Response: The issue raised by the commenter is more closely related to the definitions of ''participant'' and ''reportable individual,'' as set forth in § 677.150 and which are discussed in detail above. The Departments have concluded that these definitions are clear in setting the standards under which participants are included in performance calculations for purposes of the primary indicators of performance. Specifically, the definition of ''participant'' at § 677.150(a) ensures that an individual is receiving services of a substantive nature from any of the core programs before the individual is considered a ''participant'' and, thus, included in performance calculations. Because § 677.155(a)(1)(i) is consistent with sec. 116(b)(2)(A)(i)(I) of WIOA, no change to the regulatory text is being made in response to this comment.

Comments: A number of commenters expressed support for the WIOA requirements as proposed in § 677.155(a)(1)(i) and (ii). However, many commenters recommended that this section of the regulation and the section related to calculating performance should include the option for excluding participants who report that they are not working and not looking for work. These commenters cited data showing that 29 percent of AEFLA participants were ''not in the labor force.'' A commenter suggested adding the words ''who are in the labor force at enrollment'' after the word ''participants'' in § 677.155(a)(1)(i) through (iii). Another commenter stated that it would seem practical to include participants who are not looking for employment in the calculation of the employment performance outcome.

Departments' Response: The Departments acknowledge the concerns raised by commenters about being held accountable for those participants who enter the program and are not seeking employment, and about how participants not in the labor force might affect performance outcomes. However, WIOA secs. 116(b)(2)(A)(i)(I) through (b)(2)(A)(i)(III) measure the percentage of program participants in employment during the second and fourth quarters after exit and the median earnings of participants in the second quarter after exit. Therefore, the Departments disagree with commenters who believe that individuals who are not looking for work should not be included in the performance calculation. Having said this, the Departments recognize that there are very limited circumstances where certain individuals, such as those who are incarcerated and receiving services under sec. 225 of WIOA, should not be included in the performance calculations for this indicator. The Departments have decided to exclude incarcerated individuals served under sec. 225 of WIOA because they do not have the opportunity to obtain employment or participate in education or training programs in the same manner as other participants who are in the general population. The Departments consider additional determinations regarding the need for exclusions from performance calculations to be more appropriately made through the ICR process and, therefore, have added § 677.155(a)(2) to the regulatory text. This matter will be discussed in more detail with respect to that provision below.

Comments: Another commenter asked whether the State can use AEFLA funds to serve individuals who are not looking for employment.

Departments' Response: Section 203(4) of WIOA defines an eligible individual for the purposes of AEFLA. Eligibility does not include employment status. Whether or not an individual is seeking employment does not affect that person's eligibility status under title II. Further matters concerning AEFLA program implementation are in the program-specific final regulations published elsewhere in this issue of the **Federal Register**.

Comments: Several commenters opposed the suggestion in the preamble to the NPRM that the Departments plan to calculate an ''entered employment rate'' for participants who were not employed at the time of program entry, in addition to an employment rate for all program participants regardless of employment status at entry.

Departments' Response: Upon consideration of the various issues, the Departments have not made changes to these joint regulations to require the collection and reporting of an entered employment rate. Instead, the Departments intend to utilize the individual records available for the WIOA title I, Wagner-Peyser Act Employment Service, and VR programs (*i.e.*, the disaggregated data submitted by the States) to calculate such a measure for comparative purposes. The Departments can calculate this entered employment rate from the information that is required to be collected under sec. 116 of WIOA. Therefore, no additional reporting burden will be imposed on the States for these programs for this additional calculation at the Federal level.

However, such entered employment rate calculations will not be possible at the Federal level for the AEFLA program under title II, because States report AEFLA program data only in an aggregate manner. Therefore, for the Departments to receive the data necessary to perform the entered employment rate calculation for the AEFLA program—and to produce such outcome data—would place an undue burden on title II programs.

Comments: Most commenters opposed including the entered employment rate as a performance indicator. A number of commenters recommended that only the employment rate should be counted for those employed during the second quarter after exit because less document retrieval would be required, and there are other indicators that can show whether program participants are better off after enrollment. Other commenters suggested that the employment rate should include job seekers who were both employed and not employed at the time of participation because this will help determine how effective the system is at helping both the unemployed and those looking for career progression. A commenter added that it is difficult to capture information about employees in part-time or multiple-employer jobs.

Several other commenters, however, supported calculation of an entered employment rate, particularly for youth programs.

The Departments also received numerous comments in reference to calculating the second quarter after exit employment indicator as an ''entered

employment measure,'' as defined in WIA. A commenter only would support an entered employment calculation if the Departments modified the regulation to require submission of individual records under title II.

Departments' Response: The Departments have concluded that that the entered employment rate will provide a useful comparison of the public workforce system as it exists under WIA and WIOA. As stated above, the Departments will calculate an entered employment rate for the WIOA title I, Wagner-Peyser Act Employment Service, and VR programs using information collected through the WIOA Joint Performance ICR. This entered employment rate will not be a primary indicator of performance and, thus, it will not be a basis for sanctions. It is nonetheless useful information in evaluating the impact and efficacy of programs under WIOA. No change to the regulatory text is being made in response to this comment.

Comments: A commenter opposed measuring the employment rate in the second quarter after exit instead of the first quarter, as done under WIA, because the commenter suggested that 2 quarters after exit is too late to determine unsubsidized employment. Another commenter agreed that it is simpler to locate and re-engage a customer after the first quarter performance measure rather than waiting an additional 3 months. A commenter added that the time frame of 6 months for an individual working in an integrated setting to achieve a competitive integrated employment outcome is too fixed and arbitrary, and the time period should be increased to 18 months if needed by the individual. Another commenter warned that using the second and fourth quarters after exit for performance measures will negatively impact States with a highly seasonal workforce.

Departments' Response: The Departments acknowledge the concerns raised, but sec. 116(b)(2)(A)(i)(I) and (II) of WIOA specifically require that employment be measured at the 6- and 12-month mark (second and fourth quarters respectively). Given the specificity of the quarters to be measured for purposes of the performance accountability system, the Departments do not have the authority to implement a regulation inconsistent with the statutory requirement. No change to the regulatory text is being made in response to this comment.

Comments: A commenter opposed the provisions in §§ 677.155(a)(1)(i) and 677.175(a) because of a concern that these provisions would ask educators to store personal data, such as social security numbers (SSNs), that the students may be unwilling or unable to share.

Departments' Response: The Departments acknowledge the concerns about the retention of SSNs. The Departments concluded that, where available and possible, the use of wage records to fulfill reporting requirements is required in accordance with sec. 116(i)(2) of WIOA. Matching participant SSNs against quarterly wage record information is the most effective means by which timely and accurate data can be made available to the system. However, consistent with the Privacy Act, program services cannot be withheld if an individual is unwilling or unable to disclose a SSN. More specifically, program eligibility is not contingent on the provision of a SSN for any of the core programs.

Nevertheless, 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 SSNs against quarterly wage record information is the most cost-effective means by which timely and accurate data can be made available to the system.

In consideration of the circumstances articulated by commenters in responses to both the Joint WIOA NPRM and the proposed WIOA Joint Performance ICR, the Departments will allow the collection and verification of non-UI wage data in the absence of available UI wage data obtained through wage record matching, as discussed more fully in the preamble to § 677.175 below. The Departments also intend to issue guidance and technical assistance regarding the collection and reporting of both quarterly wage record data and supplemental information. No change to the regulatory text is being made in response to this comment.

Comments: A commenter remarked that the indicators in § 677.155(a)(1)(i) through (iii) would require an unprecedented degree of interdependency between VR and other State and Federal repositories of employment data. Another commenter recommended that, given that several of the primary performance indicators for the core programs, including VR, require reporting on the percent of exiters who are in ''unsubsidized employment,'' the Departments should clearly define ''unsubsidized employment.'' In particular, the commenter requested clarity regarding whether individuals in competitive integrated employment who receive supported employment services following VR case closure are considered to be in ''unsubsidized employment.''

Departments' Response: The Departments acknowledge that the use of wage record data for the employment and median earnings indicators will require a greater level of cooperation between the State VR and UI agencies. The Departments are developing guidance to facilitate this process and also are developing a new State wage record interchange system data sharing agreement to aid in the exchange of wage record data to enable all core programs to meet the performance reporting requirements outlined in these regulations and sec. 116 of WIOA.

The Departments have considered the comments regarding the VR program and ''unsubsidized employment.'' Section 116 of WIOA describes the primary performance indicators for all core programs, including the VR program. Three of the performance indicators pertain to the employment status or median earnings of participants who exit a program in unsubsidized employment. In response to the commenter regarding supported employment and unsubsidized employment, the Departments want to clarify that supported employment means, in general for purposes of the VR program, employment in competitive integrated employment or in an integrated setting in which the individual is working towards competitive integrated employment on a short-term basis. Once an individual achieves supported employment as an employment outcome under the VR program and exits that program (in other words, his or her VR record of service is closed), the individual typically receives extended services from another provider. Receipt of extended services after the VR record of service is closed does not affect the nature of the employment. Supported employment is considered unsubsidized employment because the wages are not subsidized by another entity. Individuals in supported employment at subminimum wage who are working on a short-term basis toward competitive integrated employment would not satisfy the definition of ''exit'' for performance accountability purposes.

Comments: A commenter recommended that adult education providers receive student-level disaggregated wage or UI data for compliance and input into the Student Information System tracking and

monitoring application and that MOUs and guidance from the Departments must authorize access. Commenters concluded that States may need to use alternative methods for tracking employment outcomes for participants and need to be provided with options for databases and data sharing.

Departments' Response: As mentioned above, the Departments are aware of the necessity for pathways to match wage record data to exit data in order to have complete outcome information on a program. The Departments reiterate their intent to issue guidance and facilitate a new data sharing agreement in order to facilitate wage record data matching required for all core programs in meeting their performance reporting requirements under WIOA. These agreements will be executed under the authority of WIOA sec. 116(i)(2) and consistent with all applicable Federal and State privacy and confidentiality laws and regulations. The Departments cannot require the sharing of individual level PII from wage records with entities that do not meet the requirements of 20 CFR part 603. It should be noted that the Departments are aware of and recognize that a variety of structures exist within States affecting levels of access to certain types of information required to comply with WIOA and efforts are underway to issue joint guidance on data access and how to obtain what is necessary to comply with WIOA reporting requirements.

Comments: An individual expressed concern that the performance indicators in § 677.155(a)(1)(i) and (ii) may act as a disincentive to making progress in further education and training after exit. A commenter asked for clarification about the calculations for employment in the second and fourth quarters after exit, inquiring as to the time period for measurement and the individuals to be included in the measure.

Departments' Response: The Departments have considered commenters' concerns regarding the disincentive the employment performance indicators may create for furthering education and training after exit. However, sec. 116(b)(2)(A)(i)(I) of WIOA establishes a statutory requirement for a performance indicator measuring the percentage of program participants who are in unsubsidized employment during the second quarter after exit from the program. Subsequent guidance providing the time periods for measurement and other operational parameters pertaining to calculations will be issued by the Departments.

Comments: In the preamble to the Joint WIOA NPRM, the Departments asked for public comment on whether and how to collect information on the quality of employment. A commenter suggested that while the Departments are proposing some metrics that attempt to assess the quality of employment, specifically mentioning median wage, retention, and training-related outcomes, the Departments should consider looking at quality of employment once the current performance indicators are implemented. Other commenters asserted that information on the quality of employment should not be collected because it is redundant, costly, and too subjective. Another commenter described several factors contributing to the quality of employment: Fair, attractive, and competitive compensation and benefits; opportunities for development, learning, and advancement; wellness, health, and safety protections; availability of flexible work options; opportunities for meaningful work; promotion of constructive relationships in the workplace; culture of respect, inclusion, and equity; and provisions for employment security and predictabilities. Other commenters added the importance of wages sufficient to sustain the worker and dependents, work-based training, changes in net income, worker input into schedules, and employment outcomes consistent with the consumer's education and employment goal. One of the commenters discouraged making inappropriate comparisons across programs.

Departments' Response: The majority of commenters did not support collecting information on the quality of employment because it would be too subjective to collect consistently, overly burdensome, and costly. At this time, the Departments have decided not to include such a measure because it would be too burdensome to implement a measure that would have to be developed in the absence of an existing metric. The Departments will consider in the future whether there is a suitable mechanism to measure the quality of employment. No change to the regulatory text is being made in response to this comment.

Section 677.155(a)(1)(ii) implements the second statutory indicator as described in sec. 116(b)(2)(A)(i)(II) of WIOA. This indicator is a measure of the percentage of program participants who are in unsubsidized employment during the fourth quarter after exit from the program. This section, which mirrors WIOA sec. 116(b)(2)(A)(i)(II), remains unchanged from what was proposed in the NPRM.

Under WIA, the common measures included a retention measure based on individuals who were employed in the first quarter after exiting from WIA services, and who were also employed in the second and third quarters. WIOA does not have an equivalent to the WIA retention measure. Instead, WIOA requires a second—separate and distinct—employment indicator for the fourth quarter after exit, which measures the employment rate in that quarter, regardless of whether those participants also were employed in the second quarter after exit from the program. In other words, a participant would be counted as a positive outcome for this indicator if he or she was employed in the fourth quarter after exit regardless of whether he or she was also employed in the second quarter after exit.

Comments: In the preamble to the NPRM, the Departments sought comment on the advantages and disadvantages of collecting or reporting the employment retention rate. A commenter expressed support for a retention rate because it would be an important measure to know, for example, when comparing Job Corps to other youth programs. A few commenters reasoned that a retention rate would represent the quality of the initial job placement. Many commenters supported using a retention rate as long as programs would not be held accountable to negotiated goals for employment retention and States would not be required to capture, report, or calculate additional values. Some commenters opposed highlighting measures of employment retention because they would be confusing for the system and impede the transition from the measures in WIA to the indicators in WIOA. A commenter stated that there was no benefit to calculating this measure for WIOA title I programs; however, another commenter supported the proposed provision to calculate a retained employment rate in the fourth quarter after exit. An individual commented that if fourth quarter employment is not used as a retention measure, then the growth or reduction of the employment rate of the cohort can be used to evaluate occupational skills training, particularly for those who are underemployed.

There were a few commenters who articulated a preference for the requirement under WIA. Commenters stated that employee retention is based on market conditions and dependent on factors such as company working conditions. Commenters also asserted that a retention measure should take into account a change or advancement

in occupation and quality or levels of work. A commenter remarked that by collecting or reporting the retention rate, the Departments could compare performance under WIOA with performance under WIA, but the commenter also suggested this was not necessary. A few commenters asked whether the individual had to be working with the same employer or at the same job between the second and fourth quarters. Other commenters recommended that employment retention should be measured regardless of whether the employer or job title has changed.

Departments' Response: As stated above, retained employment rate would not be counted for the purpose of performance calculations and, thus, would not form the basis for sanctions because it is not among the primary performance indicators set forth in sec. 116(b)(2)(A)(i) of WIOA. The Departments have concluded that calculating a retained employment rate would provide useful information about the effectiveness of services that lead to sustained attachment to employment. The Departments will calculate a retained employment rate for participants who were employed at the second quarter after exit for informational purposes at the Federal level for those programs for which the Federal offices collect individual (*i.e.*, disaggregated data) records (*i.e.*, for the WIOA title I, Wagner-Peyser Act Employment Service, and VR programs). For the AEFLA program, for which ED does not collect individual (*i.e.*, disaggregated) records, the Departments will not require States to calculate and report a retained employment rate in addition to an employment rate at the fourth quarter after exit.

Comments: With regard to this indicator and partner program metrics, one commenter remarked that in States where TANF is a required one-stop partner, a performance metric that is limited to 1 year after exit from the program may not align with outcomes that are significant for TANF customers, resulting in positive outcomes of TANF employment services that will not be captured. Another commenter suggested that the fourth quarter employment information could be obtained more easily by the local DOL office rather than the State VR administration and as such, State VR agencies should not be required to report this data.

Departments' Response: The Departments acknowledge the commenters' concerns regarding the capture of outcomes for TANF employment services and the difficulty some programs will face in the collection of the data necessary to calculate this indicator. However, if an individual is a participant in a WIOA core program as described in sec. 116(b)(3)(A)(ii) of WIOA, sec. 116(b)(2)(A)(i)(II) of WIOA explicitly requires the Departments to measure the employment rate for that participant in the fourth quarter after exit, regardless of whether that individual is also a participant in TANF or any other required partner program. With regard to comments that maintain that VR agencies should not have to report data on the fourth quarter after exit due to issues of data access and availability, the Departments reiterate the intent to renegotiate the wage record data sharing agreements and issue joint guidance on accessing such data in order to meet the requirements laid out in WIOA sec. 116. The Departments strongly encourage the development, enrichment, and enhancement of partnerships at the State and local levels to leverage such connections in obtaining relevant performance information. No change to the regulatory text is being made in response to this comment.

Section 677.155(a)(1)(iii) implements the third statutory indicator as described in sec. 116(b)(2)(A)(i)(III) of WIOA. This indicator is a measure of the median earnings of those program participants who are in unsubsidized employment in the second quarter after exit. This section remains unchanged from that proposed in the NPRM.

Comments: Several commenters requested guidance on how to match wage records or collect employment-related data without the use of SSNs, because some States cannot collect SSNs and some students do not have them. A commenter suggested that the regulation should provide States with the authority to require SSNs as a condition of program participation. Another commenter asserted that WIOA only should require SSNs when customers are directly receiving some form of financial assistance. A commenter discussed the challenge of tracking the progress of individuals without SSNs. A commenter urged the Departments to provide ways for agencies to share long-term wage and employment information to enable the commenter to report on the indicators.

Departments' Response: The Departments considered the concerns raised by commenters in light of the statutory provisions at WIOA sec. 116(b)(2)(a)(1)(iii) and concluded that, where available and possible, the use of wage records to fulfill reporting requirements is required in accordance with sec. 116(i)(2) of WIOA. Matching participant SSNs against quarterly wage record information is the most effective means by which timely and accurate data can be made available to the system.

Nevertheless, the Departments want to make clear that neither WIOA nor this Joint WIOA Final Rule allows or requires States to request or require SSNs as a condition of program participation or for receipt of any form of financial assistance. As such, program eligibility under WIOA is not contingent on the provision of a SSN. Additionally, depriving such an individual of service would be in violation of the Privacy Act of 1974, which establishes a code of fair information practices that govern the collection, use, dissemination, and maintenance of information about individuals contained in systems of Federal records. Specifically, sec. 7(a)(1) of the Privacy Act (5 U.S.C. 552a Note, Disclosure of Social Security Number) provides that unless the disclosure is required by Federal statute, ''It shall be unlawful for any Federal, State, or Local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.'' In consideration of the circumstances articulated by the commenters in public comments received on both the Joint WIOA NPRM and the WIOA Joint Performance ICR, the Departments are allowing the use of supplemental information to augment the performance information obtained through wage record matching when necessary because critical information (such as a SSN) is not available. More information can be found in the preamble to § 677.175 discussed in more detail below. The WIOA Joint Performance ICR also will provide for the collection of such supplemental wage information in those circumstances where quarterly wage records are not available or may not apply. The Departments also intend to issue guidance and technical assistance regarding the collection and reporting of both quarterly wage record data and supplemental information on employment-based outcomes.

Comments: Some commenters supported the use of median earnings rather than average (mean) earnings, used under WIA, noting that averages can be skewed by a few numbers. One commenter stated that the indicator data should be collected at both the second and fourth quarters. Commenters suggested that the median earnings indicator should be based on all earnings and not just earnings related to the employment goals on the IPE for customers of VR services. With the

change from an average earnings calculation under WIA to a median earnings calculation under WIOA, one commenter asked how to arrive at a baseline for determining performance numbers. A few commenters said they would prefer reporting both average and median wages and highlight the high-income employment outcomes they have historically achieved. The commenters also asked how to best verify and include incomes for self-employment outcomes in this indicator.

Departments' Response: WIOA sec. 116(b)(2)(A)(i)(III), which forms the basis for § 677.155(a)(1)(iii), requires States to collect data regarding median earnings of participants who are in unsubsidized employment during the second quarter after exit from a core program. The Departments have the authority to collect additional information that provides context for the primary indicators of performance. Such information is important to understand and manage public workforce programs. The Departments note that the primary indicators identified in § 677.155 are the only indicators subject to the performance accountability sanctions. Additionally, pursuant to sec. 116(b)(1)(A)(ii) of WIOA and § 677.165, States may develop additional performance indicators which could include median earnings in the fourth quarter, as the commenter suggests.

With regard to inclusion of all earnings and not just those earnings related to employment goals on the IPE for customers of VR services, the individual records collected under the RSA–911 can be used to determine median wages at exit. The Departments acknowledge that wages may vary over time and that median earnings at exit may not reflect median wages in the second and fourth quarters after exit. With regard to baseline data for median earnings, the Departments recognize that some programs may not have the historical data necessary to establish a baseline for median earnings while other programs can review the data collected under WIA to establish an approximate baseline for this indicator. The Departments acknowledge the concerns raised regarding such employment outcomes that would not be captured through a pure match against State UI wage records, such as self-employment. The Departments will promulgate guidance regarding the collection and verification of supplemental employment information, as noted in the preamble to § 677.155(a)(1)(iii) and more fully discussed in the preamble to § 677.175. The Departments recognize there is a need to further clarify and provide guidance regarding transitioning to the WIOA performance indicators and intend to provide further clarification and guidance on the establishment of baseline data. No change to the regulatory text is being made in response to these comments.

Comments: A few commenters recommended that the value of benefits received should be included in the participants' median earnings indicator. Commenters urged reporting of wages expressed as dollars per hour to reflect outcomes for part-time workers accurately.

Departments' Response: Since the value of benefits clearly does not constitute earnings, adopting this recommendation would be inconsistent with the statutory provision calling for measuring earnings. Further information and clarification regarding the operational parameters of each indicator will be provided through both the WIOA Joint Performance ICR and program guidance. No change to the regulatory text is being made in response to these comments.

Comments: A few commenters stated that individuals participating in an education or training program should be excluded from the calculation of this indicator. Commenters especially expressed support for not including youth who were enrolled in postsecondary education in the median earnings indicator because such youth would not necessarily have an income. Some commenters warned that as many individuals are simultaneously enrolled and employed part time, they tend to work fewer hours at lower hourly wage rates. In these instances, the earnings measure serves as a disincentive for programs to provide further education and training. One of the commenters added that exiting applicants with entrepreneurship training may not reflect well on the earnings measures because a new business often takes time to become profitable.

Departments' Response: In response to the comments regarding exclusions from the median earnings indicator, sec. 116(b)(2)(A)(i)(III) of WIOA requires the collection of data regarding the median earnings for all participants who exit the program and are employed during the second quarter after exit, regardless of whether the participants are simultaneously enrolled in an educational or training program. The Departments understand the commenters' concerns regarding the decreased likelihood of full-time employment while enrolled in an education or training programs, but the Departments expect the levels of performance for different programs will vary based on the results of the statistical adjustment of the performance levels for those programs. Furthermore, States will have the ability to disaggregate performance data in order to gain an understanding of the effect of including youth in performance outcomes. No change to the regulatory text is being made in response to these comments.

Comments: Other individuals requested guidance on how to treat missing earnings information for particular participants and whether the participant may be excluded from the dataset used to determine the median earnings.

Departments' Response: In State wage record systems, a missing wage means that no wages for an individual were reported by any firm residing in that State. The missing wage only indicates that the individual is not in employment covered by the quarterly wage records for performance accountability purposes. The Departments have determined that collection and verification of supplemental employment data is allowed for the performance indicators where a wage is not present in quarterly wage data. Supplemental information that is used to establish employment must include earnings information and be counted in the employment indicators and the median earnings indicator. This calculation is meant to represent the median quarterly wage of all individuals who are employed in the second quarter after exit, therefore, ''missing earnings information'' will not be included in the median earnings calculation. Further, the Departments have elected to permit non-wage record matches (supplemental information) in the performance calculations. More information about this is in the preamble to § 677.175 discussed in more detail below. The Departments note that the use of supplemental information must be uniform across performance indicators. In other words, if a participant is included in the employment in second quarter after exit indicator based on information obtained through supplemental information, wage information must be collected and that data must also be used for the median earnings indicator. Likewise, if the collection and verification of employment and wages cannot be obtained for such a participant through either wage record matching or through supplemental wage information, then the participant cannot be included as being in unsubsidized employment during the second quarter and fourth quarters after exit, as measured by the

first and second performance indicators. The Departments will issue guidance regarding the collection and verification of supplemental employment information, as noted in the preamble to §§ 677.155(a)(1)(iii) and 677.175.

Section 677.155(a)(1)(iv) implements the fourth statutory indicator as described in sec. 116(b)(2)(A)(i)(IV) of WIOA, subject to sec. 116(b)(2)(A)(iii). This indicator is the percentage of program participants who obtain a recognized postsecondary credential or a secondary school diploma or its recognized equivalent, during participation in or within 1 year after exit from the program. The Departments are implementing § 677.155(a)(1)(iv) as revised and described here. The regulation, consistent with the statutory requirements, limits inclusion of participants who obtain a secondary school diploma or its equivalent in the percentage counted as meeting the criterion by only including those participants who are employed or are enrolled in an education or training program leading to a recognized credential within 1 year after exit from the program. The Departments specifically sought comment on clarifications necessary to implement this indicator.

Comments: Many commenters expressed concerns about including all program participants in the indicator and asked whether the indicator is limited to those in an education or training program.

Departments' Response: The Departments revised § 677.155(a)(1)(iv) to clarify that this indicator only applies to those participants who are or were enrolled in an education or training program. The purpose of the indicator is to measure performance related to attainment of a recognized postsecondary credential or a secondary school diploma or its recognized equivalent. As such, it would not fulfill the purpose of this indicator to measure a State's performance on the credential attainment indicator against a universe of participants that includes individuals who are not in an education or training program through which they can obtain one of these credentials. The Departments decided that it is appropriate to include, for purposes of this indicator, only those participants enrolled in an education or training program. The Departments have excluded participants enrolled in work-based on-the-job training or customized training from this indicator because such training does not typically lead to a credential. This exclusion avoids creating a disincentive to enroll in work-based training. This section has been revised to clarify that only those participants in an education or training program are included in the performance calculations for this performance indicator, with the exception of those in on-the-job or customized training. The WIOA Joint Performance ICR also will explain that participants, for purposes of the credential rate performance indicator, are only those who are in an education or training program (excluding those in on-the-job training or customized training).

During the review period leading to this Joint WIOA Final Rule, the Departments noted an error in the NPRM related to the statutory requirement that participants receiving a secondary school diploma or its equivalent be included in the percentage of participants meeting the performance indicator only if the participant is employed or enrolled in an education or training program leading to a recognized postsecondary credential within 1 year of exit from the program. The NPRM incorrectly stated that a participant who has *obtained a high school diploma or its equivalent* only is included in the indicator if the participant is employed or is enrolled in an education or training program leading to a recognized credential within 1 year of exit from the program. The Departments have corrected § 677.155(a)(1)(iv) to make it consistent with WIOA's requirement so that a participant who *obtains a secondary school diploma or its recognized equivalent* only counts as having met the performance indicator if the participant is also employed or is enrolled in an education or training program leading to a recognized postsecondary credential within 1 year after exit from the program.

Comments: A few commenters stated that they fully supported the proposed provision. Some commenters remarked that WIOA presents a great opportunity to learn more about the credentials being earned by participants in the workforce system. The commenters suggested that regulations on the reporting of credential attainment should strike a balance between incentivizing the collection of better data and unfairly penalizing States that do not have the ability to measure attainment of all types of credentials, and that the Departments should consider a phased approach for making licenses and certifications part of performance levels.

Departments' Response: The Departments are not planning a phased implementation of the credential attainment indicator because such data generally were collected and reported under WIA. With regard to the full performance accountability provisions under WIOA sec. 116, which include the application of an objective statistical adjustment model and the implementation of sanctions, the Departments did modify § 677.190 to allow for a phased-in approach for assessing performance success or failure for the purposes of sanctions in order to provide programs time to collect and report at least 2 full years of data required to develop and run a statistical adjustment model on those indicators. More information can be found on this in the preamble to § 677.190 below.

Comments: In the preamble to the NPRM, the Departments sought comments on clarifications that would be necessary to implement the credential attainment indicator. Many commenters requested clarification about accepted credentials; how to collect and track credentials; the definitions of enrollment and postsecondary credential; the determination of ''within 1 year after exit'' from the program; the achievement of a secondary degree or General Education Diploma (GED); and whether the indicator applies to the VR program. A commenter recommended consideration of apprenticeships as postsecondary credentials, but other commenters suggested that employer-based work activities generally do not result in industry-recognized credentials but often result in permanent employment.

Departments' Response: The definition of ''recognized postsecondary credential'' is found in sec. 3(52) of WIOA, stating ''a credential consisting of an industry-recognized certificate or certification, a certificate of completion of an apprenticeship, a license recognized by the State involved or Federal Government, or an associate or baccalaureate degree.''

With respect to one comment, the Departments note that this definition includes completion of an apprenticeship. In addition, the statutory language of the credential attainment indicator in WIOA sec. 116(b)(2)(A)(i)(IV) includes participants' attainment of a secondary school diploma or its recognized equivalent in performance calculations, subject to the requirement that those participants also are employed or in an education or training program leading to a recognized postsecondary credential within 1 year after exit from the program. The credential attainment indicator applies to all core programs, including the VR program, except for the Wagner-Peyser Act Employment Service program, as

specified in sec. 116(b)(2)(A)(i) of WIOA. To be counted as having met the indicator, a participant must have obtained a credential at any point during participation in the program or up to 1 year after exit from the program.

The Departments will issue joint guidance that further illustrates what constitutes a recognized postsecondary credential for the credential rate indicator, including definitions for each type of credential. The Departments recognize burden concerns for tracking credential attainment. However, as noted, WIOA requires the collection of data for purposes of reporting on the credential attainment indicator for all core programs, except for the Wagner-Peyser Act Employment Service program. The Departments also will provide joint guidance and technical assistance for tracking and reporting with respect to this performance indicator.

Comments: A few commenters expressed concern that the value of a secondary diploma would be reduced. One commenter suggested the regulations should clarify that employment is at any time during the year after exit. Commenters recommended including alternative, standards-based certificates of high school completion for students with disabilities among the credentials recognized for achievement of the credential attainment indicator. Commenters cautioned that this indicator may not be appropriate for students in English language acquisition programs, and one of these commenters requested that postsecondary credentials include completion of Career and Technical Education programs. A commenter encouraged the reporting of credential type in addition to the attainment of a credential.

Departments' Response: The Departments do not agree that a secondary school diploma would be devalued because a participant's attainment of a secondary school diploma can be included in performance calculations for purposes of the credential attainment indicator. For those who obtain a secondary school diploma or its recognized equivalent, such participants must also be employed or in an education or training program leading to a postsecondary credential within 1 year after exit from the program. Such employment or enrollment in an education or training program only needs to be for some period during the 4 quarters after exit, not for the entire 1-year period after exit. The types of secondary school diplomas and alternate diplomas that would satisfy this performance indicator are those recognized by a State and that are included for accountability purposes under the ESEA, as amended by the Every Student Succeeds Act. The types of recognized equivalents, for those not covered under ESEA, that would satisfy this performance indicator are those recognized by a State. No change to the regulatory text is being made in response to these comments.

Comments: Several commenters also expressed concern that State VR and other programs do not track whether a participant is enrolled in postsecondary education after program exit and that to do so would represent a significant burden. One of the commenters recommended that educational attainment data could be reported as it occurs by the appropriate State educational authorities and matched to participant data. A commenter suggested that sharing information should be mandatory between workforce agencies and secondary and postsecondary educational and other training institutions. One commenter stated that national access to postsecondary records and earnings not covered by UI wage records are needed for implementation of the provision.

Departments' Response: The Departments recognize that, in cases where information was not previously collected or reported on, there is an initial burden associated with establishing such collections for reporting. However, the Departments have concluded that WIOA sec. 116(b)(2)(A)(i)(IV), read in conjunction with sec. 116(b)(2)(A)(iii), requires that the indicator applies to all core programs and necessitates tracking enrollment and employment up to 1 year after exit. With regard to the comments raised concerning real-time tracking and matching of educational attainment, the Departments note that tracking and reporting on participants is an obligation of the program. A State educational authority would not necessarily have information on all participants enrolled in education programs, public or private, non-profit or for-profit. The Departments do not currently have the authority to mandate sharing of information between workforce agencies and secondary and postsecondary educational and other training institutions in the manner proposed. In regards to the comment about national access to postsecondary records and earnings, the Departments do not think that implementation requires national access because States have the authority to implement appropriate mechanisms, including data sharing agreements, at the State level to fulfill these reporting requirements. The Departments are developing guidance to help the States meet their obligations. No change to the regulatory text is being made in response to this comment.

Comments: One commenter stated that participants who were in occupational training designed to lead to employment in a specific occupation and who do not achieve the credential because they have become employed in the occupation should be removed from the indicator. Some commenters suggested that the credential attainment indicator should not be calculated as the percentage of all participants who earn a credential, but the indicator only should calculate the percentage of participants receiving education or training services who earn a credential. A commenter recommended that the indicator only should apply to participants who were enrolled in a program leading to a postsecondary credential or secondary diploma. One commenter cautioned that many students are currently unavailable to the job market. Another commenter reasoned that cross-enrollment may lead to participants furthering their training in one program after leaving another, and this may not be completed within 1 year.

Departments' Response: With respect to the comment that the credential attainment indicator should calculate only the percentage of participants receiving education or training services who earn a credential, the Departments reiterate, as noted above, that § 677.155(a)(1)(iv) has been revised, as contained in these final regulations, to address this concern. With respect to the comment that those who do not earn a credential because they become employed should not be included in the calculation for the credential attainment indicator, the Departments note that the reason that a participant fails to attain a credential, including participating in further training, is not a basis for excluding that participant from the performance calculations for the credential attainment indicator. No change to the regulatory text is being made in response to these comments.

Comments: Commenters also suggested that the indicator would result in a strong disincentive to enroll participants in title I programs that would not result in an industry-recognized credential. An individual mentioned that the indicator may discourage participation in training programs that take several years to complete. Commenters also suggested that prospective workers enrolled in TANF and other hard-to-serve populations may require more than 1

year to achieve positive outcomes and that States have varying requirements for attaining credentials.

Departments' Response: The Departments note that because the credential attainment indicator is an exit-based indicator, there is no requirement for a participant to attain a credential within 1 year of enrollment in the program. There is no time limit on how long participants are in the program, and the measurement point for credential attainment is not until 1 year following exit from the program. If participants are in a program multiple years before attaining a credential they are still counted as a success in the indicator if the credential is attained during participation in the program or within 1 year of program exit. Thus, the Departments do not think that this indicator will discourage participation in training programs that take several years to complete. It should be noted that in instances where participants are enrolled in an education or training program that is not intended to result in a credential, the measurable skill gains indicator can capture progress made by participants.

Section 677.155(a)(1)(v) implements the fifth statutory indicator as described in sec. 116(b)(2)(A)(i)(V) of WIOA. This indicator is a measure of the percentage of participants who, during a program year, are in education or training programs that lead to a recognized postsecondary credential or employment, and who are achieving measureable skill gains toward such a credential or employment. The Departments are defining measurable skill gains as documented academic, technical, occupational, or other forms of progress toward the credential or employment. After seeking and considering all comments on the measurable skill gains indicator proposed at § 677.155(a)(1)(v), the Departments added five measures of documented progress that specify how to show a measurable skill gain.

Comments: The preamble of the NPRM identified six examples of standardized ways States could measure documented progress during participation in an education or training program, and sought public comment on these and other ways progress may be measured. Some commenters generally supported the examples as well as the preamble language that stated, ''Documented progress could include such measures as . . .'' because it provided the State with flexibility. Another commenter recommended a menu system similar to the proposed but recommended the progress measure be attached to participant characteristics rather than a funding stream. Other commenters asserted that it would be difficult to standardize measures and documentation across all core programs as proposed by the Departments, and there would be little benefit for the VR program where individuals often seek to maintain their current occupation. Another commenter recommended that Local WDBs should be required to write into their local plans an exhaustive list of the documented progress measures they will use.

Departments' Response: The Departments noted the suggested ways in which the States could measure documented progress. The Departments disagree with commenters that recommend against standardized methods, across States and core programs, to measure documented progress for purposes of the measurable skill gains indicator. Section 116(b)(4)(A) of WIOA requires the Secretaries to issue definitions of the primary performance indicators in order to ensure national comparability of performance data. Defining the measurable skill gains indicator to include standardized methods to measure documented progress across programs helps to ensure this comparability. With regard to the VR program, although a State VR agency may provide services to individuals with disabilities that enable them to maintain their current occupation, the Departments note that the majority of individuals served by the VR program receive assistance in obtaining or advancing in employment. With regard to local plan content and the recommendation that it include ''an exhaustive'' list of the documented progress measures, the Departments encourage States and local areas to consider the service provisions and applicable progress measures in the development of their plans but have determined that it is beyond the scope of part 677 to regulate concerning such requirements. State and local plans are discussed more fully in 20 CFR part 679 (*see* DOL WIOA Final Rule, published elsewhere in this issue of the **Federal Register**). The Departments reiterate that States will be required to report on the measurable skill gains indicator as set forth in § 677.155(a)(1)(v), consistent with program guidance. No change to the regulatory text is being made in response to these comments.

Comments: Many commenters strongly supported the fact that the proposed regulations recognize the intent of Congress to ''encourage local adult education programs to serve all low-skilled adults,'' and stated that the measurable skill gains indicator will help to achieve that goal. One commenter suggested that measurable skill gains should be the only indicator of performance required for students functioning below the ninth grade level.

Departments' Response: The Departments do not agree with the suggestion that the measurable skill gains indicator be the only indicator of performance for students functioning below the ninth grade level since WIOA requires that the indicators of performance apply across all core programs in order to assess the effectiveness of States and local areas in achieving positive outcomes for participants served by those programs.

There is no basis for a blanket exclusion from all performance indicators except the measurable skill gains indicator for participants functioning below the ninth grade level. Such participants have the potential to receive services under a program, be included in performance calculations, and be counted as having met one of the other indicators. Therefore, unless a student functioning below the ninth grade level is otherwise appropriately excluded from participants included in the performance calculations for a particular indicator under § 677.155(a)(2), the Departments will not categorically exclude such students functioning below the ninth grade level from the other five indicators of performance. No change to the regulatory text is being made in response to these comments.

Comments: The majority of commenters endorsed continued use of educational functioning levels (EFLs) and encouraged eventual refinement of EFLs or the development of other potential measures that can document participants' progress toward educational goals. Other commenters expressed concern because in high intensity programs, students may advance two or more EFLs; therefore, the proposed language would not capture the full impact of adult education instruction. The commenters recommended that the requirement should be ''the achievement of the EFLs of the participant.''

Departments' Response: As set forth in the preamble of the NPRM, the first standardized way States could measure and document participants' measurable skill gains is the documented achievement of at least one EFL of a participant in an education program that provides instruction below the postsecondary level. The Departments agree with comments that supported the continued use of EFLs to measure progress towards the measurable skill gains indicator. The Departments also

recognize that in some cases, students may advance more than one EFL during a program year. However, for purposes of the performance calculations, programs will be permitted to report only one EFL measureable skill gain per a participant's exit from the program through the WIOA Joint Performance ICR. This means that if a participant exits a program more than once in a program year and attains an EFL measureable skill gain prior to exiting each time, then the program will be able to report, for performance calculation purposes, more than one EFL measureable skill gain for the participant in a program year. In so doing, participants, for purposes of performance calculation purposes with respect to the measureable skill gains indicator, will be treated the same as for any other performance indicator. Having said this, through the WIOA Joint Performance ICR, the Departments will require States to provide unique identifiers for participants. Thus, there will be a unique count of participants under the core programs regardless of how many times the participant exits the program (see discussion in this preamble regarding the definition of ''exit'' in § 677.150(c) above). The Departments have added § 677.155(a)(1)(v)(A) to include ''documented achievement of at least one educational functioning level of a participant receiving instruction below the postsecondary education level,'' as one way of measuring documented progress under the measurable skill gains indicator. Options for measuring educational functioning level gain are described in the WIOA Joint Performance ICR.

Comments: A commenter recommended that attainment of a high school diploma not be included as one of the measures of documented progress for purposes of the measurable skill gains indicator.

Departments' Response: The Departments disagree with the assertion and consider attainment of a secondary school diploma a valuable measure of progress and have therefore revised § 677.155(a)(1)(v)(B) to include ''documented attainment of a secondary school diploma or its recognized equivalent.''

Comments: Commenters stated that a lower requirement of six credit hours per semester better reflects the capability of adults who must work to provide for their families. Another commenter suggested that the measure should be expanded to include a demonstration of semester-to-semester retention, which is a key indicator of academic success.

Departments' Response: As proposed in the preamble of the NPRM, the third standardized way States could measure and document participants' measurable skill gains is through a transcript or report card for either secondary or postsecondary education. The Departments had proposed a measure requiring a transcript or report card for 1 academic year or for 24 credit hours. The Departments agree with the concern that a transcript for 1 academic year or 24 credit hours is too onerous for part-time students and have changed this measure to require that the transcript or report card reflect a sufficient number of credit hours to show a participant is achieving the State's academic standards. The Departments' current standard for a sufficient number of credit hours is at least 12 hours per semester or, for part-time students, a total of at least 12 hours over the course of 2 completed consecutive semesters during the program year that shows a participant is achieving the State unit's academic standards. The Departments have added § 677.155(a)(1)(v)(C) to read ''secondary or postsecondary transcript or report card for a sufficient number of credit hours that shows a participant is meeting the State unit's academic standards.'' Clarification regarding the progress measures and the specific requirements for collection and reporting will be provided through the Departments' WIOA Joint Performance ICR, Department-specific ICRs, and programmatic guidance.

Comments: A commenter suggested that the Joint WIOA Final Rule identify progress reports from training providers as an acceptable measure of documented progress for purposes of the measurable skill gains indicator.

Departments' Response: As proposed in the NPRM, the fourth standardized way States could measure and document participants' measurable skill gains is through a satisfactory or better progress report towards established milestones from an employer who is providing training. Such milestones to be achieved could include completion of on-the-job training (OJT) or completion of 1 year of an apprenticeship program. The Departments agree with the commenter that progress reports from training providers as to achievement of established milestones also could be acceptable and note that when participants are enrolled in training programs, the training providers are in the best position to report on participants' progress toward established milestones. The Departments emphasize that rigor is expected in determining whether a progress report is satisfactory, whether from an employer or a training provider. The Departments have added § 677.155(a)(1)(v)(D) to include ''satisfactory or better progress report, towards established milestones, such as completion of OJT or completion of 1 year of an apprenticeship program or similar milestones, from an employer or training provider who is providing training.''

Comments: Several commenters requested information on how progress shall be measured under the VR program.

Departments' Response: With regard to the VR program, there may be several methods for obtaining documentation related to measuring progress. For example, documentation such as standardized reports of progress from training providers, provided to the State VR agency, may be used to substantiate progress. To adequately document progress, programs should identify appropriate methodologies based upon the nature of the service being provided. For example, VR agencies frequently use grade reports from postsecondary educational institutions to document a student's progress toward achieving a degree. For OJT, where the individual is being trained on site by either the employer or by a vendor, VR Counselors receive regular training reports that include the OJT milestones completed as the individual masters the job skills required. More broadly, for apprenticeship programs, the milestones are already incorporated into the process. The steps required to complete the apprenticeship and the increases in pay that occur can be used to document progress.

Comments: Some commenters recommended that successful completion of an exam, as recommended in the preamble of the NPRM as a way of measuring documented progress, be understood as achieving a passing score on the exam.

Departments' Response: As proposed in the preamble of the NPRM, the fifth standardized way States could measure and document participants' measurable skill gains is through successful completion of an exam that is required for a particular occupation, or through progress in attaining technical or occupational skills as evidenced by trade-related benchmarks such as knowledge-based exams. The Departments agree with the commenters that this measure documenting a measurable skill gain should require that a participant achieve a passing score on an exam and thus have added § 677.155(a)(1)(v)(E), which requires ''successful passage of an exam that is

required for a particular occupation, or progress in attaining technical or occupational skills as evidenced by trade-related benchmarks such as knowledge-based exams.'' Joint guidance will be issued about what qualifies as a trade-related benchmark to show documented progress for purposes of the measurable skill gain indicator.

Comments: Commenters expressed concern about another measure of documented progress proposed in the preamble to the NPRM—measurable observable performance based on industry standards. Commenters indicated that it would be very challenging to identify a way to document this type of gain.

Departments' Response: The Departments agree with the commenters' concerns that it would be difficult to articulate a method for documenting progress using measurable, observable performance based on industry standards. The Departments did not include this measure in § 677.155(a)(1)(v).

Comments: Commenters recommended using other measures of progress including achievement of passing grades, completion of high school equivalency (HSE) subtests, receipt of postsecondary education or training, completing some adult diploma requirements, and obtaining U.S. citizenship to document measurable skill gains. A commenter suggested that employment-related indicators of skill gains, such as employment in the participant's program of study, advancement in job titles, and performance-based wage increases, recognize that skills attainment correlates with career progression. One commenter recommended that a high school credential from another country should be treated as sufficient in meeting the requirement. Some commenters suggested that the metric should measure completion of something easily definable such as a degree, certification, or entrance into a program. A commenter asked the Departments to measure interim progress, including documented gains in achieving ''soft skills,'' such as program attendance, timely arrival, gains in proper behavior, and creating an IPE. Another commenter asked whether proceeding through a prescribed program toward a secondary degree would be considered ''achieving measurable skill gains.'' One commenter cautioned about subjectivity in deciding positive gains. One commenter stated that the measurement should be simply ''making progress—yes or no.''

Departments' Response: The Departments reviewed all of the additional suggestions for measurement of documented progress under the measurable skill gains indicator and concluded that none of the additional suggestions would be included in the Joint WIOA Final Rule or WIOA Joint Performance ICR. The Departments concluded that subjectivity should not be a part of determining skill gains and have included five objective progress measures that States may use in implementing the measurable skill gains indicator of performance. These indicators are sufficiently broad as to provide flexibility that addresses some of the commenters' concerns, while maintaining rigor. Several of the measures suggested by commenters (*e.g.,* achieving soft skills) do not share the same level of rigor or objectivity. The Departments will provide further clarification, definition, and specification in the WIOA Joint Performance ICR.

Comments: Another commenter suggested the Departments empanel expert working groups to assist in developing measures of skill gains. A commenter suggested that regional or local workforce boards be allowed to assign the WIOA defined skill gains indicator to particular education or training programs based on program curriculum and goals. One commenter recommended allowing the Local WDB to define industry-related credentials or eliminating work-based learning from the measurable skill gains indicator. Another commenter agreed that work-based training activities, such as on-the-job training, should be exempt from this indicator.

Departments' Response: The Departments acknowledge the various points raised with regard to objective measures that are implemented in a rigorous manner. The Departments have, through the WIOA Joint Performance ICR, jointly coordinated the development of the underlying calculations, specifications, and operational definitions of the documented progress measures under this indicator. This will ensure measures uniformly are implemented in a rigorous and objective way. In addition to the WIOA Joint Performance ICR, each core program will define through guidance, the types of skill gains that are appropriate for the services provided and whether the program is an education or training program that leads to a recognized postsecondary credential or employment. For example, work experience in the WIOA title I youth program may not be considered an education or training program and, therefore, the measurable skill gains indicator may not apply to those participants engaged only in work experience under the WIOA title I youth program. More guidance regarding education and training programs is provided in 20 CFR part 680 (*see* DOL WIOA Final Rule published elsewhere in this issue of the **Federal Register**). No change to the regulatory text is being made in response to these comments.

Comments: Commenters asked for specificity and guidance about the ''comparator group/cohort;'' how to most efficiently collect documentation (such as confirmation by phone or email); industry-specific recognized credentials; how time intervals would be used for skill gains; how the measure applies to shorter-term training programs that are completed within 1 year; how different measures could be used for different trainings; whether Indian and Native American youth are included in this indicator; and definitions and timing regarding when a measurable skill gain must have occurred in order to be counted.

Departments' Response: The Departments recognize that the regulation poses broad parameters for these indicators. Many concerns and requests for clarity by commenters were identified and will be explained within the WIOA Joint Performance ICR or Department-specific ICRs, which are designed to operationalize such aspects of collection and reporting as time periods, specific calculations, details regarding who is included, and where to record positive outcomes. In addition to the WIOA Joint Performance ICR, the Departments will provide further guidance on acceptable source documentation, and the definitions recommended by commenters. In addition, the Departments will provide program-specific guidance for programs, such as the Indian and Native American youth program, on the application of performance indicators in their respective regulations and in guidance.

Comments: In the preamble to the NPRM, the Departments sought comments on whether time intervals should be required when implementing the measurable skill gains indicator and if so, what time intervals might be. One commenter suggested that specific time intervals should not be required because of variation in services across and within core programs and because individuals at different levels take different amounts of time to show gain. Other commenters agreed that a time requirement should not be used for determining measurable skill gains. Certain commenters, however, recommended that time intervals be established in a manner that is flexible

enough to meet the varying durations of service across core programs, from 1 month to an academic year, but those time intervals should not adversely affect the provision of services based on the particular needs of a customer. One commenter stated that, for youth under WIA, the skill gains and literacy/numeracy gains are effective for a participation year. However, if a customer enrolls in education or training toward the end of a program year, it will result in a negative outcome due to the customer not having enough time to obtain the skill gain before June 30. This commenter recommended that any participants, adult or youth, who were enrolled less than 90 days prior to the program year end, and are continuing services into the next program year be allowed to continue as an active participant, and considered enrolled in Year 1, and in progress in Year 2, with expected completion in Year 2. Another commenter supported a minimum program duration threshold, and suggested that measurable skill gains generally should not be available to programs that are shorter than sixteen weeks. Another commenter suggested a time period of measurement set at the first anniversary of enrollment and each year thereafter.

Departments' Response: The Departments considered whether a minimum time threshold should be incorporated into the measurable skill gains indicator. The Departments have concluded that, given the diversity of participant needs and program services, imposing a time period by which progress is to be documented would be somewhat arbitrary and difficult. Such practice could result in excluding a number of participants from performance accountability reporting requirements, even if those participants would achieve a gain under one of the measures of progress. The Departments recognize that participants enrolling late in the program year may not have enough time to achieve a measurable skill gain prior to the end of the first program year, and the Departments recognize this could be perceived as negatively impacting performance. However, the negotiation process can and should take into account enrollment patterns and lower baseline data when setting targets for the measurable skill gains indicator. The Departments are concerned about incentivizing behavior that discourages service providers from enrolling disconnected youth in particular when they first approach programs, or that purposefully attempts to focus service on individuals who are more likely to obtain a positive outcome. The Departments emphasize that programs must not delay enrollment or prohibit participants from entering a program late in the program year. All participant outcomes, regardless if achieved at the end of the reporting period in which they enrolled or in the next reporting period, count as positive outcomes for the program. No change to the regulatory text was made in response to these comments.

The Departments will define, through program guidance, the types of services and trainings that constitute ''an education or training program that leads to a recognized postsecondary credential or employment,'' applicable for each of the core programs. All participants who enrolled during a program year in an education or training program that leads to a recognized postsecondary credential or employment are counted each time the participant exits the program during a program year.

Comments: In the preamble of the NPRM, the Departments also asked for comments on whether the negotiated levels of performance for this indicator should be set at the indicator level or the discrete documented progress measure (*e.g.,* attainment of high school diploma) level. Setting the negotiated levels of performance at the indicator level would aggregate results for all documented progress measures (*i.e.,* achieving any or several of measurable skill gains would be recorded as a success). Setting the negotiated levels of performance based on discrete documented progress measures would separately set targets for each indicator and each measurable skill gains. The vast majority of these commenters preferred that the performance targets for this indicator be set at the indicator level rather than at the documented progress level. Other commenters, however, suggested that standardization is more easily achieved by linking the target to a documented progress measure level, stating that targets based on documented progress, versus an indicator, may be easier to collect. Another commenter suggested that performance targets should include both indicator and documented progress measures.

Departments' Response: After considering the comments received, the Departments agree with the majority of commenters that supported setting the target (or the adjusted level of performance) at the indicator level. The Departments have concluded this will provide a more streamlined and user-friendly approach to using progress measures and will result in a more uniform application of the measurable skill gains indicator. Guidance on negotiating adjusted levels of performance that contains specific information about setting targets for Measurable Skill Gains will be issued by the Departments. No change to the regulatory text is being made in response to these comments.

Section 677.155(a)(1)(vi) implements the sixth statutory indicator as described in sec. 116(b)(2)(A)(i)(VI) of WIOA, subject to sec. 116(b)(2)(A)(iv). This indicator measures program effectiveness in serving employers. Under WIOA, the Departments must consult with stakeholders and receive public comment on proposed approaches to defining the indicator. As part of this requirement, in addition to seeking public comment through the NPRM and the WIOA Joint Performance ICR, the Departments previously 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, and additional town-halls and webinars on WIOA across the country as well as consultations with State Administrators for AEFLA programs and VR stakeholders. As described more fully below, the Departments received many comments regarding the three proposed definitions of this indicator. After considering the responses received through all venues, the Departments are initially implementing this indicator in the form of a pilot program to test the rigor and feasibility of the three proposed approaches, and to develop a standardized indicator. The performance indicator for effectiveness in serving employers will not be included in sanctions determinations until the standardized indicator is developed.

Proposed Approaches to Measuring Employer Satisfaction

Comments: The preamble to the NPRM described three approaches to measure employer satisfaction (*i.e.,* effectiveness in serving employers). In the first approach, States would use wage records to identify whether or not a participant matched the same FEIN in the second and fourth quarters. Many commenters opposed this approach because participants may have relocated, joined the military, or found a better job, although these circumstances do not mean the employer was not satisfied. They also opposed this approach because the mere fact that an individual is employed with the same employer does not mean that

the employer is satisfied. Many other commenters, however, favored the approach because it would be the least disruptive to employers. A commenter agreed that employee retention can be measured, but that measure does not take into account the quality of the placement. Commenters suggested piloting a limited demonstration using existing data to determine if the variability in the types of occupations in a particular local area has a more profound impact on retention than the value added by the services provided under a WIOA program, and to determine whether there is a correlation between retention and effectiveness.

The second approach to define this indicator would measure the repeated use rate for employers' use of the core programs. Many commenters did not support this approach because some employers may not have many hiring needs during a program year, or an employer may have a need but the program has no students who are ready to graduate and go to work. Also, this approach would encourage programs to protect their individual employer relationships rather than working collaboratively through sector partnerships. Several commenters recommended use of this measure along with the number of workers employed by businesses participating in sector partnerships. Other commenters supported the approach because it represents increased use, retention, or growth of business engagement, although some commenters would use the number of workers employed, not the number of businesses served. The preamble to the NPRM specifically sought comments on how States could capture this data, the feasibility of capturing and reporting this data, and queried whether this indicator would measure the efficacy of services provided to employers. The Departments received both positive and negative comments regarding this approach.

The third approach would use 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). A large proportion of commenters opposed this approach and warned that this saturation method only would work if all participants come from the local market area; for a number of programs, it is usually not the case that most of the participants come from the local market area. Also, the commenters asserted that this option would focus too much on the breadth of employer involvement, rather than the depth or quality. Some commenters supported this approach when used with another approach. The preamble to the NPRM specifically sought comments on how States could capture this data, the feasibility of capturing and reporting this data, and queried whether this indicator would measure the efficacy of services provided to employers. The Departments received both positive and negative comments regarding this approach.

Departments' Response: After further review, analysis, and consideration of public response, the Departments have concluded that too little is known with regard to the validity and reliability of each of the proposed approaches. In concurrence with multiple commenters, the Departments have concluded that the retention method, using wage record FEIN matches to be the least burdensome method to employers for measuring the quality of service provided to employers given that the outcome is concluded solely by the use of wage-match data, which prevents outside factors from influencing the way success is measured within the reporting system. The Departments concluded, however, that there was not enough evidence that this point of measurement would encompass the intent of this indicator. Therefore, the Departments have proposed a pilot allowing all three approaches, and any additional measure that the Governor may establish relating to services for employers, with the intent of assessing each approach for its efficacy in measuring the effectiveness in serving employers.

The Departments have included these approaches in the WIOA Joint Performance ICR and will require each State to choose two of the three approaches set out in the NPRM as well as any additional measure that the Governor may establish related to services to employers, with results to be included in the first WIOA annual report due in October 2017. This approach provides States flexibility in selecting the measures that best suit their needs, while providing partner Agencies the opportunity to evaluate States' experiences in using these measures during PY 2016 and PY 2017, and additionally allows the Departments to obtain employer feedback regarding the extent to which these indicators measure effectiveness in serving employers. The Departments will evaluate State experiences with the various indicator approaches and plan to use the results of that evaluation to identify a standardized indicator that we anticipate will be implemented no later than the beginning of PY 2019. In this process, the Departments intend to engage the National Association of State Workforce Agencies (NASWA) and the States to inform the evaluation design; communicate how States fare in operationalizing the measures; and contribute to the development of technical assistance activities and tools.

The Departments acknowledge the dissatisfaction expressed by commenters with using each of the NPRM proposed measures as a sole indicator of successful service to employers and agree with comments discussing the utility of piloting multiple alternative measures to ensure that States are being required to report on employer satisfaction in the most effective manner. As such, the Departments will work to implement a pilot program, the details of which will be further delineated in joint Departmental guidance. The Departments have opted to implement a pilot program using all of the approaches in order to assess the States' experiences with these and evaluate the efficacy of such approaches in measuring this construct. Further guidance regarding the pilot program will be provided.

Effectiveness in Serving Employers across Programs

Comments: The NPRM also sought comment on using effectiveness in serving employers as a shared indicator across programs, as many employers are served by multiple programs. Many commenters supported using effectiveness in serving employers as a shared indicator across programs because it would foster collaboration rather than competition among the core programs. One commenter stated that using effectiveness in serving employers as a shared indicator would mitigate concerns regarding measuring effectiveness in serving employers for the Wagner-Peyser Act program. Commenters stated that there are too many indicators already and a single metric should suffice. Commenters also suggested that the Departments should engage the employer community, such as using a short survey or task force, to discover methods of measuring effectiveness. One commenter, however, opposed employer surveys and burdensome employer contacts. A group of commenters recommended that agency directors conduct a study on how effectively workforce development aligns with business needs. Others favored having States create and submit for approval an indicator that meets the State's current needs, including targeted sectors and partner collaboration. A commenter suggested that the workforce system offer one point of contact or

''account executive'' to each employer. However, one commenter opposed the use of a shared indicator, and recommended measuring at an individual program level in order to measure the impact on each core program.

One commenter developed a novel approach for measuring effectiveness and provided details in a concept paper, which was expressly supported by some commenters. The approach includes a customizable point-menu system that would award varying levels of points to WDBs based on the degree of intensity and the value of services provided. Services earning high points would clearly reflect deeper relationships with employers and activities that are the result of longer-term relationships. The Departments will consider this approach in the course of the pilot program. A separate commenter suggested using tiers to measure employer engagement with concrete examples. The Departments also will further consider this suggestion of a tiered approach.

The preamble to the NPRM also requested feedback regarding whether a single metric for this indicator would sufficiently capture effectiveness in serving employers or if this indicator should encompass a combination of metrics, as well as how these metrics could most effectively be combined. A number of commenters expressed concern or disinterest with using a single metric to measure effectiveness in serving employers.

A few other commenters who expressed support for using multiple metrics for this indicator recommended a list of core functions to indicate the effectiveness in serving employers, with the list of core functions including strategic planning with business to identify business needs; outreach and recruitment; hiring; retention; training, consultation services, and other customized services; and business customer satisfaction with services provided. One commenter added preparing workers for in-demand industries and occupations and the percentage of participants who earn an industry credential. Some commenters also mentioned fill rate—the number of job seekers placed against the number of open job orders in the system—and employer referrals. A few commenters stated that there is insufficient clarity on the employer satisfaction indicator and the meaning of effectiveness.

Departments' Response: The Departments have concluded that implementing the effectiveness in serving employers indicator as a shared indicator across all core programs to be the most useful approach based on the collaborative nature of this method and the overwhelming majority of commenters who were in favor of this option. In doing so, States and local areas are better positioned to provide a single point of contact to each employer, making it easier for the differences between specific core programs to become invisible and enable the programs to serve together as a unified front. Measurement at the program level would be contrary to WIOA's efforts to streamline reporting across programs, reduce burden on employers, and decrease the likelihood of duplicated employer counts. In keeping with such efforts, the Departments have opted not to require employers to fill out any additional surveys. The Departments had, however, prior to the publication of the NPRM, engaged in multiple meaningful exchanges with the employer community to receive feedback on the most appropriate ways to assess the utility of the public workforce system for businesses.

In addition, through the implementation of the previously mentioned pilot program, the Departments will seek to discover the best methods for assessing how well workforce development aligns with business needs. There were a number of noteworthy measures suggested by State workforce agencies and nonprofit organizations, some of which will be included in the pilot, giving the Departments an opportunity to review some of the alternative methods that would help States to improve current relationships and establish strong future relationships with local employers, such as using the fill rate, employer referrals, the level of employer engagement, allowing any additional measure that the Governor may establish relating to services for employers, participation in targeted sector partnerships, the inclusion of recruitment, training, and other pre-hire services as part of the performance metric, using tiers to measure employer engagement, and the use of already existing electronic, or wage record data along with a myriad of other valuable recommendations. The Departments acknowledge the value of using a combination of metrics as pointed out by a number of commenters and will seek to delve further into the benefits of such an option through the use of the upcoming pilot program. No change to the regulatory text is being made in response to these comments.

Comments: One commenter stated that the provision is not applicable to the INA program because it is not a core program. Another commenter requested that the measurement of effectiveness of serving employers be eliminated as a measure for Adult Education and Literacy because the program already works closely with Career and Technical Education, the workforce system, and industry to ensure that it is providing programs and services to meet the needs of employers. A commenter recommended that any finalized measure not allow a program to be penalized because of factors beyond its control. Another commenter requested information about feedback obtained at the stakeholder meetings that involved employer partners.

Departments' Response: The Departments recognize that the INA program is not a core program. However, WIOA sec. 116(e)(5) requires that the performance accountability indicators (which include effectiveness in serving employers) be used to assess performance, and WIOA sec. 116(h)(2) requires agreement on the adjusted levels of performance for all of the primary indicators be reached between the Secretary of Labor and the entity carrying out activities under this section.

In response to the comment requesting that the measurement of effectiveness of serving employers be eliminated as an indicator for the AEFLA program, the Departments have no authority to exempt AEFLA programs from the indicator regarding effectiveness in serving employers. WIOA sec. 116(b)(2)(A) explicitly requires that the State primary indicators of performance for the AEFLA activities authorized under title II, as well as for other specified programs and activities, shall include indicators of effectiveness in serving employers. In response to concerns about programs being required to account for factors beyond their control, the Departments refer to § 677.170 and the associated discussions regarding factors to be considered when coming to agreement on negotiated levels of performance, including the objective statistical model. The Departments have provided a summary of comments raised at stakeholder meetings and during the regulatory process above. No change to the regulatory text is being made in response to these comments.

Comments: Commenters expressed a great deal of concern regarding the implementation of an indicator that would likely cause undue penalty.

Departments' Response: The Departments note that this concern weighed heavily in the decision to allow employee retention to serve as a means of measuring employer satisfaction. The Departments also note that concerns regarding penalties are an issue that will

be greatly ameliorated with the use of benchmark target setting via the statistical adjustment model. The statistical adjustment model also will address issues such as size discrepancies across States and local areas, labor shortages, and other external factors and provide objective, realistic goals for improvement. Application of the statistical model to both set targets and apply sanctions is most effective when assessing quantitative metrics, with the use of qualitative metrics making both efforts exponentially more complex. It is for this reason that, although the Departments understand the significance of using such methods to evaluate quality service to employers, more qualitative metrics were not included as part of the effectiveness in serving employers indicator.

As previously stated, a great deal of discussion regarding these and other proposed methods for measuring this indicator took place during previous webinars and town halls with State workforce agencies, members of the employer community, and other stakeholders. The outcome of these discussions was the three options listed within the NPRM. Understanding the importance of receiving extensive feedback on this issue, the Departments requested further input via the NPRM and the proposed WIOA Joint Performance ICR, the responses for which can be found on regulations.gov. No change to the regulatory text is being made in response to these comments.

Section 677.155(a)(2). The Departments added a new paragraph § 677.155(a)(2) after considering public comments received in response to the proposed WIOA Joint Performance ICR, particularly with regard to discrete populations that would be excluded from performance calculations. As noted in both the preamble to the NPRM and the supporting statement to the proposed WIOA Joint Performance ICR, because of the close relationship between the two documents, the Departments informed the public that comments on either the NPRM or the proposed WIOA Joint Performance ICR would be used to form the basis for necessary changes in both the Joint WIOA Final Rule and the finalized WIOA Joint Performance ICR. After reviewing WIOA sec. 116, the Departments have concluded that the purpose of the performance accountability system is to measure a program's performance with respect to the populations served and the services provided. A program's performance should be measured in terms of populations it is designed to serve or services it is designed to provide. In so doing, the performance accountability system will measure a program's performance more precisely. Given that sec. 116(f) of WIOA imposes sanctions for poor performance, it is critical that the Departments receive data that accurately reflect a program's performance. Explicitly defining which participants will be included in performance indicator calculations will allow a program's performance to be assessed appropriately. It is for this reason that the Departments proposed certain ''exclusions'' in the proposed WIOA Joint Performance ICR.

The Departments have added language in the Joint WIOA Final Rule at § 677.150(a)(2)(i) to exclude individuals receiving services under sec. 225 of WIOA from all primary performance indicators for purposes of performance accountability, except the measurable skill gains indicator (§ 677.155(a)(1)(v)). This is because the measurable skill gains indicator is the only performance indicator applicable to this population. In so doing, the Departments ensure programs serving these individuals will not be inadvertently subject to low performance levels with regard to those indicators not applicable to sec. 225 participants.

Section 677.150(a)(2)(ii) allows the Secretaries of Labor and Education to make further decisions as to the participants to be included in calculating program performance levels for other purposes that are necessary with regard to any of the primary performance indicators. Further information about those exclusions is provided through the WIOA Joint Performance ICR and related guidance.

Section 677.155(b)—Indicators for the Employment Service Programs

Paragraph (b) of § 677.155 remains unchanged from that proposed in the NPRM. The Departments did not receive any comments regarding this provision.

Section 677.155(c)—Indicators for the Youth Program

Paragraph (c) of § 677.155 implements the primary indicators for the WIOA title I youth program, as described in sec. 116(b)(2)(A)(ii) of WIOA. No change to the regulatory text is being made in response to public comments.

Comments: A few commenters supported the fact that the common performance indicators for youth programs apply only to WIOA title I youth programs. Some commenters remarked that employment rate measures are different for youth and adults because the youth measure allows enrollment in education and training to be included in the indicator, that this difference is likely to work against co-enrollment. These commenters suggested that 18 to 24 year old individuals co-enrolled in the WIOA title I youth program and other WIOA programs only be included in the youth indicators.

Departments' Response: Although the Departments recognize that subjecting such youth to adult and youth employment rate indicators could serve as a barrier to co-enrollment, WIOA only authorizes the youth indicators for the WIOA title I youth program and does not authorize these indicators for any other WIOA core program.

Comments: One commenter suggested that the following outcomes count toward the first two youth statutory indicators as successful outcomes: (1) Unsubsidized employment, (2) military employment, (3) education (secondary or postsecondary), (4) advanced training (long-term licensed or credentialed, for example, registered nurse training), and (5) occupational skills training.

Departments' Response: The Departments agree that these suggested outcomes, and additionally registered apprenticeships, are among the successful outcomes for the first two statutory indicators, but do not think that any change to the regulatory text is necessary to accommodate such outcomes as successful. Specific references to particular successful outcomes will be included in the WIOA Joint Performance ICR.

Comments: One commenter suggested that supplemental data be allowed to measure employment in the second and fourth quarters after exit because UI wage record data alone do not capture the full spectrum of employment options.

Departments' Response: The Departments agree and have chosen to permit the States to use non-wage record matches (supplemental information) in calculating the performance indicators, subject to use consistent with the Departments' guidance on this issue. More information can be read about this in the preamble to § 677.175 below. That guidance regarding the use of supplemental wage data will be relevant to the use of supplemental data to determine employment status.

Comments: One commenter recommended consideration of planned short-term employment by youth as a positive outcome, such as internships. Another commenter requested that service programs such as AmeriCorps, NCCC, and Public Allies be counted as ''unsubsidized employment.'' A

commenter recommended that placement in unsubsidized employment or postsecondary education count as a success regardless of the quarter in which it occurs, rather than focusing only on the second and fourth quarters after exit. Similarly, one commenter asked that attainment of initial employment count as a successful outcome (*i.e.,* a placement rate).

Departments' Response: As required by sec. 116(b)(2)(A)(ii)(I) and (II) of WIOA, only unsubsidized employment will count as a positive outcome for employment in the first and second indicators. Internships that are subsidized would not count as a positive employment outcome, but they are an important service in preparing youth for unsubsidized employment. However, service programs, such as AmeriCorps, would count as a positive outcome in the first and second primary youth indicators because these service programs are considered training for the purposes of those youth indicators. The Departments will clarify the categorization of service programs in the WIOA Joint Performance ICR. The first and second primary youth indicators measure the percentage of participants in unsubsidized employment, or in education or training activities, during the second and fourth quarters after exit. The Departments do not have the authority to deviate from the WIOA statute by counting participants' status in the first and third quarters after exit, or by counting participants as successful simply upon attainment of initial employment.

Comments: A few commenters expressed concern that the requirement to track educational attainment up to a year after exit may prove infeasible. One commenter favored alignment of reporting that is required on post-school outcomes.

Departments' Response: Although the Departments recognize that tracking attainment up to a year after exit is difficult for an often-transient youth population, the WIOA title I youth program includes a follow-up services program element that is required to last not less than 12 months after completion of participation. The requirement to capture program outcomes 1 year after exit is consistent with the follow-up services program element. In addition, follow-up services help ensure youth receive the support they need as they transition to the world of work or postsecondary education. Regarding alignment of reporting on post-school outcomes, WIOA requires the specific indicators for youth programs identified in WIOA sec. 116(b)(2)(A)(ii). No change to the regulatory text is being made in response to these comments.

Comments: A number of commenters stated that the Departments only should measure status of employment or education in the second quarter after exit, rather than an entered employment or education rate that includes only those not employed or not in education prior to program enrollment. This commenter also asked for a clarification of the definition of education and training activities related to the two youth indicators that measure the percentage of participants in unsubsidized employment or in education or training activities. One commenter suggested that any type of education should count in the two youth indicators related to employment or education or training.

Departments' Response: The Departments agree that the first two indicators only should measure status of employment or education in the second and fourth quarter after exit, respectively, regardless of employment or education status at enrollment. The definition of education and training activities related to the two youth indicators will be included in the WIOA Joint Performance ICR. Both secondary and postsecondary education will count as successful outcomes for the two youth indicators related to employment or education or training. No change to the regulatory text is being made in response to these comments.

Comments: Many commenters addressed the third primary performance indicator, which measures median earnings in the second quarter after exit. The commenters reasoned that areas that are highly successful in exiting youth to postsecondary education and training should not be penalized; therefore, youth who are working part-time and are also in education or training activities should be excluded from the calculation of median earnings. In addition, a commenter suggested that the focus of services to youth is education and training and, therefore, a measure of median earnings does not seem appropriate.

Departments' Response: WIOA requires all participants with earnings in the second quarter after exit to be included in the earnings indicator, including participants engaged in education or training programs. Therefore, youth who are working part time while in education or training activities will be included in the calculation of median earnings. Those engaged in both employment and education and training will be taken into account in both the statistical adjustment model and through target setting. No change to the regulatory text is being made in response to these comments.

The fourth primary indicator for youth measures attainment of a recognized postsecondary credential, or secondary school diploma or its recognized equivalent, by participants who are enrolled in an education or training program (excluding those in on-the-job training or incumbent worker training), subject to the caveat that such participants only are measured as successes if the participant is also employed or enrolled in an education or training program leading to a recognized postsecondary credential within 1 year from program exit. The language of this indicator 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) above and refer readers to this section for more information on this indicator. No particular comments were received regarding the implementation of the fourth primary youth indicator, other than discussed above. The Departments are implementing § 677.155(c)(4) as revised.

The fifth primary indicator documents measurable skill gains. The language of this indicator is the same as the indicator in § 677.155(a)(1)(v). The Departments have provided an in-depth explanation of these changes in the preamble for § 677.155(a)(1)(v) above. No particular comments were received regarding the implementation of the fifth primary youth indicator, other than discussed above. The Departments are implementing § 677.155(c)(5) as revised and discussed in more detail above with respect to § 677.155(a)(1)(v).

The sixth primary indicator measures effectiveness in serving employers. The Departments' approach for measuring this indicator and the resulting changes to the regulatory text are discussed in significant detail in the preamble discussion for § 677.155(a)(1)(vi) above and that approach is applicable for this indicator for purposes of calculating performance under the title I youth program.

Comments: A commenter suggested that the proposed youth indicators in § 677.155(d)(1) and (2) sufficiently measure employer satisfaction and that, to the extent that those measures do not sufficiently measure employer satisfaction, a brief survey could be developed and administered to measure employer satisfaction.

Departments' Response: The Departments have concluded that the effectiveness in serving employers

indicator is statutorily required as a separate indicator from percentage of participants in education or training activities, or in unsubsidized employment, during the second and fourth quarters after exit from the program. The Departments will be implementing a pilot program, as discussed above, to assess measures of effectiveness in serving employers.

Comments: One commenter stated that the introductory description provided under this proposed section is confusing regarding the primary indicators, particularly when distinguishing between the adult and youth indicators. The commenter suggested that the indicators of performance for adults and youth be separately described so there is no confusion in the field as to which indicators apply to each population group.

Departments' Response: As suggested, the Joint WIOA Final Rule separates adult and youth indicators to avoid confusion.

Comments: One commenter suggested that the VR program report youth performance separately just as title I youth programs.

Departments' Response: Section § 677.155(d) of the NPRM contained the performance indicators set forth in sec. 116(b)(2)(A)(ii) of WIOA, which applies only to the title I youth program. These youth performance indicators are now found in the final regulatory text at § 677.155(c). WIOA sec. 116(b)(2)(A)(i) requires all other core programs, including the VR program, to comply with the primary performance indicators set forth in sec. 116(b)(2)(A)(i) of WIOA and § 677.155(a)(1). Therefore, there is no statutory authority for the Departments to do as the commenter suggests.

The Departments understand that the VR program pays for training and education needed for individuals, including youth, to obtain employment. Because the youth indicators in § 677.155(c) are not applicable to the VR program, State VR programs are not required to report outcomes under the youth indicators. Adult and youth performance outcomes can be differentiated in the RSA–911 data, as has always been the case, with no need for additional reporting burden.

Section 677.160 What information is required for State performance reports?

Section 677.160, which implements sec. 116(d)(2) of WIOA, identifies the information States are statutorily required to report in the State performance report, including levels achieved for the primary indicators of performance. No substantive changes have been made to this section.

Comments: Some commenters expressed concern that in many States and tribal nations it will be time-consuming and costly to collect the data and produce a report for all core programs.

Departments' Response: The Departments understand the concerns expressed by some of the commenters regarding the collection of data needed to produce the annual reports and have made every effort to minimize the burden and cost to States by incorporating only necessary data elements in the Departments' data collection instrument provided through the WIOA Joint Performance ICR. Prior to amending each Department's data collection instrument, considerable time was taken to ensure the required data elements collected would be consistent across all core programs and that the only elements added would be necessary to meet the requirements under sec. 116 of WIOA, thereby minimizing the burden as much as possible. Each core program will be responsible for submitting performance reports to their respective Federal agency, just as has been done prior to WIOA. Further, the Departments clarify in this response that there is no requirement in WIOA or the Joint WIOA Final Rule that data reporting be integrated among all core programs. As discussed in more detail with respect to the issue of ''common exit'' in the preamble for § 677.150(c) above, DOL intends to work towards developing an integrated reporting mechanism for the core programs it administers. The Departments are open to States wishing to submit integrated performance reports, but a single report submission across core programs is not required. If a State were to do this, it must ensure that it reports on all required reporting elements—both for the common performance accountability system under sec. 116 of WIOA and for each of the program-specific reporting elements.

Comments: Commenters recommended that the Departments develop guidance, technical assistance, or an integrated set of reporting specifications that will allow States to submit customer data in the same format for each of the six core programs.

Departments' Response: The Departments recognize the need for, and will develop and disseminate, guidance and associated technical assistance related to the preparation and submission of joint and WIOA title-specific performance reporting, and the WIOA Joint Performance ICR.

Comments: One commenter suggested that the Departments, working with State and local systems, should consider how core programs can collect and provide information on the amount of training provided to program participants.

Departments' Response: The Departments acknowledge the comment and have concluded that data that will be collected through the WIOA Joint Performance ICR associated with this Joint WIOA Final Rule are sufficient to meet the requirements of sec. 116(d)(2) of WIOA. Prior to imposing additional information collection requirements, the Departments must consider them in the context of associated burden and cost. The Departments have concluded that the final information collections meet the statutory requirement while minimizing reporting burden to the extent possible.

Comments: Commenters urged the Departments to allow the State and local agencies that administer the core programs to have access to the data they need, such as UI wage record data. A commenter added that in some States, a release of information form must be signed by the participant. Another commenter recommended that States should be given the option to await the results of the national data integration workgroup before creating their State interoperable system.

Departments' Response: With regard to the commenters' concerns about the availability of quarterly wage record information and the need for, in some cases, informed consent for the disclosures required under applicable privacy and confidentiality laws and regulations for all programs, the Departments did not modify this regulation. The Departments are developing, and will disseminate, guidance that covers the allowable disclosures and processes through which disclosures can be made under 20 CFR part 603, 20 U.S.C. 1232g and 34 CFR part 99 and 34 CFR 361.38. Additionally, work is underway to re-negotiate the Wage Record Interchange System Data Sharing Agreements to establish pathways to the wage record matching required for all core programs to meet their performance reporting requirements.

Paragraph (a)(1) of § 677.160 requires the total number of participants served and total number of participants exited, disaggregated by the number of individuals with barriers to employment and by numbers of participants co-enrolled in core programs. No change to the regulatory text is being made in response to these comments.

Comments: Commenters supported the provision in § 677.160(a)(1)(i) that would require reporting to be disaggregated by categories for individuals with barriers to employment. Commenters also urged that the requirement apply to ''reportable individuals'' as well as ''participants.'' Those commenters generally suggested that the information in the reporting requirements should be disaggregated based on each disability subset and not the entire group.

Departments' Response: The Departments acknowledge the identified potential benefits for State reporting of disaggregated data for ''reportable individuals'' in addition to ''participants.'' For the purpose of § 677.160, the Departments are addressing only the requirements for States' annual performance report as required under sec. 116(d)(2) of WIOA, which requires reports on only participants. It should be noted that the different core programs already collect and report information pertaining to ''reportable individuals'' through their separate individual reporting vehicles.

With regard to the discrete disability categories, RSA currently collects a number of data elements, including the primary and secondary disability type, for individuals who have been determined eligible for VR services and would be considered a ''reportable individual.'' The data can be disaggregated in different categories, including by disability type. The final RSA–911, which is published concurrently with this Joint WIOA Final Rule, has been revised to align with the additional WIOA requirements. No change to the regulatory text is being made in response to these comments.

Comments: A commenter recommended that the requirement to collect information on barriers to employment be tied to the point at which the initial IPE is signed.

Departments' Response: The Departments recognize that different State programs have a number of questions regarding how each of the core programs will collect the required data elements, including at what point required demographic information will be collected to produce the most reliable information and how the current consumer information will be updated to meet the new WIOA requirements. These issues will be addressed through guidance related to the WIOA Joint Performance ICR or the Department-specific ICRs. The Departments also note that § 677.150(a)(1) defines participants for the VR program as an individual who has an approved and signed IPE, and who has begun to receive services. Therefore, data elements required on ''participants'' must comply with the definition applicable to that term for the VR program. No change to the regulatory text is being made in response to these comments.

Comments: Commenters inquired about implementing a count of total participants and total exiters, disaggregated by co-enrollment in any of the core programs. A commenter expressed concern about being able to obtain the information. For disaggregated counts for those who participated by co-enrollment as required by § 677.160(a)(1)(ii), commenters warned that integrated case management and reporting systems would need to be in place, and the commenters requested technical assistance regarding how core programs housed in different agencies can share and compare participant data to meet reporting requirements. One commenter, however, supported the requirement to report data disaggregated for co-enrollment in any of the core programs.

Departments' Response: The Departments acknowledge that the absence of integrated case management or integrated reporting systems poses challenges to ensuring uniform and easy access to data across programs. The Departments have concluded that integrated data systems would allow for unified and streamlined intake, and case management and service delivery, and would overcome many such challenges. The Departments also note that such systems are not widely used or in place currently at the State level, and encourage States to examine ways in which this may be developed or implemented across core programs. The Departments note that data system integration ranges from data sharing between existing systems to employing consolidated systems. However, in the absence of such systems, the Departments encourage all programs to ensure strong partnerships and collaborative workspaces in which to ensure all programs can meet their reporting requirements. In addition to planning and conducting training and technical assistance on data sharing, the Departments will issue joint guidance for matching education and wage records in order to assist States in providing performance information required under WIOA. Additionally, the Departments will work with State and Local WDBs, 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. No change to the regulatory text is being made in response to these comments.

Paragraph (a)(2) of § 677.160 requires disaggregated performance levels based on barriers to employment, age, sex, race, and ethnicity. Certain commenters favored this provision. No substantive change was made to this section.

Paragraphs (a)(3) through (a)(7) of § 677.160 require information on participants who received career services and training services. The Departments have revised § 677.160(a)(3), (4), (6) and (7) to specify that career services and training services are two different services, not one type of service. No change was made to § 677.160(a)(5).

Comments: Several commenters stated that tracking these detailed costs would be overly burdensome and exceed the value of the information gained.

Departments' Response: The Departments recognize the concerns identified by the commenters about the States' ability to collect data pertaining to career services and training services, including expenditures. However, the data elements contained in the State performance report, including the data elements on career services and training services, are required by statute. No change to the regulatory text is being made in response to these comments.

Comments: A few commenters recommended that reporting begin with a 1 year period and work up to 3 years.

Departments' Response: The Departments have concluded that these provisions are prospective provisions that do not require retroactive collection of information. Reporting begins in PY 2016, and by PY 2018 States will have reported 3 years of data. No change to the regulatory text is being made in response to this comment.

Comments: Commenters asked for a definition of ''career and training service'' and the relationship to ''vocational and training services'' in the VR program regulations.

Departments' Response: WIOA defines both career services and training services in sec. 134(c)(2) and (c)(3)(D), respectively. Additionally, further information is provided in § 678.430 of this Joint WIOA Final Rule about career services in the one-stop delivery system. Although the definitions are contained in statutory provisions relevant only to the title I core programs, sec. 121 of WIOA (which applies to all core programs) requires each of the core programs to provide career services and training services, as applicable to the program, thereby making those

definitions relevant to all core programs, including the VR program. Furthermore, these services are consistent with the types of services provided by the VR program and with the data collected through the VR program's RSA–911 collection instrument.

With respect to § 677.160(a)(3) (4), (6), and (7), the Departments have revised the regulatory text to address commenter requests for clarity. The previous language at § 677.160(a)(3) referred to ''the total number of participants and exiters who received career and training services for the most recent program year and the 3 preceding program years, as applicable to the program.'' This has been revised to refer to ''the total number of participants who received career services and the total number of participants who exited from career services for the most recent program year and the 3 preceding program years, and the total number of participants who received training services and the total number of participants who exited from training services for the most recent program year and the 3 preceding program years as applicable to the program.'' In so doing, the Departments make clear that career services and training services are two different types of services, not one type of service. The revised language is also more consistent with the statutory provision by referring to ''participants who exited'' rather than ''exiters'' since these final regulations define ''exit,'' not ''exiter.'' A similar revision was made to § 677.160(a)(4). Likewise, proposed § 677.160(a)(6) previously referred to ''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.'' This language has been revised to refer to ''the amount of funds spent on career services and the amount of funds spent on training services for the most recent program year and the 3 preceding program years, as applicable to the program.'' A similar revision was made to § 677.160(a)(7). These changes clarify that the Departments interpret sec. 116(d)(2)(D) to require the collection and reporting on participants who receive career services and participants who receive training services, as well as participants who exited from career services and training services, as a single point of collection and thus does not require an itemized collection and reporting on each of the various career services or each of the various training services that a program provides. Instead, the amount to be reported is the total amount spent on career services and the total amount spent on training services.

Comments: Paragraph (a)(3) of § 677.160 requires reporting on the number of participants and exiters who received career services and training services. A number of comments were received regarding the difficulty of tracking costs associated with expenditures of funds on such services, as required in paragraph (a)(6).

Departments' Response: The Departments will provide technical assistance or guidance in regard to tracking costs associated with expenditures of funds on career and training services.

No particular comments were received in regard to § 677.160(a)(4).

Paragraph (a)(5) of § 677.160 requires reporting on the percentage of participants who obtained training-related employment through WIOA title I, subtitle B programs.

Comments: Some commenters warned that determining what constitutes training-related employment under paragraph (a)(5) is highly subjective and requires clarification.

Departments' Response: The Departments will provide more information regarding what constitutes training-related employment services through the WIOA Joint Performance ICR and through guidance. No change to the regulatory text is being made in response to these comments.

Paragraphs (a)(6) and (a)(7) of § 677.160 require reporting on the amount of funds spent on career services and training services, and the average cost per participant for participants receiving career services and training services.

Comments: Commenters requested guidance on whether the average cost per participant for career and training services refers to the cost to serve the individual or the costs of the career and training services, and whether administrative costs are included. Separately, one of these commenters also asked for the meaning of ''type'' of service needed for disaggregation in reporting under paragraph (a)(6).

Departments' Response: The Departments will provide guidance regarding calculations of costs in the WIOA Joint Performance ICR. The Departments have revised § 677.160(a)(6) to reflect the statutory language, as WIOA did not require reports on the amount of funds spent on career services and training services to be disaggregated by the type of career service or training service. The language of the regulation no longer refers to the ''type'' of service.

Paragraph (a)(8) of § 677.160 requires that States report on the percent of the State's annual WIOA allotment expended on administrative costs.

Comments: A commenter sought clarification on whether this means the percentage of each core program's annual allotment spent on administrative cost, or the State as a whole.

Departments' Response: The Departments want to clarify that § 677.160(a)(8) applies only with respect to the allotment under WIOA sec. 132(b) and not with respect to allotments under other core programs. No change to the regulatory text is being made in response to this comment.

Paragraph (a)(9) of § 677.160 requires information that facilitates comparisons with programs in other States.

Comments: Some commenters opposed a requirement for additional data collection and preferred, for example, development of shared tools/surveys for measuring the quality of services to one-stop center customers.

Departments' Response: The Departments note that WIOA allows consideration of information that is necessary to facilitate comparison of programs across States, which could potentially include the development of shared tools or surveys. No change to the regulatory text is being made in response to these comments. Further, the Departments note that implementation of this provision would be accomplished through the information collection request process.

Comments: The Departments also sought comments on the potential inclusion of a supplemental customer service measure, including suggestions on how to structure such a measure and whether the inclusion of such a measure would be valuable. Commenters did not favor developing a universal access point for customer feedback to be provided with regard to the one-stop centers, though other commenters expressed support for State or local measures of customer satisfaction. One commenter asserted that such information would serve as a foundation for substantive strategic planning, continuous improvement, program research and evaluation, and the dissemination of best practices nationwide.

Departments' Response: The Departments are considering various mechanisms available to produce a national measure of customer satisfaction, with particular interest in a measure akin to the net promoter score used commonly in business and industry. Additionally, the Departments intend to collect information on

customer satisfaction efforts used by the State and local areas through the WIOA Joint Performance ICR as well as information on what States are doing to leverage such information in the management of their programs. The Departments continue to welcome input and participation from States and local areas on how to capture customer satisfaction as it pertains to usage of the public workforce system.

Comments: Other commenters also supported the provision and suggested customer service measures to assess the quality of services, but warned that guidance is needed. A few commenters reasoned that a customer service measure is valuable only if the local area receives the information and has a mechanism to reach out to the customer and make the experience better.

A few commenters warned that obtaining the data would be difficult and suggested that the measure should be left to the discretion of the State or local government. Commenters recommended that the provision should be part of the continuous improvement process at the local level. In addition to the approach described above, the Departments also are interested in the work that has been developed and used at the State and local levels with regard to customer satisfaction, as well as what actions States and Local areas have and will take in response to such feedback.

Departments' Response: At this time, the Departments are not modifying the regulatory text to regulate such activities. As discussed above, the Departments recognize that, a national, State or local customer satisfaction measure would require guidance and technical assistance that will be provided through the mechanisms available such as the information collection request process, which allows for notice and public comment, program guidance, and technical assistance. The Departments reiterate their intent to implement a uniform, national customer satisfaction survey, applicable to both participants and reportable individuals. While this customer satisfaction survey will not be tied to accountability provisions, and the survey results will not be factored into determinations of sanctions, customer satisfaction will be a factor considered in the certification of one-stop centers. The Departments anticipate the survey will encompass two elements: A national net-promoter score-type indicator will be issued through the amended WIOA Joint Performance ICR with a standard methodology; and a State-based methodology that States will develop and States and Local WDBs will use for one-stop center accountability and customer service improvement. A focus from the Federal level will be on understanding what States and local WDBs did with the results, which is critical to using the data and information gathered towards the betterment of service delivery and design. When the Departments collect information on these activities, such actions and instructions will be conveyed through the information collection process that is also subject to notice and public comment.

Comments: Paragraph (a)(10) of § 677.160 requires a State narrative report regarding pay-for-performance contracting. A local government recommended that the Departments provide a clear definition of pay-for-performance contracts.

Departments' Response: The Departments did not introduce a definition of pay-for-performance contracts under this section of the regulation. The Departments refer to 20 CFR part 683, subpart E, where the allowance and guidelines for pay-for-performance activities is more fully described (*see* DOL WIOA Final Rule, published in this issue of the **Federal Register**). Paragraph (a)(10) of § 677.160 remains unchanged from that proposed in the NPRM.

Paragraph (b) of § 677.160 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.

Comments: Commenters suggested that States are likely to have several ''cell sizes'' that do not meet the standard of statistical reliability; therefore, reporting requirements should include alternative methods for summarizing data into larger aggregates. A commenter requested guidance on an acceptable level of disaggregation of data.

Departments' Response: The Departments recognize that disaggregation can produce certain cell sizes that fall below the aggregation levels that are allowed in order to protect the data from yielding PII.

The Departments did not impose a minimum disaggregation level in this section of the NPRM or this Joint WIOA Final Rule and will provide additional clarity through guidance regarding aggregation that is statistically significant and reliable yet protects the identity of individuals served through the programs. In developing such guidelines and guidance, the Departments have considered industry standards such as those established by the National Institute of Standards and Technology (NIST), the Family Educational Rights and Privacy Act (FERPA), the confidentiality regulations for the VR program at 34 CFR 361.38, the UC confidentiality regulations found at 20 CFR part 603, the Social Security Act sec. 1137(a)(5) as well as State laws that govern aggregation levels and factors that can be used to affect the level of suppression required to maintain the privacy and confidentiality of participant data. No change to the regulatory text is being made in response to these comments. Furthermore, the Departments reiterate their interpretation of this statutory provision of WIOA, as noted in the NPRM at 80 FR 20474, 20589 (April. 16, 2015). 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 requires States to comply with sec. 116(d)(6)(C), which ensures the Departments receive statistically reliable information and protects participants' privacy. The Departments are implementing this regulation as proposed.

Paragraph (c) of § 677.160 requires that the State performance report include a mechanism of electronic access to the State's local area and ETP performance reports. This provision does not require a State to submit the actual local area and ETP performance reports with its State report. Failure to provide a mechanism of electronic access to the State's local area and ETP performance reports will constitute an incomplete State performance report submission, and thus trigger sanctions. No comments were received regarding this electronic access reporting requirement. This section remains unchanged from that proposed in the NPRM.

Paragraph (d) of § 677.160 states that States and local areas must comply with the requirements in sec. 116 of WIOA as explained through joint guidance that the Departments will promulgate. This section remains unchanged from that proposed in the NPRM.

Section 677.165 May a State establish additional indicators of performance?

Section 677.165 reflects the WIOA provisions in sec. 116(b)(2)(B) that a State may identify in the Unified or Combined State Plan additional performance accountability indicators. For example, a State could add an indicator for attaining U.S. citizenship, work readiness, completion of work-based learning, or any other indicator of State significance. This provision of additional performance indicators proposed by the State remains

unchanged from WIA. There were no comments on proposed § 677.165. There were no substantive changes made to this section.

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

Section 677.170 outlines the process that will be followed and the factors that will be considered in determining adjusted levels of performance. WIOA uses the term ''adjusted levels'' to refer to both the levels agreed to prior to the start of a program year, as well as the adjustment done using the objective statistical model at the close of the program year. In order to distinguish between the two adjustment processes described in statute, this section was revised to use two different terms for each process, specifically ''negotiated levels of performance'' and ''adjusted levels of performance.'' Section 677.170 was revised to provide specific distinctions among expected levels, negotiated levels, and adjusted levels of performance. The section explains the process under which levels of performance are negotiated, adjusted, and then calculated.

Section 677.170(a)(1) implements the requirement in sec. 116(b)(3)(A)(iii) that States provide expected levels of performance in the initial submission of the Unified or Combined State Plan for the first 2 years of the plan. In addition, the Departments are requiring in § 677.170(a)(2) that the States submit expected levels of performance for the third and fourth years before the start of the third program year covered by the Unified or Combined State Plan consistent with §§ 676.135 and 676.145, as part of the State Plan modifications under sec. 102(c)(3)(A) of WIOA.

Comments: One commenter questioned whether performance levels required in the State Plans are the proposed standards or the negotiated standards since the term ''expected'' is used. The commenter also recommended that the State WDB coordinate and participate in performance negotiations for each partner and that the negotiations be completed with States at least 45 days before the statutory deadlines for submission of the 4-year plans and the 2-year plan modifications.

Departments' Response: Section 116(b)(3)(A)(iii) of WIOA requires that each State identify expected levels of performance for each of the corresponding primary indicators of performance for each of the core programs for the first 2 program years covered by the Unified or Combined State Plan. The expected levels of performance are those submitted by the State in the initial submission of the State Plan prior to negotiation. The expected levels of performance will be used to reach agreement with the Departments on State negotiated levels of performance. Therefore, the expected performance levels are similar to proposed goals, reflecting the State's expectations for its performance. These expected levels, however, will be adjusted through negotiations between the State and the Departments in accordance with sec. 116(b)(3)(A)(iv) of WIOA. Once the negotiated levels of performance are agreed upon, these levels will be incorporated into the approved Unified or Combined State Plan. Section 677.170(a) reflects this statutory requirement. The Departments did not modify the regulation to require coordination across core programs with regard to the negotiations process, as recommended by the commenter. The Departments agree that the commenter's suggestions are important for the purposes and priorities of WIOA and strongly encourage coordination across the core programs and other partner programs with respect to negotiating performance levels for all programs operating in a State. This section is consistent with the statutory requirements; the timing of the negotiation is connected to the approval of the State Plan. The Departments will provide guidance about the negotiation process.

Section 677.170(b) requires that the State reach agreement with the Secretaries on negotiated levels of performance based on the factors in WIOA sec. 116(b)(3)(A)(v). The Departments reiterate that WIOA uses the term ''adjusted levels'' to refer to both the levels agreed to prior to the start of a program year, as well as the adjustment done using the objective statistical model at the close of the program year. This paragraph was revised to use the term ''negotiated levels'' as appropriate, to distinguish between the two processes.

The Departments sought comments on whether any additional factors, beyond those identified in the proposed regulation, should be considered in developing the statistical adjustment model, and the best approach to updating the model as necessary.

Comments: Several commenters requested clarification of the requirement for promoting continuous improvement, as set forth in paragraph (b)(3) of § 677.170. One commenter recommended that the Departments consider embracing the full concept of continuous improvement or eliminate the term from the regulations because a true continuous improvement measure may have nothing to do with increasing a performance measure and may seek to improve a process. Another commented that continuous improvement can be defined in a variety of ways, including as improvements in efficiency. Commenters also requested that continuous improvement be defined in the regulation.

Departments' Response: The Departments want to make clear that sec. 116(b)(3)(A)(v) of WIOA requires the negotiated levels of performance take into account four factors, including, among other things, how the levels of performance promote continuous improvement. The Departments recognize the complexities involved in using a continuous improvement factor in performance negotiations. However, the Departments are unable to remove the continuous improvement factor from the regulation because it is a statutory requirement. The Departments will issue guidance on the performance negotiations process that will provide additional information regarding how the factor will be applied. No change to the regulatory text is being made in response to these comments.

Section 677.170(c) provides that the Secretaries will disseminate an objective statistical adjustment model that will be used both to reach agreement on the State negotiated levels of performance and to revise the negotiated levels at the end of a program year, to establish the adjusted levels of performance. The objective statistical adjustment model will account for actual economic conditions and characteristics of participants, including the factors required by WIOA sec. 116(b)(3)(A)(v)(II). The Departments will consider identified statutory factors and other factors, which through empirical support are established to have an effect on employment or skill outcomes and are consistent with the factors identified in WIOA. The Departments also will publish guidance that includes how the model was developed, what factors were considered, and how the results are interpreted.

The regulation reflects the statutory requirement that the objective statistical model consider certain factors. The differences among States in actual economic conditions, as set forth in § 677.170(c)(1) for required inclusion in the statistical adjustment model, include the same economic conditions identified in WIOA sec. 116(b)(3)(A)(v)(II)(aa). The characteristics of participants, as set forth in § 677.170(c)(2) for required inclusion in the statistical adjustment

model, include the factors identified in WIOA sec. 116(b)(3)(A)(v)(II)(bb).

Comments: One commenter expressed concern that including participants' disability status as a factor in the objective statistical model could unintentionally undermine the goal of increasing the number of participants with disabilities in integrated and competitive employment settings.

Departments' Response: The Departments note that disability status is a statutorily required factor for the objective statistical model. The Departments also note that continuous improvement is a factor in establishing the negotiated levels of performance.

Comments: In the preamble to the NPRM, the Departments requested comments specifically concerning additional factors to consider in developing the statistical adjustment model. Many commenters supported the commitment to use a statistical model and offered additional factors, including race, Hispanic ethnicity, age, gender, veterans in the area, severity of disability (*e.g.*, receiving Social Security disability benefits), seasonal employment, self-employment, minimum wage and other economic data applicable to the local area, nature of predominant employers in the area, quality of educational and training facilities in the area, crime rate in the area, public transportation and geographic barriers in the area, unemployment rate applicable to young people, lack of a high school diploma, individuals not in the workforce, and ratio of earnings at program entry to child support arrearages.

Departments' Response: Upon consideration of comments regarding additional factors to be included in the model, the Departments concluded additional regulation is not required to include additional factors. The Departments intend, in accordance with the statutory requirements for the use of an objective statistical model, to consider those identified statutory factors along with any other factors either established within WIOA or through empirical support (and which are consistent with the factors in the statute) to have an effect on employment or skill outcomes as measured by the primary indicators of performance established in § 677.155. Factors that are included in the model will be based on the application of empirically supported statistical analyses used to determine the effect of a particular factor on participant outcomes. The statistical adjustment model will be reviewed periodically and may be revised with appropriate consultation to ensure its accuracy and utility.

Comments: A commenter asserted that adjusted performance levels should include a factor for small States, single-area States, and areas of generally lower population.

Departments' Response: The Departments are considering all potential factors in an effort to establish a model that is evidence-based and supported by the literature. Having conducted a review of the existing literature, the Departments have concluded that small States and single-area State structures would be accounted for by those variables that capture industrial structures, unemployment rates, and shares of the population represented by race and educational levels. No change to the regulatory text is being made in response to these comments.

Comments: One commenter suggested that the Departments be mindful of the potential burden that requiring additional data collection would create and urged reducing reporting burdens and simplifying reporting requirements.

Departments' Response: The Departments are mindful of the reporting burden that would result from requiring additional information on participants. In this case, the Departments aim to work with States as well as other agencies that may have administrative data that could be used to populate the model based on established, empirical evidence that such information is shown to have an effect on the outcomes being measured.

Comments: A few of the commenters suggested that the Secretaries may need to establish separate statistical models for different programs, such as those for youth and for adults, and suggested that the models should be tested over a trial period and re-examined. Commenters also recommended regular updates to the models.

Departments' Response: Section 116(b)(3)(A)(v)(II) of WIOA requires that adjustments be made using ''the objective statistical model,'' which the Departments will build on a common framework for all core programs to allow for programmatic differences between programs. The model will be examined and revised as necessary. No change to the regulatory text is being made in response to these comments.

Comments: One commenter raised concerns about the title II program not collecting individual records at the Federal level and stated that such records are absolutely necessary to develop and operate statistical models. The commenter urged the Departments to develop a common reporting mechanism. Other commenters noted that title II programs lack experience using adjustment models and requested additional guidance and technical assistance.

Departments' Response: The Departments acknowledge that the use of aggregate data for the title II AEFLA program creates shortcomings for developing an adjustment model because, among other things, the results only can be used to adjust performance at the aggregate level (*i.e.*, State) and results from these models cannot be applied to any sub-level (*e.g.*, city, county). However, the Departments disagree that individual data are absolutely necessary to develop a statistical adjustment model for State-level adjustments. Aggregate data may be used in statistical adjustment models when individual records are not available. The Departments have already developed statistical models for other program purposes that produce accurate results using aggregated data and show that results are comparable for State level adjustments, regardless of whether individual data (*i.e.*, disaggregated data) or aggregate data are used. The Departments note that for the AEFLA program under title II, ED will provide technical assistance to States in applying the statistical adjustment model. The Departments will develop procedures to minimize burden to States when using the model to generate adjusted levels of performance. No change to the regulatory text is being made in response to these comments.

Comments: A few commenters warned that there is limited or no statistical tribal data available that captures economic circumstances for the various Indian and Native American geographic service areas. One of these commenters added that a regression model that factors in local economic conditions will need to be developed for the INA program.

Departments' Response: In response to the commenter's concern about developing an accurate regression model to establish levels of performance for INA program grantees, the Departments recognize that labor market information (LMI) for American Indian geographic service areas may not be as reliable as that for other areas. However, the regression model also factors in the characteristics of participants served by the grantee and is, therefore, not totally dependent on LMI. Despite the potential for inaccurate LMI data for American Indian geographic service areas, the Departments are confident a regression model can be developed that establishes fair and attainable levels of performance for each INA program grantee's service area. The Departments envision developing further guidance regarding

INA adult performance indicators. No change to the regulatory text is being made in response to these comments.

Comments: Some commenters did not support the use of an adjustment model, or express concerns about the design of the State performance accountability systems, because of the temptation to serve those individuals who are more likely to achieve positive outcomes. This commenter also noted that the fact that the State has sufficient tools to evaluate current and projected performance to identify intervening occurrences that would trigger re-evaluation of performance.

Departments' Response: While the Departments understand the concerns expressed, sec. 116(b)(3)(A)(v)(II) of WIOA requires the use of an objective statistical model to adjust the State levels of performance based on actual economic conditions and characteristics of participants. The Departments caution that any service provider tempted to utilize the tactics described by the commenter should consider the impact on future performance levels, which may be affected because of relatively lower numbers or percentages of hard-to-serve populations and other populations with barriers to employment. No change to the regulatory text is being made in response to this comment.

Comments: Commenters added that the model will need to account for varying levels of impact of a particular demographic or local economic condition in different parts of the country, in particular race and ethnicity, offender status, dependence on public assistance, local minimum wage, and the local unemployment rates for young adults. Some commenters recommended these factors be explicitly mentioned in the regulation. One such commenter suggested that select CEOs participate in the selection of factors in different parts of the country.

Departments' Response: The Departments are considering a State fixed effect variable. Such a variable would account, in essence, for the quality of the programs and their services. The Departments, after consulting with various stakeholders and particularly in consultation with expert reviewers, identified that the most important piece of information that is not directly included within the statistical adjustment model for the purposes of the performance accountability system, is the quality of the programs and services. The model is being developed with consideration of all participant and student variables required by WIOA and the potential State specific factors that could be accounted for through a State fixed effect variable. This variable ultimately could serve the same purpose statistically as including additional individual characteristics and any other State characteristic not included in the model. With regard to participation of select CEOs in the selection of factors to be included within the statistical adjustment model, the Departments note that the methodology, including the factors in the model, will be available for public comment and review. Moreover, WIOA sec. 116(b)(3)(A)(viii) requires the Departments to develop an objective statistical model in consultation with a variety of stakeholders identified in sec. 116(b)(4)(B), who would include CEOs. No change to the regulatory text is being made in response to these comments.

Comments: Some commenters also suggested that States should be allowed to provide additional information specific to the State that may not be fully accounted for in the national statistical models when setting performance targets. Some commenters suggested that State and local areas should be able to document this information and use it in performance negotiations. Others stated that additional State information is critical because it is not feasible to develop a single statistical model with one set of demographic and economic variables that is equally accurate for all States and all boards.

Departments' Response: The Departments note that States are permitted to provide additional information concerning factors listed in sec. 116(b)(3)(A)(v) of WIOA during the negotiations process. The States may provide relevant documentation and research concerning these factors during the negotiation process. The Departments will ensure that each programs' data, its availability, and its specificity will be considered in developing the methodology and framework for the application of the model to each program. The Departments intend to continue to assess the quality and robustness of the statistical adjustment model since it plays such a key part in the adjusted levels of performance under this section. No change to the regulatory text is being made in response to these comments.

Section 677.170(d) requires the statistical adjustment model to be used before the beginning of a program year as a consideration in establishing levels of performance, and then used to adjust levels of performance at the end of a program year. The Departments reiterate that WIOA uses the term ''adjusted levels'' to refer to both the levels agreed to prior to the start of a program year, as well as the adjustment done using the objective statistical model at the close of the program year. This paragraph was revised to use the term ''negotiated levels'' as appropriate to the process.

Comments: Several commenters opposed having the goals adjusted twice a year, because it would make building strategic plans difficult, add additional burden, and create a moving target. Another commenter requested that the margin of error be published with the statistical models. A few commenters asserted that applying the formula at the end of the year creates the possibility of targets higher than planned outcomes, which could lead to local areas failing performance. The commenters stated that this approach does not lend itself to a strategic planning process. An individual suggested that the year-end adjustment process needs to allow room for additional factors that were not anticipated to be significant at the start of the year, and another commenter asked whether States will be able or required to negotiate the final targets or if the results of the model will be applied without discussion.

Departments' Response: Section 677.170(d) implements sec. 116(b)(3)(A)(iv) and (vii) of WIOA and requires the objective statistical model to be applied before the beginning of the program year as a consideration in establishing State levels of performance for the upcoming program year and be used again at the end of the program year based on actual circumstances. Therefore, there is no statutory authority to delete the requirement to use the objective statistical model at the end of the program year. The concern about margin of error is important in evaluating the results from the model. Consequently, the Departments will provide confidence intervals along with the adjusted performance measures for each State. The Departments also recognize that the effects of variables used in the adjustment model may change over time. No change to the regulatory text is being made in response to these comments.

Comments: Commenters requested that the model be made available for the States to install within their own information systems so that it can be made available to the local areas.

Departments' Response: The Departments acknowledge the commenters' interest in incorporating the model within their own systems. As required by WIOA, the Departments intend to make the statistical adjustment model available to States, local areas, and the public. No change to the

regulatory text is being made in response to these comments.

Comments: Commenters sought guidance and technical assistance, including guidance on how to ensure that disadvantaged populations receive comparable services throughout the program with expectations that they will achieve outcomes leading to successful exits similar to all participants in the program. A commenter favored development of a common reporting mechanism, so that model development would not be delayed by claims that the necessary data are not available.

Departments' Response: The Departments intend to publish guidance that includes how the model was developed, what factors were considered, and how the results are interpreted. The Departments also share the commenters' concerns regarding comparable service for disadvantaged participants and commit to providing technical assistance and guidance on how to ensure an equal distribution of services. No change to the regulatory text is being made in response to these comments.

Comments: Many commenters suggested that, because data are lacking to set benchmarks for the new outcome measures, FY2017 should be a benchmarking year, or implementation should be lagged for 2 to 4 years to establish accurate levels of performance. A commenter expressed concern about the comparability of data across core programs and across States. Another commenter asked for clarification on whether there will be sanctions for low performance prior to the establishment of benchmarks and baselines.

Departments' Response: The Departments have revised § 677.190(c) in response to these comments; more information about the Departments' approach is set out below in the preamble to that section.

Section 677.170(e). The Departments added a new paragraph (e) to § 677.170, and renumbered the previous paragraph (e) as § 677.170(f). The new paragraph (e) specifies that the previously discussed negotiated levels, after being revised at the end of the program year based on the statistical adjustment model, are the adjusted levels of performance.

Section 677.170(f) requires States to comply with the requirements in sec. 116 of WIOA. The Departments intend to issue guidance, which may include information on reportable individuals as established by the Secretaries. No comments were received regarding this reporting requirement and no changes have been made to this section.

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

Section 677.175 implements the requirement that States must, consistent with State laws, use quarterly wage record information to measure progress on State and local performance accountability measures, as required by sec. 116(i)(2) of WIOA. Such information includes the intrastate and interstate wages paid to an individual, the individual's SSN, and information about the employer paying the wages to the individual.

After further review of this provision, the Departments recognize that some participants may not be included in quarterly wage records held by the State, such as those participants who refuse to provide a SSN to the program or who may be self-employed. In light of this fact, the Departments have revised § 677.175(a) to make clear that States must use quarterly wage records to the extent they are available; however, States may use other information when such records are not available. In so doing, the Departments ensure that programs may track the participants for performance accountability purposes even if their information is not contained in the State's quarterly wage record system.

The Departments have revised § 677.175(c) to provide that the State agency or appropriate State entity designated to assist in carrying out the performance requirements is responsible for preventing disaggregation that would violate applicable privacy standards. The Departments added the words ''applicable'' and ''standards'' to § 677.175(c)(3) to require that the States must consider the privacy standards that apply to them.

Comments: A significant number of commenters raised concerns about the difficulty in matching wage records, citing concerns over FERPA privacy rules, that students often refuse to provide SSNs (for reasons such as concern about consumer fraud and uncertain residency status), some students do not have SSNs, and several States do not allow programs to collect SSNs. Some of these commenters asserted that there are other data matching mechanisms by which to track employee outcomes. Other commenters suggested not including participants without SSNs in the measure for computing the percentage for the performance target. Many commenters also urged the Departments to provide guidance on how to collect employment-related data without use of SSNs, acceptable forms of SSN validation, and on alternatives to using wage records. Many commenters added that data from the UI wage record system often do not present a complete picture of employment because it excludes the self-employed, those outside of an individual State, and risks over-representing Limited English Proficient individuals in the non-matching group. Some of these commenters recommended that States be given supplemental options such as follow-up calls or emails to verify employment status.

Departments' Response: The Departments considered the commenters' concerns about the obstacles to using wage record information and agree there are limited circumstances in which such information may not be available. The Departments want to make clear that sec. 116(i)(2) of WIOA requires that States use quarterly wage records when determining performance under the primary performance indicators that measure employment status and median earnings. Using its authority under sec. 189 of WIOA, the Secretaries are allowing States to use other information to verify performance of those individuals for whom quarterly wage records are not available, such as those who are self-employed. This flexibility is necessary to carry out the requirements of WIOA and its performance accountability system. To do otherwise would potentially result in programs not able to report on participants as required under WIOA. Therefore, where available and possible, States must use wage records to fulfill reporting requirements. Furthermore, the Departments understand that wage record information may not provide a complete representation of the employment outcomes. For all the reasons discussed here, the Departments will allow the collection and verification of supplemental wage information to demonstrate employment outcomes in the second and fourth quarters after exit in those instances where wage records are not available. However, if a State uses supplemental information to report on the employment rate indicators, the State also must use supplemental information to report on the median earnings indicators. The Departments will provide guidance on acceptable supplemental information to verify performance outcomes. Section 677.175(a) has been revised to reflect the changes described here.

With regard to acceptable forms of SSN validation, the Departments note

that WIOA sec. 116(d)(5) requires the Departments to issue data validation guidelines, which the States must use to ensure that the information in the reports is valid and reliable. See the preamble to § 677.240 below for further discussion on this requirement.

In the NPRM, the Departments expressed the intent to engage in a renegotiation of the WRIS data sharing agreements with States, which will allow States to conduct interstate wage matches for all WIOA core programs. Like WIA, WIOA similarly provides authority for the Departments to facilitate data matching between the States.

Comments: Several commenters approved of this commitment and encouraged the Departments to clarify that all the core programs may use the Federal Employment Data Exchange System (FEDES) for WIOA performance reporting.

Departments' Response: Under WIA, DOL's Employment and Training Administration aided in the establishment and management of a system through which participating, signed States could access Federal employment records from the participating government agencies. The Departments have concluded that the authorities established in WIOA allow for the continuation of such an agreement to facilitate wage matching for Federal employment for States that become signatories to the established data sharing agreement. The Departments have concluded that such agreements should be entered into and conducted at the State level based on the language of WIOA sec. 116(i)(2), which requires that the use of wage records must be consistent with State law. Moreover, WIOA sec. 116(i)(2) requires the Secretary of Labor to facilitate such arrangements between States. Therefore, the Departments continue in their commitment to review and renegotiate the appropriate agreements with State government entities that provide the necessary wage data for complete and robust performance reporting across all core programs under WIOA.

Comments: One commenter recommended that, for private training providers who cannot access wage record information, regulations should provide that the data these entities submitted for training participants not found in the UI wage records be returned to the provider, indicating that the records do not match UI records.

Departments' Response: ETP access to wage records is governed by the UC Confidentiality and Disclosure regulations at 20 CFR part 603. Therefore, training providers seeking access to wage records must comply with these provisions. Because ETP access is governed by 20 CFR part 603, the Departments have not changed § 677.175 in response to this comment. However, the Departments will issue guidance regarding the process of matching wage records. No change to the regulatory text is being made in response to this comment.

Comments: Another commenter favored allowing performance to be reported disaggregated by industry.

Departments' Response: The Departments consider additional disaggregation, when it is not required by statute, to pose an additional and unnecessary burden on the States. Moreover, many States do not require the inclusion of the North American Industry Classification System codes within wage records. Therefore, its inconsistent availability makes requiring this kind of reporting infeasible. No change to the regulatory text is being made in response to this comment.

Comments: One commenter suggested that WDBs and AEFLA providers are entitled to know whether a participant they served was employed in a given quarter.

Departments' Response: The Departments reiterate that an entity's ability to obtain this information depends on their compliance with the confidentiality requirements of 20 CFR part 603 (covering UC records), 34 CFR part 99 (covering educational records protected by FERPA), and 34 CFR 361.38 (covering VR records), as well as any applicable State laws. However, the Departments want to make clear that States are responsible for ensuring the appropriate entities have access to the information required for reporting purposes under WIOA sec. 116 and these regulations.

Comments: The Departments received several comments related to the use of wage record information and the VR program. Another commenter asked whether the wage record provision will be tracked in the VR program differently than in the other core programs. A commenter requested that additional guidance on VR access to WRIS be issued so that States may plan any necessary changes to their IT systems.

Departments' Response: The Departments recognize the unique disclosure requirements that have to be navigated by various entities. Because of the importance of protecting PII while also obtaining the necessary information needed for States to comply with the performance accountability system requirements, the Departments will issue guidance to assist States in regard to accessing wage record information.

The Departments also refer these commenters to the UC Confidentiality and Disclosure regulations at 20 CFR part 603, which govern the confidentiality and disclosure of, wage record information. It should be noted that the confidentiality provisions apply to PII contained within a wage record and this extends to the absence of data for an individual level as well. The tracking of employment outcomes through wage record matching is subject to 20 CFR part 603 and any applicable Federal and State laws; therefore, there may be some variation in the mechanisms for matching wage record data via the State UC agencies and the process through which any core program enters into and engages under those agreements. Furthermore, regulating access to wage record information is beyond the scope of this part. No change to the regulatory text is being made in response to these comments.

Comments: A commenter asserted that if the VR program is to track progress on wages, then it would need ready access to longer-range employment data.

Departments' Response: The VR program is subject to the same outcome reporting requirements as the other core programs under WIOA. Thus the Departments have concluded that access to a different duration of employment data is not necessary. No change to the regulatory text is being made in response to this comment.

Comments: Another commenter requested clarification on how participants who are seeking to better themselves without entering the workforce or postsecondary education should be treated in the performance accountability system. This population includes retirees, the non-working disabled, and English language learners who are seeking to improve their language skills but are not in the labor force.

Departments' Response: The Departments interpret WIOA sec. 116(b)(2)(A)(i) to require all participants to be included in the primary performance indicators, with very limited exceptions, regardless of their employment status at program entry. No change to the regulatory text is being made in response to this comment.

Comments: A commenter requested clarification about whether the wage record information refers to wages paid or wages earned.

Departments' Response: The Departments clarify that the wage record information held by State UC agencies, from which wage record information is drawn, only contain the wages paid to an individual. See 20 CFR 603.2(k)(1). Moreover, sec. 1137(a)(3) of the Social Security Act, which creates the requirement that States provide quarterly wage reports, only requires that employers report wage information. Similarly, sec. 3306(b) of the Federal Unemployment Tax Act defines wages as all remuneration for employment. Because the records only include wages paid, the Departments interpret WIOA sec. 116(i)(2)'s requirement to use State UI wage records to mean that the States only are required to report on wages paid. No change to the regulatory text is being made in response to this comment.

Comments: Some commenters favored data sharing and record matching across departments and programs. Another commenter said that the Indian and Native American programs (INAP) do not have a mechanism to match participant SSNs with UI wage records. One commenter recommended that the Departments, in renegotiating the Wage Record Interchange System (WRIS) agreements, make it possible for States to access readily both intra- and interstate UI data beyond the fourth quarter after exit for longer-term program impact evaluations.

Departments' Response: The Departments recognize the variety of structures that exist for programs under WIOA; some programs are run through the States and others are run through sub-State level grantees. The Departments recognize the challenges faced by the INA programs in complying with WIOA performance reporting requirements and will be issuing guidance for and providing technical assistance to those programs. Under WIA the Secretary of Labor, working with States, established the WRIS to facilitate access to interstate wage data for State workforce agencies to fulfill their performance reporting requirements. In addition, DOL established the Common Reporting Information System (CRIS) in order to provide access to the aggregate wage data necessary for performance reporting, to those workforce programs that were not operated by State workforce agencies. These programs included the WIA national programs, such as INAP and NFJP, as well as competitive and discretionary grant programs operated under the jurisdiction of DOL.

Under WIOA, the WRIS, WRIS2, and CRIS are being reviewed and renegotiated to establish the mechanisms for programs, including those under the jurisdiction of ED, where applicable, to access the quarterly wage data necessary for grantees to fulfill their WIOA performance reporting requirements.

The Departments considered these comments and made no changes to the regulatory text. First, WIOA sec. 116(i)(2) already requires that the wage records of any State receiving program funds are available to any other State to the extent that such wage records are required by the other State in carrying out performance accountability for its State Plan. While the Departments are working to facilitate applicable programs' access to intra- and interstate UI data, the Departments have determined that the conditions and availability of the records outlined within these agreements are not appropriately included in this regulation.

Comments: A commenter suggested that DOL look at wage record pilots to research gaps in wage record use.

Departments' Response: The Departments will continue to give consideration to activities that identify gaps and improve on the usage of wage record information for the purposes of performance reporting. No change to the regulatory text is being made in response to this comment.

Comments: Several commenters suggested that Local WDBs have access to data that is timely and pertinent, citing surveys in which participants say that their job is unrelated to the training received.

Departments' Response: The Departments recognize the need for local areas to gain access to timely and accurate data and the Departments strongly urge States to provide the sub-State level local area reporting outcomes to their local areas along with the reporting that they submit to the Departments. No change to the regulatory has been made in response to these comments.

Comments: Commenters suggested that the wages should include all program participant wages, pre- and post-exit.

Departments' Response: The Departments have concluded that it is not necessary to include this level of specificity in the regulatory text. Such information and its required collection are handled through the WIOA Joint Performance ICR. No change to the regulatory text is being made in response to these comments.

4. Sanctions for State Performance and the Provision of Technical Assistance (20 CFR part 677, subpart B; 34 CFR 361.180 through 361.200; 34 CFR 463.180 through 463.200)

Section 677.180 When is a State subject to a financial sanction under the Workforce Innovation and Opportunity Act?

Section 677.180 outlines performance and reporting requirements that are subject to sanctions under sec. 116(f) of WIOA. Section 677.180 provides that the failure to submit the State annual performance report required under sec. 116(d)(2) of WIOA is sanctionable, and that sanctions for performance failure are based on the primary indicators of performance. The Departments have revised § 677.180 to correct a statutory citation error in the introductory paragraph (to change WIOA sec. 116(d) to sec. 116(f)). WIOA sec. 116(d) outlines the requirements for performance reports. The correct reference should be to sec. 116(f), which governs sanctions for State failure to meet State performance accountability indicators. No other substantive changes were made to this section.

Comments: Commenters expressed support for the imposition of sanctions for failure to report as well as for failure to meet a performance standard.

A few commenters stated that funding and sanctions should be tied to individual programs to ensure that a core program's poor performance does not negatively impact the funding of other core programs.

Departments' Response: The Departments recognize the commenters' concerns regarding funding and sanctions being tied to individual programs; however, WIOA sec. 116(f)(1)(B) makes clear that the sanctions are imposed against the Governor's Reserve for statewide activities under the title I adult, dislocated worker, and youth formula programs regardless of which of the six core program's performance constitutes a failure giving rise to the sanction. Therefore, given the explicit statutory requirement, the Departments do not have the authority to do as these commenters suggested. No change to the regulatory text was made in response to these comments.

Comments: Another commenter requested clarification regarding how individual core programs will be held accountable if they reside in different agencies.

Departments' Response: The Departments note that accountability for the State's performance rests with the Governor and State WDB, through

which all core programs are represented. Therefore, even if the core programs are located in different agencies, there is no difference in how the States and core programs are treated. The Departments encourage and expect the core programs to work closely together regardless of the State agency in which they are located. No change to the regulatory text was made in response to this comment.

Comments: A commenter sought clarification concerning the process for submitting the State annual performance report and the manner in which sanctions will be enforced.

Departments' Response: The Departments consider the process of submitting State annual performance reports to fall under the purview of sub-regulatory guidance as it is implementation of the regulatory requirements. Therefore, the Departments will issue guidance clearly explaining how to carry out the annual reporting process. The Departments will impose financial sanctions consistent with WIOA sec. 116(f)(1)(B), which provides for a five percent reduction of the State Governor's Reserve for Statewide Activities from the amount allocated in the immediately succeeding program year. The Departments consider the logistics of how the financial sanction will work to fall under the purview of sub-regulatory guidance as it is implementation of the statutory and regulatory requirement. Moreover, the financial sanctions will be carried out consistent with financial management and rules already in place. Therefore, the Departments will issue further guidance on how this process will be conducted. No change to the regulatory text is being made in response to this comment.

Comments: One commenter requested clarification about whether WIOA or Perkins indicators of performance would take precedence in a Combined State Plan.

Departments' Response: The Departments clarify here that the Perkins program is subject to its authorizing statute's requirements on performance measurement. Should a grantee receive both Perkins and WIOA funds, it must report on both programs accordingly.

Section 677.185 When are sanctions applied for a State's failure to submit an annual performance report?

Section 677.185 outlines the circumstances under which a State may be sanctioned for failure to report under sec. 116(f)(1)(B) of WIOA. No substantive changes were made to this section.

Comments: A commenter stated that the 30-day deadline to request an extension should be removed as it does not allow for exceptional circumstances, such as a natural disaster, that may occur closer to the deadline.

Departments' Response: The Departments refer the commenter to § 677.185(c)(2) which allows for unexpected events within the 30-day period and provides a process by which exceptional circumstances may be addressed in less than 30 days. No change to the regulatory text was made in response to this comment.

Comments: A few commenters supported the enforcement of sanctions for failure to report.

A few other commenters requested clarification regarding what the Departments consider exceptional circumstances under which a State would be exempt from sanctions for failure to report.

Departments' Response: In response to the comments on enforcement of sanctions for failure to report, the Departments note that a State annual performance report is considered complete only when it provides a mechanism of electronic access to local area and ETP performance reports. Thus, the submission of a State annual performance report that does not provide a mechanism of electronic access to local area and ETP performance reports is a sanctionable offense. Section 677.185(b) provides a non-exhaustive list of examples that may qualify as an exceptional circumstance. The listed exceptional circumstances include natural disasters, unexpected personnel transitions, and unexpected technology related impacts. These are not the only circumstances that may be justified, but rather are examples of the types of circumstances the Departments would consider exceptional. The Departments expect that any request for delay or any failure to report timely information would not be based on a routine or predictable situation. The Departments interpret § 677.185(c) to require these exceptional circumstances to be fully documented by the States, supported by clear rationale, and include an estimation of when the performance reports will be made available. The Departments will determine the merits of each request based on exceptional circumstances in consultations with the States, and their respective regional offices. The Departments plan to issue guidance to provide further clarity with regard to exceptional circumstances. No change to the regulatory text is being made in response to these comments.

Comments: A commenter expressed concern that the guidance regarding exceptional circumstances is to be issued without public comment and at a point at which States may already incur sanctions.

Departments' Response: Any guidance issued by the Departments regarding exceptional circumstances would be interpretive and thus, is exempt from the notice and comment rulemaking requirements under the Administrative Procedure Act. *See* 5 U.S.C. 553(b)(A). The Departments intend to issue guidance prior to applying sanctions. No change to the regulatory text has been made in response to this comment.

Comments: A commenter requested the Departments focus on incentivizing timely submission of State annual performance reports rather than sanctions.

Departments' Response: WIOA sec. 116(f) requires that financial sanctions apply with regard to the timely submission of performance reports and does not provide for incentives within this context. No change to the regulatory text was made in response to this comment.

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

Section 677.190 governs how States will be assessed for performance failure and when such failure will result in a financial sanction. Although the Departments have referenced other non-core programs in previous sections of this preamble for part 677, consistent with WIOA sec. 116(b)(2) and 116(f)(1)(B), performance success or failure will be based solely on the performance of the six core programs of WIOA—not other partner programs in the public workforce development system. The Departments have added two new provisions to § 677.190(c) to reflect a phased-in approach for applying sanctions for failure to achieve adjusted levels of performance. In addition, the Departments reiterate that WIOA uses the term ''adjusted levels'' to refer to both the levels agreed to prior to the start of a program year, as well as the adjustment done using the objective statistical model at the close of the program year. Paragraph (c) was revised to make clear that performance accountability will be based on a comparison of the State's performance with that determined to be the ''adjusted levels of performance,'' as appropriate. These revisions resulted in renumbering the subsequent paragraphs. Section 677.190(c)(2) provides that, until at least 2 years of complete data are available

for each of the indicators, the Departments will assess the State's performance on the overall program score based on the indicators for which there are at least 2 years of data available. Section 677.190(c)(4) similarly provides that until at least 2 years of complete data are available for each of the indicators, the Departments will assess the States' performance on the overall indicator score, based on the indicators for which there are at least 2 years of data available. The Departments consider complete data to consist of, at a minimum, 2 full program years of performance data.

Comments: Many commenters discussed the timeline for implementing the full accountability system, with the majority of commenters supporting a 2-year benchmarking period to allow for the collection of baseline data to be used to assess performance moving forward. Other suggestions included a 1-year baseline period, a 3-year baseline period, and a 4-year baseline period. Still, other commenters supported a baseline period, but did not provide a specific timeline for implementing the full performance accountability system. Commenters supported using the PY 2016, PY 2017, and PY 2018 annual report as the first years to report on State adjusted levels of performance. A commenter suggested the PY 2016 annual report be the first used for all of the performance indicators except credential attainment and measurable skill gains. Some commenters asserted that a 2-year delay in the implementation of sanctions would allow for further calibration of the statistical adjustment model. Some commenters requested a 2-year transition period that would allow States to adapt to the new performance standards before sanctions are implemented.

Departments' Response: Section 677.190(c)(1) and (3) govern how performance on the overall State indicator score and the overall State program score will be assessed. As explained above, the Departments have revised the regulatory text in § 677.190(c) to reflect a phased-in approach for applying sanctions for failure to achieve adjusted levels of performance. Paragraphs (c)(2) and (4) of § 677.190 govern how performance on the overall State indicator score and the overall State program score will be assessed. Section 677.190(c)(2) provides that, until at least 2 years of complete data are available for each of the indicators, the Departments will assess the State's performance on the overall program score based on the indicators for which there are at least 2 years of data available. Section 677.190(c)(4) similarly provides that until at least 2 years of complete data are available for each of the indicators, the Departments will assess the States' performance on the overall indicator score, based on the indicators for which there are at least 2 years of data available. Pursuant to these provisions, the Departments consider complete data to consist of, at a minimum, 2 full program years of performance data.

The Departments acknowledge that, given the lag in reporting data and the amount of time needed for each indicator to be measured, 2 program years' worth of data for each of the indicators will occur at different times. However, the Departments consider it vital that performance accountability take effect as soon as possible to align with the vision and requirements of WIOA. These revisions provide for an assessment of the overall State program and indicator score when the States have reported at least 2 years of complete data for the indicators. For performance accountability determinations, including the determination of failure to achieve adjusted levels of performance, the Departments will not use data reported prior to July 1, 2016. The Departments note that where historical data that were reported under WIA provide a proxy for the new indicators (at least 2 years of data), it is possible to establish a statistical adjustment model for negotiation of those indicators. Such indicators will be included in the overall State program or overall State indicator score for performance assessment when States have reported 2 years of outcomes under WIOA. The States are still subject to a performance risk plan under § 677.200(b).

Comments: Several commenters urged the Departments to delay implementation of the full performance accountability system for reasons other than the collection of baseline data, including that the first annual State report should be coordinated with the development of data systems.

Departments' Response: The Departments recognize the challenges in unified reporting across the core programs. For this reason the Departments are exercising the transition authority in sec. 503 of WIOA to implement the requirements in a manner that allows for an orderly transition from the requirements of WIA to the requirements of WIOA. To the extent that data are available, States must comply by submitting the requisite data. Moreover, the Departments recognize that some States have the capability to currently report all of the data in one system and upload reports to the Departments, whereas other States may not have that capability. The Departments plan to provide guidance on the submission process for WIOA State annual reports through the WIOA Joint Performance ICR.

Comments: Several commenters stated that sanctions should not be implemented until the third consecutive year of performance failure, rather than the second, in order to allow improvement measures to be effective.

Departments' Response: Section 116(f)(1)(B) of WIOA provides that performance is assessed and sanctions are applied in the second consecutive year of failure. Therefore, the Departments cannot implement the commenters' suggestion.

Comments: Several commenters remarked that a definition of second year failure should be added to the regulatory text in order to prevent a State from incurring sanctions without adequate time to improve performance. Another commenter stated that sanctions should not be applied until a State has demonstrated that it is able to implement their performance improvement plan. While acknowledging the existing statutory constraints, a commenter expressed concern about the lack of time to intervene and allow program adjustments to demonstrate improvement.

Departments' Response: Section 116(f)(1)(B) of WIOA is clear that sanctions apply after 2 program years of consecutive performance failure; the statutory language does not permit the Departments to delay sanctions because the State has not been able to implement its performance improvement plan. The Departments encourage States to use their quarterly data to monitor progress on their performance improvement plan benchmarks without waiting until they submit their annual performance report. No change to the regulatory text was made in response to these comments.

Comments: Concerning the timing of performance outcome reporting, several commenters stated that performance outcomes for core programs should be reported by December 31 of each year.

Departments' Response: The Departments have concluded that the timing of reporting performance outcomes will be announced through joint guidance clarifying when and how States should provide their respective program performance reports. No change to the regulatory text was made in response to these comments.

Comments: A commenter asserted that to evaluate performance effectively,

indicators should be reported on a quarterly basis.

Departments' Response: The Departments note that § 677.235 requires quarterly reporting for the WIOA title I, Wagner-Peyser Act Employment Service, and VR programs. No change to the regulatory text was made in response to these comments.

Comments: Commenters also addressed the limited availability of and timely access to data, which can significantly hinder a State's ability to identify areas of improvement and make the necessary program adjustments to avoid failing.

Departments' Response: The Departments acknowledge the commenters' concern regarding the limited availability of timely data that may assist in identifying areas of program improvement. The Departments have clarified the regulations regarding data availability and sanctions in § 677.190(c), above. Additionally, the Departments note that all States have access to their program data and can use it to assess at intervals of their own choosing to best manage their performance, without the Departments having to require such action.

Comments: Some commenters suggested using only the State average measure of the performance indicators rather than the average program scores for each State in order to incentivize partnerships among programs.

Departments' Response: Under these regulations, failure is determined by both individual program performance as well as overall State performance in the overall State indicator score. The Departments' approach is premised on ensuring accountability for the individual core programs while incentivizing the partnerships that the Departments have concluded are critical to WIOA's long-term success. No change to the regulatory text was made in response to these comments.

Comments: Several commenters suggested that the Departments award monetary incentives and public recognition in order to emphasize the importance of performance success, rather than setting unrealistic goals.

Departments' Response: The Departments note that WIOA, unlike WIA, does not authorize the use of incentives for successful performance. However, States may continue to utilize incentives to recognize successful local performance under WIOA sec. 134(a)(3)(A)(xi). Finally, requests for guidance concerning performance metrics were made in order to allow for proper administration of programs. The Departments intend to issue further details on performance accountability through the WIOA Joint Performance ICR, guidance, and technical assistance.

Comments: In addition to soliciting public comments on the NPRM text, the Departments posed several questions regarding the application of sanctions for failure to achieve adjusted levels of performance. Many commenters responded to the question about using a weighted average or a straight average for calculating State overall indicator scores. Some commenters supported the use of an unweighted average in order to support the goal of shared accountability among core programs. A commenter stated that performance measures should not be weighted until it is clear how weighted averages would be determined. Other commenters stated that a weighted average would take into account differences among programs and would prevent the misrepresentation of particular programs. Citing the enhanced accuracy of the system of performance, a commenter suggested that program performance be weighted by the number of participants served to avoid giving unequal weight to smaller core programs. Other commenters urged the Departments to weight the indicators in order to maintain the emphasis on job placement and employer partnerships as established in WIOA. A few commenters suggested that local areas be weighted less due to their lesser impact on wages paid within the area. A commenter supported the use of a weighted average if performance is to be determined regionally, in order to take into account the relative size of regional WDBs. In addition, several commenters stated that if a weighted average is pursued, a draft weighted average should be published for public comment. Similarly, a commenter suggested that the weights assigned to each program should be determined or agreed to by all partners. A few commenters suggested that, in addition to a public comment period, the weights should be reviewed at the end of each program year and adjusted as needed.

Departments' Response: The Departments considered the comments regarding the use of a weighted or unweighted average for the determination of performance outcomes across programs and individual indicators. The Departments have decided that using unweighted measures across the programs and indicators still ensures performance accountability across all core programs and individual indicators. The Departments conclude this, in part, because an average performance number weighted by the number of participants would essentially cause each State's performance under Wagner-Peyser Act Employment Service programs to have a disproportionate impact. The Wagner-Peyser Act Employment Service program served more than 14 million participants in PY 2014, which surpasses the number of participants served in all other core programs combined. Using a weighted formula would mean that the Wagner-Peyser Act Employment Service program's outcomes would be determinative of a State's failure to achieve performance requirements. The Departments do not consider this to be consistent with the performance accountability goal of WIOA, which provides for shared accountability across the core programs. The Departments have concluded that using unweighted outcomes across the programs and indicators properly implements WIOA in recognizing the importance of both employment-related and education outcomes of the participants. No change to the regulatory text was made in response to these comments.

Comments: Additionally, some commenters suggested the Departments weight the employment indicators more heavily than the credential and measureable skill gains indicators.

Departments' Response: The Departments considered these comments, but decided not to alter the regulation as the three employment-related indicators make up half of all of the WIOA performance indicators. The three employment related indicators are the second and fourth quarter employment rate and the second quarter median earnings indicator. Because these measures make up half of all WIOA performance indicators, the Departments concluded they already have a sufficient impact on a State's performance.

Comments: Many commenters addressed the proposed thresholds for performance failure of 90 percent for each of the State overall program scores and the overall State indicator scores, and 50 percent of the individual indicator scores. Numerous commenters opposed the 90 percent threshold, citing the current lack of core program performance data, the unrealistic nature of a 90 percent threshold, and the seemingly arbitrary assignment of the threshold. A few commenters stated that the 90 and 50 percent threshold for performance failure should not be established without the required statistical adjustment models. Many other commenters responded to the Departments' solicitation regarding the potential increase of the 90 percent threshold to emphasize the importance

of performance success stating that the 90 percent threshold should not be increased. Other commenters urged the Departments to adopt alternate thresholds, ranging from 70 to 80 percent, with the majority supporting an 80 percent threshold. A number of commenters urged the Departments to establish thresholds in guidance rather than regulation so that they could be more easily adjusted in the future, as necessary. Many commenters stated that the Departments should establish a lower threshold than 90 percent to allow for a phased-in approach that gradually increases the threshold for performance failure over time. One commenter supported a tiered approach in order to promote continuous improvement. Although the vast majority of commenters supported maintaining or decreasing the proposed thresholds, one commenter stated that the 50 percent threshold for individual performance indicators should be increased because, as proposed, it would weaken the requirements of States and was not Congress's intent in WIOA.

Departments' Response: The Departments considered the comments regarding the overall 90 percent threshold and the 50 percent threshold for individual indicators for a program year. The Departments considered the various commenter-proposed threshold levels in light of historical performance data and historical thresholds for each of the core programs and have decided to maintain the thresholds as proposed. The new thresholds are an increase from the 80 percent threshold familiar to the title I programs and a decrease from the 100 percent threshold for title II programs under WIA. The Departments consider these thresholds to be reasonable due to the use and application of an objective statistical model to account for actual conditions experienced by a program. Previously, the title I and title II thresholds were applied to a negotiated performance level and performance was assessed in the absence of weighting for actual economic conditions or participant characteristics. With the structure of the performance accountability system in sec. 116 of WIOA, the Departments consider a 90 percent overall threshold to strike the appropriate balance between maintaining flexibility for unknown mitigating variables and the newer precision introduced by utilizing an objective statistical model. The 50 percent performance threshold ensures that significant performance failure on a single indicator cannot be compensated for by successful performance in any other indicator or set of indicators. The introduction of an overall State score across programs and indicators ensures that the performance accountability system as articulated in sec. 116 of WIOA maintains alignment and integration across all of the core programs. This overall score paradigm, which is set at the 90 percent threshold, and balanced with a 50 percent threshold on any single indicator, allows a State to account for mitigating factors that prevent it from achieving 100 percent of its adjusted levels of performance. It also provides that a State has not failed to achieve its negotiated levels of performance unless its average performance across all programs for one indicator or its performance for all indicators in one program falls below 90 percent of the State's adjusted targets. No change to the regulatory text was made in response to these comments.

Comments: One commenter expressed concern that a program could potentially pass the threshold for all of the individual indicators, but not meet the overall program or overall indicator threshold, which would send a mixed message to a program.

Departments' Response: In order to ''pass'' the threshold, each State must meet or exceed the 90 percent threshold for the overall State program score for each program and the overall State indicator score for each indicator. Furthermore, under § 677.190(d)(2), the State must not fall below 50 percent on any individual indicator. This is an additional safeguard against egregious failure by one indicator being outweighed by high scores elsewhere. Thus, there is no possibility of what the commenter suggested occurring. No change to the regulatory text was made in response to this comment.

Comments: Some commenters raised potential alternative metrics for evaluating success including: the use of statistical variation metrics instead of the proposed threshold framework; standard deviation units or variation against regression predictions; and confidence intervals rather than a point estimate.

Departments' Response: The Departments considered utilizing these methods, but concluded that a consistent threshold, which does not change from year to year based on the size of the dataset, is the most appropriate way to account for variations in the core programs or the indicators and the varying availability of data. By creating a consistent threshold, expected levels of performance will be easier for program staff to understand and allows for comparisons across program years. No change to the regulatory text was made in response to these comments.

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

Section 677.195 governs 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 five percent of the amount that could otherwise be reserved by the Governor.

Section 677.195(a)(3) was added so that this section contains the causes of failure as defined in § 677.190(e) by noting that States also are subject to a 5 percent reduction of the Governor's Reserve Allotment for the immediately succeeding program year if the State's score for the same indicator in the same program falls below 50 percent for the second consecutive year. A conforming edit was made to § 677.195(b).

Comments: Several commenters expressed general support for the Departments' interpretation of WIOA sec. 116(f) and the approach proposed. However, numerous commenters opposed this approach and requested clarification regarding the implementation of financial sanctions only on WIOA title I programs funded by the Governor's Reserve allotment. A commenter suggested that the burden of financial sanctions be applied to the specific programs not meeting the performance requirements. A few commenters requested clarification from the Departments concerning allocation of funding lost via sanctions. A number of commenters urged the Departments to permit the restoration of funds once the State meets its reporting responsibilities. Commenters also remarked that sanctioned funds should be spent on the Technical Assistance and Performance Improvement Plan.

Departments' Response: Section 116(f)(1)(B) of WIOA does not provide authority for the Departments to use, for other purposes, funds that are reduced as a sanction from the Governor's Reserve. Therefore, the funds may not be used for technical assistance, performance improvement plans, the restoration of the Governor's Reserve funding, or any other activity. In contrast, WIA provided that funds reduced due to sanctions were to be used by the Secretary for performance incentive grants to the States under sec. 503 of WIA, which was not carried over to WIOA.

The Departments considered the comments regarding the sanctions to WIOA title I programs being based on

any program's failure. WIOA sec. 116(f)(1)(B) clearly requires that any performance sanction must apply to the Governor's Reserve allotment under title I for any core program or indicator failure. Therefore, the Departments do not have the authority to sanction the specific program not meeting its adjusted levels of performance. The Departments strongly encourage high levels of alignment and coordination to ensure all core partners are engaged at all levels. The Departments emphasize the role of State and local planning to ensure alignment and common goals in attaining integration and service delivery. Regarding the commenters' request for clarification concerning the allocation of funding lost via sanctions, the Governor's Reserve for the next program year will be reduced by five percentage points and money lost via sanction will not be reallocated. No change to the regulatory text was made in response to these comments.

Comments: Commenters also supported the elimination of proposed § 677.195(b) because a State could fail to meet 2 different indicators for 2 consecutive years and receive a 5 percent sanction, but if the State fails to meet one indicator for 2 consecutive years and fails to report one time, the State would receive a 10 percent sanction. These commenters stated that the latter scenario is a less significant infraction and should not prompt the imposition of a 10 percent sanction.

Departments' Response: The Departments considered the comments on imposing sanctions when in the same year the State fails to submit a performance report and is in its second year of failure to meet adjusted levels of performance. The Departments are maintaining the language in § 677.195(b) because the Departments conclude that failure to submit a State annual performance report is a serious compliance issue and should result in sanctions. Because the regulations provide for a 10 percent sanction on States that fail to submit performance reports as well as fail to meet the adjusted levels of performance for 2 consecutive years (5 percent for failure to submit report plus 5 percent for failure to meet adjusted levels of performance), States will have an incentive to report to the Departments even if they fail the adjusted levels of performance for 2 consecutive years because by doing so, they would receive only a 5 percent sanction for failure to meet adjusted levels of performance rather than the 10 percent sanction. No change to the regulatory text was made in response to these comments.

Comments: Several commenters addressed concerns regarding the insufficient funding of the Governor's Reserve allotment and stated that sanctions should be lessened or not implemented until the allotment is fully funded, as is statutorily required. One commenter suggested that the Departments scale sanctions according to the funding available in the Governor's Reserve allotment.

Departments' Response: The Departments considered the comments regarding the funding of the Governor's Reserve allotment and the use of sanctions. Statutorily, the Governor's Reserve is set at 15 percent of the WIOA adult, dislocated worker, and youth formula allocations to the States. For several years, the Governor's Reserve levels were restricted below 15 percent through the congressional appropriation, but were restored in the FY 2016 Consolidated Appropriations Act. The Departments support the full funding of the Governor's Reserve at 15 percent as envisioned in WIOA. The Departments note that if the Governor's Reserve amount is not fully funded, the amount of funds subject to sanctions will be proportionately less because the sanction is either 5 or 10 percent of the Reserve amount no matter how much the Reserve amount is. No change to the regulatory text was made in response to these comments.

Comments: A commenter stated that the sanctions for failure to report and failure to meet a State's adjusted levels of performance should be separated. Another commenter requested that the Departments provide guidelines for a process allowing for minor corrections to annual reports without incurring sanctions for failure to report.

Departments' Response: The Departments considered the comments regarding the separation of sanctions for failure to report and for failure to achieve performance. The Departments note that these two sanctions are applied separately. When a State fails to meet 90 percent of its adjusted levels of performance or fails to submit a report in the same year, the State would incur 2 separate 5 percent sanctions totaling 10 percent. Otherwise, a State may receive a sanction for failure to report based on the criteria described in § 677.185 or a State may receive a sanction for failure to achieve adjusted levels of performance per § 677.190. Regarding a process to allow for minor corrections to annual reports, the Departments will provide a process for this and details on the process in guidance. No change to the regulatory text was made in response to these comments.

Comments: A commenter urged the Departments to allow States flexibility in imposing sanctions on the State agencies responsible for the late submission.

Departments' Response: The Departments note that ultimately the Governor and State Workforce Board, which consists of representatives from all core programs, are responsible for the submission of the annual report. The Departments expect the State agencies to work together to ensure timely reporting and, if there are expected delays due to exceptional circumstances, that the State provides timely communication to the Departments. The Departments note the flexibility provided to States under § 677.185(b) and will work with States that are struggling to submit timely reports through guidance and technical assistance. No change to the regulatory text was made in response to these comments.

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

Section 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, the overall State indicator score, and the overall State program score. No substantive change was made to this section.

Comments: A few commenters remarked that language in the NPRM indicated that the Departments would each issue their own guidance regarding performance risk or performance improvement plans. These commenters were concerned that the development of separate guidance documents signals a lack of long-term coordination between the Departments regarding performance accountability and reporting. A commenter urged DOL and WDBs to become familiar with setting measurable objectives, defining activities to meet the objectives, and determining if the objectives were achieved.

Departments' Response: WIOA provides a unique opportunity for the core programs to work together in new ways, and to the extent practical the Departments will use joint guidance so that all core programs are provided a clear and consistent message.

Regarding comments about DOL and WDBs setting measurable objectives, defining activities to meet objectives, and determining if objectives were achieved for purposes of the DOL-administered core programs, this will be communicated generally. WIOA articulates certain performance

requirements, the Joint WIOA Final Rule operationalizes the provisions of WIOA, and the Departments will provide guidance and technical assistance to assist States and Local WDBs in achieving their performance goals.

5. Local Performance Accountability for Workforce Innovation and Opportunity Act Title I Programs (20 CFR Part 677, Subpart C; 34 CFR 361.205 Through 361.210; 34 CFR 463.205 Through 463.210)

Section 677.205 What performance indicators apply to local areas and what information must be included in local area performance reports?

This section governs which performance indicators apply to local areas and the information that must be included in the local area performance reports. While the arrangement of this section was revised no substantive changes were made to the regulatory text.

Comments: One commenter noted that the title did not fully convey what was contained within this section of the regulation.

Departments' Response: The Departments concur and modified the title of this section to clarify that this section also governs what information the local area must include in its local area performance reports.

Proposed § 677.205(a), (b), and (c) are implemented as proposed.

Comments: One commenter recommended removing section § 677.205(d) of the NPRM as unnecessary and duplicative of the requirements of § 677.175.

Departments' Response: The Departments agree that this section is duplicative, and is removing it. As a result, the Departments are renumbering subsequent sections to conform to this deletion.

Comments: One commenter recommended revising proposed § 677.205(e)(2) to clarify that in addition to reporting on the performance indicators, the local area report must also include the other program information required in the State annual performance report, such as average cost information.

Departments' Response: The Departments agree that further clarification would assist States and local areas in complying with their reporting requirements. The Departments note that as finalized, this has been renumbered as § 677.205(d)(1). Since § 677.205(d)(1) includes all of the information previously in § 677.205(e)(1) and (2), the Departments removed proposed § 677.205(e)(2) from this Final Rule and have renumbered the remainder of § 677.205(d).

Comments: One commenter encouraged adding a parallel provision to the one that is included in § 677.160(b) to clarify that the disaggregation of data in the local area performance report is also subject to WIOA sec. 116(d)(6)(C).

Departments' Response: The Departments have added a parallel provision at § 677.205(e).

The Departments made a technical edit to proposed § 677.205(f) to state that States must comply with any requirements from sec. 116(d)(3) of WIOA as explained in guidance. The Departments made this revision to clarify our expectations that, to the extent that either Department's guidance merely explains in plain terms the requirements that stem directly from WIOA, the Departments expect States to comply with those statutory requirements.

Comments: Several commenters from various stakeholder entities questioned the applicability of local performance indicators to core programs outside of WIOA title I. Many of these commenters specifically requested clarification on whether other core programs were exempt from local reporting requirements. One commenter also acknowledged some confusion regarding local-level requirements and offered several suggestions on reorganizing this subpart to enhance clarity. Additionally, the Departments received a number of comments pertaining to additional indicators of performance, with commenters suggesting that language be added to the Final Rule requiring States to develop any additional indicators of performance only in consultation with Local WDBs and CEOs.

Departments' Response: The Departments acknowledge that there may be some confusion across the core programs regarding local-level performance-related requirements and are taking this opportunity to specify that local-level accountability requirements contained in WIOA sec. 116 pertain solely to title I adult, dislocated worker, and youth programs. As provided by WIOA sec. 116(b)(2)(B) and § 677.165 of this regulation, the Governor has discretion to add additional indicators of performance.

The Departments recognize that Local WDBs and CEOs are critical partners in the establishment of additional indicators of performance and strongly encourage States to engage and consult with Local WDBs and CEOs in their development. No change to the regulatory text was made in response to these comments.

Section 677.210 How are local performance levels established?

Section 677.210 explains how the local performance levels are established. This section has been revised and renumbered in accordance with the distinctions among expected, negotiated, and adjusted levels of performance as described in the preamble to § 677.170. This has resulted in the introduction of the terms ''negotiated levels'' and ''adjusted levels'' as it applies appropriately within the process. Additionally, the Departments have added language to mirror provisions in § 677.190 that require 2 years of complete data for any local core program before applying the objective statistical model and establishing adjusted levels of performance.

Comments: Several comments pertained to the negotiations process in response to proposed § 677.210(b). A few commenters were unclear why Local WDBs are included in the negotiations process described in sec. 116(c) of WIOA but are not included in the negotiations process described in sec. 116(b). Many commenters also expressed a desire that the negotiations process be meaningful, with one commenter noting that the negotiations process under WIA was often subjective with performance standards dictated on a take it or leave it basis. Similarly, a commenter emphasized that the process should not simply be a matter of setting a target independently and passing it down to Local WDBs. Another commenter also suggested that the overall negotiations process would be enhanced if local areas were allowed to provide additional information not accounted for in the statistical models. One commenter suggested that the regulations contain an appeal mechanism for Local WDBs in cases where the State does not negotiate performance with the Local WDB and CEO as required by WIOA.

Departments' Response: The Departments note that local areas are permitted to provide additional information during the negotiations process. This allows the negotiations process to take into account other information that local areas consider important when establishing the negotiated levels of performance. The Departments also note that under WIOA sec. 116(g)(2)(B), the local areas may appeal the Governor's decision to impose a reorganization plan under WIOA sec. 116(g)(2)(B)(i). Therefore, if the Governor fails to negotiate with the

Local WDBs, the Local WDB fails to meet its local performance accountability indicators as described in WIOA sec. 116(g), and the Governor imposes a reorganization plan, then the Local WDB may exercise its right to appeal under WIOA sec. 116(g)(2)(B). For further discussion, the Departments refer readers to the preamble to 20 CFR 679.130 on the functions of the State WDB (*see* DOL WIOA Final Rule published elsewhere in this issue of the **Federal Register**).

WIOA sec. 116(c)(2) requires the Local WDB, CEO, and the Governor to negotiate and reach agreement on local levels of performance. The Local WDBs are not included in the process outlined in sec. 116(b) because that process pertains to State accountability, with negotiations occurring between the State and the cognizant Federal agency for the core program. The Departments agree that WIOA requires a meaningful negotiation. The Departments encourage the parties to negotiate which the Departments interpret as requiring open-communication between the parties for the purpose of reaching an agreement on the local performance targets. The Departments emphasize that the purpose of the statistical adjustment model required under sec. 116(b)(3)(A)(viii) is to enhance objectivity in the development of performance targets as part of the negotiations process. However, because the Departments have concluded that the requirement to negotiate is already conveyed through WIOA and the regulation, the Departments do not consider additional regulatory text necessary to ensure States comply with the requirements contained in sec. 116(c) that pertain to inclusion in the negotiations process. Therefore, no change to the regulatory text has been made in response to this comment.

The Departments also agree that the statistical adjustment model may not adequately account for all of the economic and demographic variables that may affect a local area's performance. Section 677.210(c) requires the negotiations between the Governor, Local WDB, and CEO to include a discussion of the circumstances not accounted for in the model. Because this is already required by the regulation, the Departments did not make a change to the regulatory text in response to this comment.

Comments: Another commenter recommended that local areas have access to the models in order to run local targets.

Departments' Response: The Departments note that it will publish the methodology of the statistical adjustment model, and the Departments invite the public, including local areas, to review, and access the model, as appropriate.

Comments: The Departments received a number of comments on the statistical adjustment model. Some commenters expressed concern that using the model as proposed at the end of the program year would result in targets being applied retroactively. Similarly, commenters expressed concern that targets set through the model may not reflect service to hard-to-serve populations, such as foreign-born participants often served by title II programs or other populations with barriers to employment. Some commenters suggested that the model needed to be updated on a regular basis in order to reflect the barriers of enrolled participants and the participants actually served.

Departments' Response: With respect to the utilization of the model at the end of program year in order to account for actual circumstances, this would not be a retroactive application of a performance target, but rather an adjustment to an already established target based on what actually transpired during the program year. This would take into account, as a commenter suggested, service to hard-to-serve populations, such as those with barriers to employment. In other words, the model will increase the performance levels required if a State or local area were to serve lower-than-anticipated percentages of hard-to-serve populations with barriers to employment because it would presumably be easier to serve these individuals. Similarly, performance levels (or targets) would be decreased if a State or local area were to serve a higher-than-anticipated percentage of individuals with barriers, because these individuals are harder to serve. Given the importance both Departments place on consistent understanding, application, and implementation of these complex yet critical requirements, the Departments are committed to providing joint and substantive technical assistance in addition to detailed policy guidance. Furthermore, commenters' expressed need to update the model to reflect the participants who are actually being served is one of the hallmarks of the statistical adjustment models as envisioned. Because the model addresses the commenters' concerns, no changes to the regulatory text were made in response to these comments.

Comments: One commenter recommended a national workgroup with broad participation across core programs and other WIOA stakeholders in order to address the statistical model, as well as other aspects of WIOA performance accountability because of the significance and impact of this Joint WIOA Final Rule. One commenter recommended that local areas be given an opportunity to review any detailed methodology utilized for setting performance targets prior to implementation.

Departments' Response: The Departments understand the significance of these joint regulations on performance accountability that implement sec. 116 of WIOA. It is for this reason that the Departments have convened multiple stakeholder dialogues to address the intricacies of the statistical adjustment models as they are developed, consistent with, and as required by WIOA sec. 116(b)(3)(A)(viii). In addition, once the statistical adjustment methodology has been approved, there will be a comment period to ensure broad stakeholder input into its finalization.

Comments: Another commenter remarked that CEOs of each local area in a planning region should be permitted to choose to develop, rather than be required to develop, regional performance measures in addition to local area measures and recommended a revision to 20 CFR 679.510 to reflect this suggested flexibility, remarking that Local WDBs and CEOs already have a significant responsibility regarding their own local area performance targets; requiring regional targets in addition to local area targets would be unduly burdensome.

Departments' Response: WIOA sec. 108(b)(1) requires the CEOs to develop the regional performance indicators and the Departments' regulations are consistent with this statutory requirement. Therefore, the regulatory text has not been changed in response to this comment.

Comments: A commenter requested that the Departments provide additional information regarding the requirement to promote continuous improvement through performance target setting, adding that neither the Preamble nor the NPRM text discuss the requirement beyond the fact that it exists. The commenter opined that the Departments seemed to interpret continuous improvement under WIA as requiring improvement on every measure, every year, and offered their own interpretation of continuous improvement, which could be defined as achieving the same results with fewer resources or serving a population with more barriers (or simply a larger population) with the same resources (*i.e.,* increased efficiency). A commenter

recommended, based on the context of an optimal return on investment in Federal funds, that setting targets focusing on improvement of measures with lower performance, while setting targets consistent with existing performance levels on measures with higher performance, is consistent with the requirement to set targets that promote continuous improvement and an optimal return on investment of Federal funds.

Departments' Response: The Departments agree that continuous improvement can be defined in multiple ways based on the circumstances and context. Because the meaning of this term varies significantly based on the circumstances and context in which it is used, the Departments do not think it is appropriate for inclusion in the regulation and will be providing additional information on continuous improvement during guidance development. Therefore, no change was made to the regulatory text in response to this comment.

6. Incentives and Sanctions for Local Performance for Workforce Innovation and Opportunity Act Title I Programs (20 CFR Part 677, Subpart D; 34 CFR 361.215 Through 361.225; 34 CFR 463.215 Through 463.225)

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

This section of the regulation governs when local areas are eligible for incentive grants.

Comments: The Departments received a comment asking under what circumstances local areas are eligible for State incentive grants. Another commenter remarked that the question posed by the rule regarding possible circumstances for eligibility is not actually answered by the rule, which instead goes on to discuss pay-for-performance strategies.

Departments' Response: The Departments agree that the regulatory text in this paragraph should be revised to ensure understanding and consistent application. Therefore, paragraph (a) has been revised to specify that Governors are not required to award incentive funds based on local performance on the primary indicators, although they have the flexibility to do so using State set-aside funds based on WIOA at sec. 134(a)(3)(A)(xi). Paragraph (b) has been revised to clarify that Governors also have the flexibility to create incentives for the Local WDBs to implement pay-for-performance contract strategies to provide training services as described in sec. 134(c)(3) or youth activities as described in sec. 129(c)(2). However, these incentives must be paid for with non-Federal funds.

The Departments have chosen not to regulate under what specific circumstances a local area be eligible for incentive grants using WIOA funds given that this is at the discretion of the Governor. However, the Departments are considering providing guidance on this topic. No change to the regulatory text was made in response to this comment.

Comments: Other commenters remarked that separate funds should be made available for States as an incentive for meeting or exceeding statewide performance targets as was the case under WIA, with commenters expressing concern that the dedicated incentive grants to States were utilized to leverage other funds and programs and the lack of this provision in WIOA presents a funding gap. These commenters requested further clarity on the issue and recommended that funds be made available to target system development needs.

Departments' Response: The requirement under WIA that high-performing States be rewarded with State incentive grants within specified Federal parameters no longer exists under WIOA. Rather, sec. 134(a)(3)(A)(xi) provides States with the flexibility to utilize Governor's Reserve funds to provide incentive grants to local areas for performance by the local areas on local performance accountability indicators. Further, the Departments would like to emphasize that, in addition to the statewide capacity building efforts that are a required use of the funds allotted to States, both Departments are committed to providing substantive technical assistance on a national, regional, and statewide basis in order to target specific development needs, including needs around performance accountability. No change to the regulatory text is being made in response to this comment.

Comments: One commenter expressed confusion about the programs included in pay-for-performance contract strategies and inquired as to whether the provision applies to title II providers, which the commenter recommended.

Departments' Response: The Departments interpret the statutory provision for pay-for-performance contract strategy incentives at WIOA sec. 116(h) as only permitted for WIOA title I programs because of the specific reference to title I training services for adults and dislocated workers as well as the reference to title I youth services. Moreover, WIOA references Local WDBs, which are responsible for title I programs and providers, as the other programs do not have Local WDBs. However, there is nothing prohibiting the adoption of pay-for-performance contract strategies by other programs that is consistent with other Federal, State, and local policies. No change to the regulatory text has been made in response to this comment.

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

This section explains when a corrective action plan or sanction may be applied to a local area. This section has been revised and renumbered in accordance with the distinctions among expected, negotiated, and adjusted levels of performance as described in the preamble to § 677.170. This has resulted in the introduction of the terms ''negotiated levels'' and ''adjusted levels'' as it applies appropriately within the process. Additionally, the Departments have added language to mirror provisions in § 677.190 that require 2 years of complete data for any local core program before applying the objective statistical model and establishing adjusted levels of performance. The Departments also have revised § 677.220(b) to specify that failure occurs when a local area fails to meet the adjusted levels of performance for the same indicator for the same core program authorized under WIOA title I for the third consecutive program year.

Comments: Several commenters indicated that more clarity is needed regarding how sanctions would apply locally to other programs and funding streams besides WIOA title I. One commenter remarked that the impact of local sanctions should be spread across the other core programs. Another commenter noted that all potential sanctions would be placed squarely on the shoulders of the Local WDB regardless of fault, creating a situation it viewed as inequitable.

Departments' Response: Any financial sanction applied to the Governor's Reserve Allotment is based on *State* performance across the core programs, and not local performance. This is governed by WIOA sec. 116(f) and subpart B of this part. Specifically, §§ 677.180 through 677.200 govern when the Departments will sanction a State. The Departments note that the local area provisions under WIOA sec. 116(c) only apply to WIOA title I programs. The other core programs may participate, partner, and provide services in a local area, but, there is no local area performance accountability

provision for those programs. However, local areas are held accountable for performance on the primary performance indicators for title I programs. Local-level accountability and any sanctions imposed are determined by the State, consistent with WIOA sec. 116(g) and subpart D of this part. Therefore, the Departments are not changing the regulatory text in response to these comments.

Comments: Several commenters responded to the Departments' request for feedback regarding what other actions in addition to those already in statute should be considered by the Governor for local areas that continue to fail to meet performance for 3 consecutive years. Many commenters offered suggestions but stated the need for clarification first on what is meant by ''failure to meet adjusted levels of performance on required indicators for a third consecutive year,'' recommending that local area failure for a third consecutive year be based on the same indicator and not any indicator.

Departments' Response: The Departments have defined ''failure to meet'' adjusted levels of performance at the State level across the core programs based on the primary indicators of performance and criteria delineated in § 677.190 of these regulations. Determining what is meant by ''failure to meet adjusted levels of performance on required indicators for a third consecutive year'' *at the local level* is within the Governor's discretion per § 677.220(a)(1), which is similar to the historical requirements that existed under WIA. Because defining these terms is within the Governor's discretion, the Departments think this is not appropriate to be addressed in these regulations. No change to the regulatory text was made in response to these comments.

Comments: One commenter proposed another reason for the Departments to define ''failure to meet adjusted levels of performance'' arguing that a local area could be making significant progress towards improving performance but could potentially miss the required level by a fraction of a point. The commenter added that the lagged performance data complicates matters further and that some systemic performance issues may take more than 3 years to correct. For these reasons, this commenter suggested changing the regulatory language of ''fails to meet'' to ''fails to make satisfactory progress.''

Departments' Response: The Departments' requirement to determine when a corrective action or sanction can be applied to a local area is based on statutory language and the Departments will not modify this requirement. Therefore, no change to the regulatory text was made in response to this comment.

Comments: Several commenters offered suggestions for additional actions that might be taken by the Governor in addition to those already specified in regulatory text. Some commenters suggested that the Governor should be authorized to apply a financial sanction, with one commenter adding that the Governor should be authorized to dissolve a local area for continued failure, and other commenters recommended that the Governor also be authorized to consolidate local areas. Another commenter supported the Governor's flexibility, noting that redesignation of a local area is an inequitable penalty when compared to the penalties WIOA prescribes for State workforce agencies that fail to meet required performance levels. Other commenters, including a number of Local WDBs, expressed concern that the language in the regulatory text allowing Governors to take significant actions as deemed appropriate was too broad in scope and could be used to redesignate or eliminate local areas, suggesting at a minimum that parameters be specified at the Federal level. These commenters also stated that any additional actions taken by the Governor should be required to include consultation with the local elected official, although one commenter suggested the mandatory consultation with local elected officials should extend to any actions related to technical assistance. One commenter also inquired about the absence of any reference to failing performance for 2 consecutive years, stating it was clear that technical assistance was required after the first year, and it was clear a reorganization plan was needed after the third consecutive year, but the regulations were silent on what would take place after the second consecutive year of failure.

Departments' Response: The Departments considered the comments regarding additional significant actions that might be taken by a Governor for continued local performance failure and concluded that there is nothing prohibiting a State from considering financial sanctions as a potential ''significant action'' as part of the reorganization plan. Therefore, no Federal action is needed to permit this. The Departments also agree that significant actions taken by the Governor pursuant to § 677.220(b)(3) would be most effective if they included a consultation with the local elected official and other local stakeholders, and therefore, recommend the Governor do so. However, the Departments do not think a change in regulatory text is necessary as WIOA and regulation do not preclude the Governor from doing this. The Departments do not agree that regulatory text is necessary requiring consultation with local elected officials occur prior to the provision of any technical assistance as this is not required by WIOA and the process for providing technical assistance is at the Governor's discretion. Therefore, the Departments have chosen not to regulate this. Regarding the comment pertaining to failure for a second consecutive year, WIOA sec. 116(g)(1) makes clear that failure ''for any program year'' will trigger the provision of technical assistance; therefore, if failure occurs in the second consecutive year, the Governor is obligated to provide technical assistance, or request the Secretary of Labor to do so. In response to comments that the Governor could consolidate, redesignate, or dissolve a local area through the reorganization plan, the Departments note that WIOA sec. 116(g)(2) leaves what actions are most appropriate to take when a local area fails to meet its local performance accountability indicators, to the Governor's discretion. Therefore, the Departments will not change regulatory text in response to these comments.

Comments: One commenter requested clarification on § 677.220(b)(2), which allows the Governor to prohibit the use of eligible providers and one-stop partners that have been identified as achieving poor levels of performance as an action that may be taken as part of a reorganization plan. The commenter pointed out that neither WIOA nor proposed regulations addressed poor performance levels of one-stop partners, such as TANF, and suggested that the NPRM was referring to a competitively procured contractor or one-stop center operator.

Departments' Response: The language in the regulation is statutory language from WIOA sec. 116(g)(2)(A)(ii), and the Departments do not have authority to change the requirements of WIOA. No change to the regulatory text was made in response to this comment.

Comments: The Departments also received a number of general comments pertaining to this paragraph. One commenter wanted to ensure that any technical assistance for youth programs be developed by experienced youth experts that also could include youth who have successfully navigated the system and who are now employed. This commenter also cautioned against assumptions that a particular youth program may be causing the

performance failure. Another commenter strongly recommended that the Departments delay enforcement of the sanctions provisions for at least 2 years to further calibrate the statistical adjustment model, during which time States could approach implementation in a methodical manner that allowed for the application of lessons learned without strict penalties. Other commenters offered a similar suggestion, recommending that an additional 2 years was needed to implement these requirements, during which time the Departments should launch an intensive and nationwide technical assistance effort. Another commenter recommended transitional implementation in conjunction with the development of a national workgroup of broad stakeholders and experts to tackle each aspect of performance accountability, including the imposition of sanctions.

Departments' Response: The Departments expect the technical assistance the Governor provides pursuant to § 677.220(a) will be well-informed and developed with input from subject matter experts and agrees that former youth participants can offer a valuable perspective on technical assistance needs based on their own experience. In response to comments requesting delayed implementation of performance at the local level, the Departments received similar comments on the State-level performance accountability. In response to those comments, the Departments have revised § 677.190(c) to provide that the Departments expect full implementation of the performance accountability requirements to take some years, given the complexity of WIOA's requirements and the timing of the availability of data necessary to populate the statistical adjustment models, for instance. At the local level, the decisions on performance implementation are at the Governor's discretion and subject to the requirements of 20 CFR part 679 (*see* DOL WIOA Final Rule, published elsewhere in this issue of the **Federal Register**). Therefore, no change to the regulatory text is being made in this part in response to this comment. Additional information on implementation will be provided by the Departments in guidance.

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

This section of the regulation governs the process for an appeal if the local area wishes to appeal a reorganization plan. The Departments received few comments on the proposed text for this paragraph of the regulations. The Departments are implementing this regulation as proposed, except for a revision to § 677.225(d) which is described below.

The Departments revised paragraph (d) of § 677.225, replacing ''to impose a reorganization plan'' with ''on the appeal'' for consistency with the relevant WIOA provision. WIOA sec. 116(g) governs the consequences for a local area's failure to meet local performance accountability indicators for the youth, adult, or dislocated worker programs. WIOA sec. 116(g)(2) requires the Governor to develop a corrective action plan if the local area's failure continues for a third consecutive year. The local area and CEO of the local area may appeal this decision to the Governor. The Local WDB and CEO may appeal the Governor's decision on the appeal to the Secretary of Labor. The proposed version of this paragraph stated that the Governor's decision to impose a reorganization plan becomes effective at the time it is issued. However, WIOA sec. 116(g)(2)(C) provides that it is the Governor's decision on the appeal, not the reorganization plan, that becomes effective unless the Secretary of Labor rescinds or revises the plan.

Comments: One commenter recommended a revision to the regulatory text to clarify that if the Secretary of Labor does not respond to a joint appeal pursuant to § 677.225(c) within 30 days, then the Governor's decision to impose a reorganization plan automatically results in the reorganization plan becoming effective.

Departments' Response: Section 677.225(c) clearly requires the Departments to respond within the specified timeframe. The statutory text does not provide for automatic effectiveness of the plan if the Secretary of Labor does not respond within the 30-day timeframe. No change to the regulatory text was made in response to these comments.

7. Eligible Training Provider Performance for Workforce Innovation and Opportunity Act Title I Programs (20 CFR Part 677, Subpart E; 34 CFR 361.230; 34 CFR 463.230)

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

Section 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 program of study eligible to receive funding under the adult and dislocated worker formula programs under title I 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 increasing awareness of the program and potentially as a tool to enhance their programs.

Section 677.230(b) has been revised to specify that the registered apprenticeships programs referred to are those registered under the National Apprenticeship Act. This section, in conjunction with 20 CFR 680.400 through 680.530, establishes the minimum requirements for performance information to be provided in the ETP performance reports. Additional information on these requirements and the data to be collected is provided through the WIOA Joint Performance ICR. The Departments inserted ''mechanism of'' into § 677.230(c) to clarify that the State must provide a mechanism of electronic access to the public ETP performance report in its annual State performance report. This edit was made for consistency with § 677.160(c).

Comments: The Departments sought specific input on how the Departments could best support ETPs in meeting the requirements of this section as well as on how to make the ETP reports a useful tool for WIOA participants, ETPs, interested stakeholders, and the general public. Multiple commenters suggested the Departments could support ETPs in meeting the requirements of subpart E by providing reporting formats and instructions in order to establish the basis for data collection. A commenter remarked that guidance to States would help streamline performance reporting for training providers and minimize the associated burden.

However, other comments suggested the Departments avoid being too prescriptive in order to maximize the accessibility of the reported data. A few commenters suggested that the increased volume of data collection necessitates technical assistance and funding support from DOL.

Departments' Response: The Departments recognize that in many cases the ETP reporting provisions will be different from what was standard under WIA. In recognition of this, the Departments are issuing definitions on the elements required under this provision through the WIOA Joint Performance ICR in accordance with the

PRA. The Departments crafted the definitions as they pertain to ETP reporting with consideration of commenter suggestions, industry standards, and statutory requirements while balancing the need for clarity and flexibility. Although the Departments agree these definitions are needed, they are appropriately handled through the aforementioned WIOA Joint Performance ICR.

Comments: Several commenters asserted that the Departments must permit an alternate definition of ''participant'' and/or ''exit'' for use in ETP reporting. These commenters noted that they would require considerable local flexibility in the application of these definitions. Commenters further articulated a need for technical assistance around the data collections associated with these definitions.

Departments' Response: As mentioned above, through the WIOA Joint Performance ICR, the Departments are issuing definitions of how these terms are used in ETP reporting. These definitions balance the needs for consistency and flexibility. No change to the regulatory text was made in response to these comments.

Comments: A few commenters suggested that the performance metrics, which are required to be reported for all individuals in a program of study, be waived for non-WIOA participants for the first 2 years to provide sufficient time to establish the required data systems to collect and report on these elements.

Departments' Response: The Departments have given consideration to the systems readiness to implement these provisions and understand that implementation will require guidance and technical assistance in order to assist States in this implementation. No change to the regulatory text was made in response to these comments.

Comments: A commenter stated that data collected should align with existing data collected on educational programs from other sources in order to maximize its usefulness to consumers.

Departments' Response: The Departments considered this concern, however, the data being collected are required by WIOA sec. 116(d)(4). Therefore no change to the regulatory text has been made in response to this comment.

Comments: A few commenters stated that since many training providers serve small populations, the data they report would not be statistically reliable indicators of performance. Similarly, a commenter requested clarification regarding the application of the disaggregation requirements to individual ETPs.

Departments' Response: The Departments recognize the contribution of ETPs that may serve smaller populations. The Departments note that the data disaggregation requirement in WIOA sec. 116(d)(6)(C) also applies to the ETP performance reports. The Departments will provide additional information on the parameters of the collection and reporting of this information through the WIOA Joint Performance ICR and program-specific guidance. This information is required to be collected under WIOA sec. 116(d)(4); therefore, no change to the regulatory text has been made in response to these comments.

Comments: A commenter urged the Departments to provide States maximum flexibility in displaying provider performance data in order to allow for State experimentation and to ensure compatibility with technology platforms. Another commenter suggested that the ''scorecards'' already developed by Local WDBs should be considered as a model.

Departments' Response: WIOA sec. 116(d)(1) and (4) require the use of 'a template' developed by the Departments to report on outcomes for eligible training providers and this template must be used consistent with the requirements of WIOA sec. 116 and this regulation. However, the use of this template does not preclude the States from additionally displaying performance data in a manner of their choosing and the Departments welcome innovative approaches to displaying this information in a user-friendly manner. No change to the regulatory text was made in response to these comments.

Comments: A commenter stated that if this data were a Federal requirement collected through ED, there would be a more consistent national approach.

Departments' Response: WIOA sec. 116(d)(4) requires the collection and reporting of this information on eligible training providers therefore no change to the regulatory text has been made in response to this comment.

Comments: A few commenters suggested that the possible barriers to employment be standardized for the purpose of the ETP performance report.

Departments' Response: The Departments recognize the importance of standardized and uniform definitions to provide data that are comparable across programs and States. The Departments note that specific calculations, definitions, and reporting parameters will be provided through the WIOA Joint Performance ICR; therefore, no change has been made with respect to defining barriers to employment in this section. No change to the regulatory text was made in response to these comments.

Comments: A commenter identified the most important data to be reported as training program completion rates, wage rates, and job placement rates.

Departments' Response: The Departments acknowledge the suggestions raised regarding information that is valuable to understanding the outcomes of training programs. WIOA provides specific collection requirements at sec. 116(d)(4), which includes much of the data suggested by the commenter, and further information as it pertains to the reporting requirements for these programs can be found in the WIOA Joint Performance ICR. No changes to the regulatory text were made in response to this comment.

Comments: A commenter stated that the performance outcomes only should be collected on those participants receiving services under WIOA title I, subtitle B.

Departments' Response: WIOA sec. 116(d)(4)(a) requires reporting on the primary indicators of performance for all students in the program of study, therefore no change has been made in response to this suggestion. No change to the regulatory text was made in response to this comment.

Comments: A commenter asserted that the ETP reporting requirements should be kept flexible to provide local providers the greatest choice in training providers. Commenters urged the Departments to allow ETP eligibility to last more than 1 year in order to generate enough participants and exits to provide a useful outcome measurement. A commenter remarked that WIOA authorizes Governors to establish a transition period for ETPs under WIA to remain on the list through 2015. A commenter suggested that the Departments require States to list credentialing programs on ETP lists (ETPLs) in order to provide the most comprehensive information.

Departments' Response: WIOA sec. 122 governs this process; therefore, the Departments refer readers to the discussion of 20 CFR part 680 in the DOL WIOA Final Rule (published in this issue of the **Federal Register**) for responses to these comments and more information regarding these issues. No change to the regulatory text was made in response to these comments.

Comments: The Departments received numerous comments requesting clarity and further information on the interaction between the provisions in WIOA sec. 116(d)(4) Eligible Training Provider performance report and the

performance reporting required for training provider eligibility under WIOA sec. 122 (20 CFR part 680, *see* DOL WIOA Final Rule).

Departments' Response: WIOA sec. 116(d)(4) requires that the ETP performance report must be prepared annually and the States must provide electronic access to this report in their State annual performance report pursuant to § 677.160(c). WIOA sec. 122 governs the process for determining training provider eligibility; this process requires calculation of certain performance information. As many commenters noted, there is significant overlap in what must be included in the WIOA sec. 116(d)(4) report and the information providers must provide for the eligibility determination under WIOA sec. 122. The Departments recognize this overlap may provide opportunities for States to collect this information for both purposes. Further information concerning ETP reporting requirements and performance reporting requirements is available through the WIOA Joint Performance ICR. The Departments will also be providing technical assistance in regard to these reporting requirements. No change to the regulatory text was made in response to these comments.

Under 20 CFR 681.550, DOL allows the use of individual training accounts (ITAs) for out-of-school youth ages 16 to 24. The parameters for this allowance are discussed in the preamble to that section. The Departments clarify here how youth are reported on in the WIOA sec. 116(d)(4) eligible training provider performance reports. The Departments clarify that such out-of-school youth are reported on in both the eligible training provider performance report as well as in the State and Local annual reports. Because WIOA sec. 116(d)(4) does not describe such youth, the Departments are clarifying here as well as in the WIOA Joint Performance ICR how these youth program participants are reported on in these reports. When such youth are reported on in the eligible training provider performance reports, their performance is reported using the same performance indicators as prescribed for WIOA adult and dislocated worker participants. Using the same metrics minimizes the burden on ETPs. The Departments note that such youth are excluded from the required reporting identified at § 677.230(a)(1)(i) through (iii) but are included in the counts required by § 677.230(a)(2) through (a)(4). The Departments further note that such youth are additionally reported on in the State and Local annual reports in accordance with §§ 677.155(d), 677.160, and 677.205, as described in those sections. The Departments will provide additional guidance on the treatment of these individuals through the WIOA Joint Performance ICR and in guidance.

Comments: A number of commenters responded to the Departments' request for comments regarding support for registered apprenticeship programs interested in providing performance information. A few commenters suggested that registered apprenticeship programs should report on the same performance outcomes as other training programs. Another commenter urged the Departments to require registered apprenticeships to publish performance data. Other commenters suggested there is value in having a comprehensive list of registered apprenticeship providers, but opposed additional reporting requirements for these programs. A commenter stated that if pre-apprenticeship programs are to be included in the ETP system, they will likely require separate criteria. Another commenter stated that performance information for registered apprenticeship programs should be clearly described.

Departments' Response: The Departments have concluded that WIOA sec. 116(d)(4) does not require registered apprenticeship programs to provide performance information for the ETP report. However, the Departments note that including information for a registered apprenticeship in these reports would provide a benefit to those individual seeking training through registered apprenticeships in that they will gain visibility and access to a broader applicant pool by voluntarily participating in this reporting. Therefore, the Departments are implementing § 677.230(b) as proposed to allow for the voluntary submission of performance information from registered apprenticeship program sponsors and their providers of related technical instruction. Any such information must be published in the State's annual ETP performance reports. With regard to the creation of a comprehensive list of registered apprenticeships the Departments note that such a requirement is beyond the scope of this regulation. No change to the regulatory text was made in response to these comments.

Comments: A commenter supported the creation of incentives for registered apprenticeship programs to submit performance information.

Departments' Response: The Departments are not creating additional incentives but notes that incentive for reporting already exists as explained above. No change to the regulatory text was made in response to this comment.

Comments: A commenter encouraged the Departments to account for positive outcomes from registered apprenticeship programs, even if the outcome is not necessarily completion of the program because programs could be several years in length.

Departments' Response: To the extent that the registered apprenticeship is actively reporting the information required under these provisions includes such information as measureable skill gains, which accounts for progress made during participation of a registered apprenticeship. No change to the regulatory text was made in response to this comment.

Comments: The Departments received multiple comments on how to calculate the average cost per participant for those who received training services for the most recent program year and the 3 preceding program years as required by WIOA sec. 116(d)(4)(E) and § 677.230(a)(3). One commenter noted that this metric is not currently collected. Such suggestions included: Calculating at the education or training program level, rather than the participant level; aligning calculations with existing national reporting standards, such as the Integrated Postsecondary Education Data System; calculating based on the tuition plus any support services (*e.g.*, books, supplies, transportation) necessary to succeed in the training; calculating based on actual training costs for a student, including portions paid for with government subsidies; and calculating based on the direct cost paid under WIOA title I funding.

Departments' Response: The Departments considered these proposals; however, the Departments have concluded that the cost per participant is more appropriately addressed in the WIOA Joint Performance ICR, which provides more specificity around what underlying data are necessary and how such data will be used in calculating this information. The Departments will provide additional information on how this metric is calculated through the WIOA Joint Performance ICR, guidance, and technical assistance. No change to the regulatory text was made in response to these comments.

Comments: Commenters expressed concern that the ETP performance report does not provide sufficient cost information because it does not take into account other factors such as, textbooks, supplies, transportation, etc.

Departments' Response: WIOA sec. 116(d)(4) and § 677.230 mandate the collection of specific information for each program of study for each eligible

provider of training services under title I as outlined in § 677.230(a). The Departments are cognizant of the reporting burden the ETP performance report places on ETPs and do not want to place additional burden on these entities. However, WIOA sec. 122 and 20 CFR part 680 require States to develop procedures for determining the eligibility of training providers and programs and to make information about the provider and program available to participants and members of the public. The WIOA sec. 116(d)(4) ETP performance report is only one component of an overall consumer product. States are not precluded from developing additional resources for consumers and the Departments encourage States to identify additional information that would be most helpful for students to have as they are evaluating a program or provider. No change to the regulatory text was made in response to these comments.

Comments: Numerous commenters raised issues on the burden posed for training providers. Such as:

- A commenter asserted that many small training providers, particularly those in rural areas, would be unable to comply with ETP performance reporting requirements, which would limit available trainings.
- A commenter expressed concern regarding the burden associated with collecting data reliant on SSNs, stating that many community colleges do not collect student SSNs.
- A commenter described the increased data collection burden associated with obtaining the SSNs for all enrolled students, and, if deemed necessary, establishing data sharing agreements with each of the individual ETPs.
- A commenter asserted that the costs associated with collecting, maintaining, and reporting out data are unknown and will vary depending on the entity responsible for these processes.
- This commenter also suggested that entities applying for inclusion on the State ETPL may not capture the required demographic and programmatic data that would allow for the production of the performance report.
- A few commenters suggested that many of the reporting elements would not be valuable and would impose a significant burden at the State and local level.

Multiple commenters suggested that many training providers do not have the capability or desire to report the proposed level of data on a regular basis, and this will lead to a decrease in training provider participation.

Departments' Response: The information required to be reported is required by WIOA sec. 116(d)(4). The Departments reiterate that the ETP performance reports provide critical information, including the employment, earnings, and credentials obtained by individuals in the program of study eligible to receive funding under the adult and dislocated worker formula programs under title I 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. No change to the regulatory text was made in response to these comments.

Comments: Many commenters addressed § 677.230(e)(3) which contains the provisions allowing the Governor to designate one or more State agencies such as a State Education Agency or State Educational Authority to assist in overseeing the eligible training provider performance. Several commenters suggested designating the State as responsible for ETP data collection, coordination, and dissemination. These commenters suggested that their proposed approach would ensure local staff time is spent serving participants and that the data are consistently collected and reported across the State. A few commenters also stated that the burden on training providers would be minimized by not requiring collection of any data the State already has. A few commenters suggested aligning the ETP eligibility determination process with the data reporting process in order to minimize burden. A commenter sought clarification regarding the role of training providers in generating ETP performance reports and collecting data on participants.

Departments' Response: The Departments note that § 677.230(e) allows many such actions as recommended by the commenters. Additionally, the Departments reiterate that to the extent that there is overlap between data collected to meet requirements under WIOA sec. 122 and WIOA sec. 116 this overlap may provide opportunities for efficiency in collection and reporting of this information for both purposes. No change to the regulatory text was made in response to these comments.

Comments: Commenters expressed concern regarding the level of burden to eligible training providers for collecting the required data.

Departments' Response: The Departments acknowledge the need to identify the most effective data collection strategies and have reviewed the comments received through the WIOA Joint Performance ICR. Based on comments received, the Departments have concluded that State grantees are best situated to make the ETP performance reports available to ETA given their existing familiarity with the reporting structure. Grantees are required to establish a process to collect the data from the eligible training providers. The Departments will provide additional guidance on the ETP performance report.

Comments: In order to facilitate the reporting process, a commenter suggested that all training providers should report outcomes in the same format to facilitate cross-program comparisons and identify underperforming vendors.

Departments' Response: The Departments agree that reporting data in the same format would facilitate cross-program comparisons and WIOA sec. 116(d)(1) requires the Departments to develop a template for the annual ETP performance report. This section of WIOA requires the ETPs to use this report; therefore, all annual ETP performance reports will have outcomes listed in the same report to facilitate cross-program comparisons. Because this is already accomplished through WIOA and the regulation, the Departments did not make any changes to the regulatory text based on this comment.

Comments: Another commenter suggested that each program of study that a provider wants to be eligible to serve WIOA-funded students should be required to report.

Departments' Response: Under WIOA sec. 116(d)(4), the required reporting on a program of study only applies to those eligible training providers who are already on the State list of Eligible training providers and programs. Additional information on eligibility requirements is found in 20 CFR part 680, subpart D. The Departments also note, however, there is nothing in WIOA that precludes a State or an Eligible Training provider from providing or publishing similar information. No change to the regulatory text was made in response to this comment.

Comments: A commenter pointed out that entrepreneurship training would not score well on the performance indicators unless a recognized credential is developed.

Departments' Response: The Departments acknowledge concerns raised with regard to training that is

targeted at self-employment and recognizes that individuals who are self-employed would not be accounted for in State UI wage records. However, the Departments note that WIOA sec. 116(d)(4) identifies more than just employment or credential based outcomes. Such indicators as measurable skill gains combined with the allowance to collect and verify employment information through supplemental means as described more fully in the preamble to § 677.175 provides alternative points of information on outcomes associated with such trainings. The Departments have not made any revisions to this section with regard to this comment. Further clarification on the allowed sources of data and calculations for these provisions will be provided through the WIOA Joint Performance ICR. No change to the regulatory text was made in response to this comment.

8. Performance Reporting Administrative Requirements (20 CFR Part 677, Subpart F; 34 CFR 361.235 Through 361.240; 34 CFR 463.235 Through 463.240)

Section 677.235 What are the reporting requirements for individual records for core Workforce Innovation and Opportunity Act (WIOA) title I programs; the Wagner-Peyser Act Employment Service program, as amended by WIOA title III; and the Vocational Rehabilitation program authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV?

This section of the regulations requires all of the core programs—except for the title II program—to report using individual records, as opposed to aggregate data. While the NPRM would have required that records submitted to DOL must be submitted in one record that is integrated across all core DOL-administered programs, the regulatory text has been revised to read that such records ''may'' be submitted in an integrated format.

Comments: Many commenters expressed a range of concerns regarding the proposed reporting requirements that appear to be based on incorrect or incomplete information. For instance, one commenter asserted that WIA required an SSN for program participation, whereas the Wagner-Peyser Act Employment Service program did not, thereby resulting in data deficiencies regarding the matching of wage records, which should be addressed under WIOA.

Departments' Response: The provision of a SSN is strongly encouraged to facilitate objective performance measurement through the use of wage records; however, requiring an SSN as a condition of program participation has been and remains a violation of the Privacy Act of 1974, 5 U.S.C. 552a Note, which DOL has previously clarified in policy guidance. See TEGL No. 5–08, ''*Policy for Collection and Use of Workforce System Participants' Social Security Numbers.*'' No change to the regulatory text was made in response to these comments.

Comments: Another commenter suggested that, because one integrated record was required for each participant across all core programs, sufficient time should be provided to implement this paragraph, and it should be implemented no earlier than July 1, 2018. One commenter noted that State VR agencies are not part of the Workforce Investment Streamlined Performance Reporting (WISPR) system and suggested that States should be allowed to file separate reports for the VR program.

Departments' Response: While the Departments want to make clear that there is no requirement that performance reporting for the Departments of Labor and Education be integrated, the Departments encourage moving in that direction. For States that have integrated reporting of WIOA title I core programs and Wagner-Peyser Act Employment Service programs, DOL strongly encourages those States to submit an integrated report. This provision regarding the submission of integrated reports does not extend to the AEFLA and VR programs administered by ED. However, the Departments note that as previously discussed, DOL intends to work towards developing an integrated reporting mechanism. No change to the regulatory text was made in response to this comment.

Comments: Another commenter disagreed with the Departments' intention to have States integrate and submit their performance reporting as a single, comprehensive, aggregate report because it would incur an undue and unrealistic burden.

Departments' Response: As explained above, this is not a current requirement. The Departments understand that there would be a burden with submitting a single, aggregate report to be submitted by one State agency when the different programs may currently be housed in different departments or agencies.

Comments: Several commenters were also under the impression that all of the core programs currently utilize individual records, with one commenter asserting that the comment had been validated by WIOA staff across multiple States.

Departments' Response: The Departments also would like to clarify that five of the six core programs currently transmit individual records to their respective Departments. The ED's OCTAE, which administers title II programs, does not receive individual records from State Adult Education Agencies. It is noted that for title II, State eligible agencies are required to collect individual records on a quarterly basis and submit annually aggregated data using individual records. The Departments acknowledge the need for guidance on program reporting as well as technical assistance needed to ensure consistent understanding for implementation. No change to the regulatory text was made in response to these comments.

Comments: Many commenters expressed opposition to the exclusion of title II programs from the individual records reporting requirements. Several articulated that the expectations for system alignment through integrated reporting discussed in the NPRM would be undercut by the proposal to exclude title II from the same quarterly reporting requirements as the other five core programs. One commenter remarked that title II programs should be included in these reporting requirements in the spirit of true integration. And, and as previously noted, some commenters were under the impression that all of the core programs already use individual records, thereby making the exclusion of title II unwarranted.

Departments' Response: Although ED's Office of Career, Technical, and Adult Education does not collect individual records at the Federal level, States are required to maintain individual record systems that meet strict standards. States are required to collect such data quarterly and aggregate the data to meet performance requirements in an annual submission. No change to the regulatory text was made in response to these comments.

Comments: Several commenters suggested that the burden for the proposed reporting requirements was considerably underestimated and should reside at the Federal level, with some suggesting the additional requirements constitute an unfunded mandate, particularly for the VR program, which must incur the significant cost and staff training needed to transition from annual reporting of the RSA 911 to the proposed quarterly reporting of the RSA 911. Many of these commenters recommended that a currently available tool be utilized to validate RSA 911 data on a quarterly

basis without the requirement for full quarterly report submission. Additionally, there were concerns raised regarding data that are collected through the VR program, which falls under the confidentiality requirements under 34 CFR 361.38 that may prohibit the release of social security information.

Departments' Response: The ED's RSA acknowledges that additional time and resources as well as staff training will be needed to accomplish statutory requirement while ensuring consistent understanding and nationwide implementation. There is no provision in 34 CFR 361.38 that prohibits the release of SSNs for reporting purposes since the reporting requirements are necessary for the administration of the VR program. Therefore 34 CFR 361.38(b) does not require informed written consent for the release of PII for this purpose. However, there may be other Federal or State laws that would govern such releases. Further, the Departments refer to the VR Performance ICR for the RSA–911 form where burden for collection and reporting this information in the RSA 911 are further addressed. No change to the regulatory text was made in response to these comments.

Comments: The Departments received comments on aspects of this part related to calculations for indicators and performance information, structure and compilation of individual records, and formatting for the collection of underlying data for the reports.

Departments' Response: Because of the level of detail these comments sought on the more specific technical aspects of this part, the Departments, as discussed throughout this regulation, reiterate that such information will be provided through the WIOA Joint Performance ICR or Department-specific ICRs, as well as associated program guidance. No change to the regulatory text was made in response to these comments.

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

Section 677.240 provides the requirements for data validation of State annual performance reports. It has been revised to specify that performance reports should be consistent with the requirement for data validation in WIOA sec. 116(d)(5).

Comments: Several commenters requested guidance for conducting data validation across core programs. Commenters specifically asked for guidance concerning where the responsibility for data validation lies when participants are co-enrolled in two or more partner programs. Commenters also asked for clarification regarding the distinction between State and local roles in annual reporting. Multiple commenters supported either the postponement of the effective date for data validation requirements until July 2017 or the gradual implementation of data validation requirements, particularly if the validation pertains to new data that are required to be collected. Some of these commenters expressed concern regarding potentially retroactive data validation requirements whereby States would have to go back in order to capture newly required data elements on periods of participation that began before the new requirements were implemented. Several commenters also suggested that the starting point for data validation guidance be based on existing data validation methods and procedures used under WIA, with one commenter specifically suggesting that a comprehensive review of the data elements currently included in WIA data validation be undertaken to ensure the appropriate data are being validated, eliminating those elements that are either duplicative or no longer necessary.

Departments' Response: The Departments concur that joint guidance for conducting data validation across the core programs is necessary in order to provide the level of detail and specificity required to implement these provisions. As noted above, § 677.240(a) has been revised to specify that reporting should be consistent with guidance issued pursuant to WIOA sec. 116(d)(5) concerning data validation. The guidance to be developed will be based on a comprehensive review of the methodology, data elements, and source documentation that have been utilized under WIA. It will clarify State and local roles in annual reporting and the associated validation process, and the co-enrollment of participants across two or more core programs will be addressed. The Departments do not expect to issue guidance that includes the need for retroactive data collection. In terms of implementation timeframes, the Departments anticipate a phased-in approach, which is particularly important for those programs that have not conducted data validation under WIA. Expectations will be articulated through the Departments' joint policy guidance, and technical assistance will be provided to ensure consistency in understanding and implementation. No change to the regulatory text has been made in response to these comments.

Comments: Commenters shared specific suggestions for source documentation to be used to validate personal identity, with one commenter arguing that applicant and counselor statements should be acceptable for SSN validation to eliminate the need to copy social security cards, thereby minimizing the risk of file breach. Another commenter requested clarification on accuracy standards, inquiring as to whether the Departments will follow the ''five percent rule'' used for WIA data validation.

Departments' Response: Source documentation requirements will be clarified in policy guidance to be issued jointly by the Departments, including documentation to validate personal identity. The Departments agree with one commenter who suggested that allowing staff verification is not consistent with data quality standards. The Departments acknowledge the proposed suggestions by commenters and will further clarify such procedures through the guidelines. No change to the regulatory text was made in response to these comments.

The ''five percent rule'' referenced in the comment pertains to an accuracy standard utilized under WIA by DOL for its programs whereby critical data elements with an error rate exceeding five percent were flagged as potentially symptomatic of larger reporting and data quality issues. This will be addressed in guidance.

In addition to the regulatory text changes discussed above, various non-substantive changes have been made for purposes of correcting typographical errors and improving clarity that have not been necessary to note elsewhere.

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 one-stop system provision below, the heading references the DOL CFR part and section number. However, ED has identical provisions at 34 CFR part 361, subpart F (under its State VR 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 provision. When the regulations are published in the CFR, these joint one-stop regulations will

appear in each of the CFR parts identified above.

2. General Description of the One-Stop Delivery System (20 CFR Part 678, Subpart A; 34 CFR 361.300 Through 361.320; 34 CFR 463.300 Through 463.320)

WIOA reaffirms the role of the one-stop delivery 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 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 regulations set forth requirements of the one-stop delivery system as established under WIOA, requiring partners to collaborate to support a seamless customer-focused service delivery network. The regulations require that programs and providers colocate, coordinate, and integrate activities and information, so that the system as a whole is cohesive and accessible for individuals and employers alike. These regulations provide a detailed framework for implementation; however, the Departments acknowledge additional written guidance and technical assistance to the public workforce system is needed to implement the provisions and intentions of WIOA fully. Such guidance and technical assistance was provided during PY 2015 and will continue to be provided and updated with the future development of policies regarding the one-stop delivery system. 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.

Subpart A describes the one-stop delivery system. It establishes the different types of one-stop centers allowable in each local area, the need for both physical and programmatic accessibility in the one-stop delivery system, and also 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 WDBs must ensure that information on the availability of career services is available at all one-stop center physical locations and access points, including electronic access points, regardless of where individuals initially enter the local one-stop delivery system. The Departments acknowledge that some comments of support were included among comments in this subpart. No changes to the regulatory text were made in response to these comments.

The Departments made several changes to regulatory text in response to comments on subpart A. Most notably, changes were made to § 678.305(d) that clarify what it means to make available a ''direct linkage'' through technology to provide access to program services and information for those partner programs not physically located in a comprehensive one-stop center.

Section 678.300 What is the one-stop delivery system?

This section provides that there are responsibilities at the local, State, and Federal levels relative to the establishment and maintenance of the one-stop delivery system.

Comments: Several commenters addressed the accessibility provisions in this subpart. A few commenters stated that VR agencies must work closely with workforce systems to ensure accessibility for individuals with disabilities. Another commenter said that each local area must have at least one comprehensive one-stop center that is accessible. A few commenters said that there are one-stop centers located in buildings that are not fully accessible, and the regulations should emphasize in this section that full accessibility is required.

Departments' Response: The Departments agree with commenters that accessibility to one-stop centers and the program and services provided at those centers is of the utmost importance. Section 188 of WIOA, the corresponding regulations at 29 CFR part 38, and the regulations in this part at §§ 678.305, 678.310, and 678.800 require that all one-stop centers and affiliated sites be physically and programmatically accessible to disabled individuals. The Departments have concluded that the numerous instances of directly addressing this or cross-referencing another section of regulation or WIOA throughout part 678 is sufficient emphasis on this point. No change to the regulatory text was made in response to these comments.

Comments: One commenter asked which entity is responsible for ensuring one-stop center accessibility.

Departments' Response: The decision as to which entity will be responsible for ensuring accessibility at a one-stop center is ultimately the Local WDB's to make, appropriately specified in the MOU.

Comments: Another commenter said this subpart should describe the procedure for when a one-stop center is found not to be physically and programmatically accessible.

Departments' Response: The procedures that must be followed when a one-stop center is found not to be physically or programmatically accessible are described in 29 CFR part 38. The Departments have added cross references to those regulations in §§ 678.305 and 678.310 to clarify that these are the controlling regulations in such instances, replacing references to § 678.800.

Comments: A commenter asked, given the long-standing separation between one-stop centers and adult education programs, how soon the Departments expect these entities to fulfill the requirement to provide a ''seamless customer-facing service delivery network.''

Departments' Response: While the Departments understand that adapting to the new one-stop delivery system structure will take time for all partners involved, partner programs are expected to work as expeditiously as possible to reach the goal of providing a ''seamless customer-facing service delivery network.''

Comments: A few commenters requested guidance on how certain partners, like libraries, are expected to measure enrollment.

Departments' Response: A WIOA program carries the responsibility for reporting and ensuring such data are available to fulfill their reporting requirements. In the case where a partner program is receiving WIOA funds to provide services for any program, a mechanism for tracking and reporting such services and individuals will need to be established between the local one-stop partner and the program responsible for making such reports. Where a local one-stop partner is providing services beyond those funded under WIOA, reporting requirements would not extend to such services. In the case of a local one-stop partner, such as a local library, who may only be providing space for a program or programs to operate within, or providing access to public computers by which participants access programs, reporting is the responsibility of the program operator.

Comments: A few commenters said that this section will require the UI program to change its business model.

Departments' Response: The Departments do not agree that the UI program will require a change to its business model, and see the program as completely adaptable to the new regulations' plan and vision for the one-stop delivery system. New requirements, such as the requirement to provide ''meaningful assistance'' to claimants who need help filing a claim, do not translate into a move away from primarily on-line or phone claims filing. They simply assure that claimants who need assistance accessing the program receive it.

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

Access and Direct Linkage

Providing one-stop center participants with access to program activities and services is the keystone of the one-stop delivery system. ''Access'' is defined in § 678.305(d), which provides three ways each partner program may meet this requirement: (1) Having a program staff member physically present at the one-stop center; (2) having a staff member from a different partner program physically present at the one-stop center appropriately trained to provide information to customers about the programs, services, and activities available through partner programs; or (3) making available a direct linkage through technology to program staff who can provide meaningful information or services. Options two and three offer a wide range of possibilities to partners. Option two could require varying levels of assistance depending on the program's needs, but this could be as simple as providing a hardcopy TANF benefit application to a participant or directing them to an online form. Direct linkage can take many forms as well, and the Departments received many comments on the definition of this term, as discussed below.

Comments: A few commenters disagreed with the definition of ''direct linkage,'' specifically because it does not include providing a phone number or Web site that individuals can use at home. These commenters said this is an unnecessary restraint on how States can serve customers and does not take into account the usage of mobile apps and other technology. The commenters also said that the definition of ''direct linkage'' exceeds what is required in WIOA. Further, the commenters stated that proposed technologies, such as live Web chat systems, are expensive.

Departments' Response: Maintaining the option of connecting to a well-trained program staff member at the one-stop center is extremely important to the success of the one-stop delivery system. The Departments recognize that the language defining ''access'' and ''direct linkage'' may have been too restrictive and also could make it appear that every interaction required a human component, not just the availability of the option to speak with a person. Many one-stop customers may only require services provided electronically or may not be ready for a direct interaction with a staff member. For these reasons, the Departments have changed the regulatory text in paragraph (d)(3) of this section, replacing ''providing direct linkage . . .'' with ''making available a direct linkage . . .,'' in order to reflect that communicating with an individual must remain an option, but is not required for every one-stop customer interaction.

Comments: Several of the previously mentioned commenters joined other commenters who said that it is not realistic to expect that every customer can receive services at the time of arrival at the one-stop center, and suggested that the regulation should not prohibit arranging for customers to receive services at a later time.

Departments' Response: The Departments agree that the proposed regulation was not intended to prohibit arrangements to serve customers at a later time. Accordingly, the Departments have deleted the language prohibiting arranging for customers to receive services at a later time, thereby providing what the Departments see as more flexible service delivery options. Specifically, paragraph (d)(2) was changed by striking the phrase ''or making arrangements for the customer to receive services at a later time or on a different day.''

Comments: A few commenters commented that the definition of ''direct linkage'' implies that all customers entering a one-stop center have a computer with Internet access at home. The commenters recommended revising this section to indicate that providing a computer with access to enrollment or eligibility services does qualify as a direct linkage.

Departments' Response: While providing such a service is of value and should be encouraged, a ''direct linkage,'' pursuant to these final regulations, must be the availability of a direct connection to a program staff member by phone or through real-time Web-based communication, an element seen by the Departments as critical to the service. As mentioned above, however, not all one-stop customer interactions require the use of a ''direct linkage;'' rather, the regulations require only that a ''direct linkage'' remains available to the customer. The language of paragraph (d)(2) was changed from ''[a] 'direct linkage' does not include providing a phone number or computer Web site that can be used at an individual's home . . .'' to ''[a] 'direct linkage' cannot exclusively be providing a phone number or computer Web site . . . .'' This means that providing a phone number or Web site, as mentioned by the commenters, would still be considered serving an individual, as long as more involved access was available to that customer if desired.

Comments: Another commenter also disagreed with the NPRM, saying that States should have flexibility to determine how and when to deliver virtual services.

Departments' Response: The Departments have concluded that, with the above-mentioned changes to the definitions of ''accessibility'' and ''direct linkage,'' States and local areas are provided a reasonable amount of flexibility to determine how and when to deliver virtual services, as long as the option of a ''direct linkage'' remains open to customers if another form of ''access'' is not available. The Departments have not made further changes to the regulatory text in response to this comment.

Comments: A few commenters requested clarification on the definition of ''timely manner'' and ''within a reasonable time.''

Departments' Response: The Departments decline to define ''within a reasonable time'' in this section. The Departments consider what is ''reasonable'' will fluctuate based on demand and resources in a specific local area. However, to ensure quality customer service, the Departments encourage States and local areas to minimize the time during which an individual must await a direct linkage to services and to coordinate direct services effectively.

One-Stop Center Partner Staffing

Comments: A commenter asked whether the title I program staff person needs to be present full-time or may be present on a part-time basis. Another commenter asked whether there must also be at least a part-time title II staff presence. Additionally, one commenter said that electronic linkage should be permissible instead of requiring a physical staff presence.

Departments' Response: At least one title I staff person must be present when the one-stop center is open for operations, although this 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 the one-stop center's times of operation.

No such requirement exists for the physical presence of a title II staff person at the one-stop center. However, such physical presence may be appropriate as a means to provide access to the title II program, depending upon the particular local area's needs.

Lastly, as long as there is a physical presence of at least one title I program staff member at all times of operation, all other programs have the option to provide ''access'' through a ''direct linkage'' that leverages available technologies according to the definitions provided in this section. The Departments, however, encourage partners to strive for a physical presence at one-stop centers to serve customers' needs better.

Comments: A few commenters asked if it is the intent of the regulations to have all required partners colocated in the one-stop centers.

Departments' Response: As stated in § 678.305(a), ''[a] comprehensive one-stop center is a physical location where job seeker and employer customers can access the programs, services, and activities of all required one-stop partners.'' As providing services through ''direct linkage'' is an allowable form of ''access,'' as defined in § 678.305(d), not all required partners must be physically present at a comprehensive one-stop center as long as ''access'' to their services, programs, and activities is provided. However, the Departments encourage as much physical presence of partner staff persons that is feasible.

Comments: Another commenter said that it will be logistically difficult to ensure that 50 percent of required partners are located in the one-stop centers, particularly with regard to adult education programs and the volume of customers that they serve.

Departments' Response: This comment seems to stem from a misunderstanding of the colocation requirements. While all required one-stop partners must provide ''access'' to their programs and activities through a comprehensive one-stop center, at least one title I program staff person must be physically present. However, the Departments encourage as much physical presence of other one-stop partners' program staff persons as is feasible. States and local areas should be aware of the requirement in § 678.315 that, if Wagner-Peyser Act services are provided at an affiliated site, at least one or more other one-stop partner programs must be located in the affiliated site, and there must be a physical presence of combined staff from the other program(s) over 50 percent of the time that the site is open.

Comments: Another commenter said that the ability of the VR program to participate through technology instead of through a physical presence will greatly expand the VR program's participation in the one-stop delivery system.

Departments' Response: As stated above, as long as this technology meets the definition of ''direct linkage'' as stated in § 678.305(d), the VR agencies are able to substitute this for a physical presence at a comprehensive one-stop center.

Comments: One commenter asked if it is the intent of the regulations to require NFJP grantees to be located in the same one-stop center as other entities that provide one-stop services. The commenter said that colocating these grantees would be logistically very difficult. A couple of commenters stated that the decision to colocate services can be beneficial but should consider financial viability. If it is more beneficial to locate NFJP programs outside of a one-stop center, these commenters reasoned that grantees should be given the flexibility to do so, and commented that the grantee can still develop a close partnership with the one-stop delivery system without necessarily being colocated.

Departments' Response: Because NFJP is an entity that administers a program authorized by title I of WIOA, sec. 121(b)(1)(B) and § 678.400(b)(1) require NFJP to be a comprehensive one-stop center partner. This does not necessarily mean, however, that NFJP staff must be physically present at the one-stop center. There are multiple examples in the regulations for providing access to a program and its services through the one-stop center (such as providing a ''direct linkage''), as discussed in paragraph (d) of this section. It should be noted, however, that an NFJP staff member placed at the local area's comprehensive one-stop center could serve as the required title I staff member when present.

Comments: Another commenter remarked that, traditionally, there has been a cost increase associated with operating NFJP services in conjunction with a one-stop delivery system that leaves less funding available for training programs and participant services. This commenter said that the increase in operating costs would be due to high rent, assignment of personnel to other duties in the one-stop delivery system, and cooperative spending.

Departments' Response: The Departments determined that while there may be cost increases in some areas, there may be savings in others due to the infrastructure cost contribution plan laid out in the local area's MOU in accordance with §§ 678.700 through 678.755.

Comments: One commenter suggested that one-stop centers should receive guidance about how to calculate co-occupancy rates so that partners are aware if there is inadequate space to provide colocated services.

Departments' Response: The Departments recognize the importance of quality facilities, including adequate physical space, to deliver services across one-stop partner programs. However, the Departments do not consider this level of detail necessary in regulations and have not made changes to the regulatory text in response to this comment. The Departments encourage the use of State and local administrative data to guide negotiations regarding colocation and shared infrastructure costs.

Comments: Some commenters said that the regulation implies that operating one-stop centers beyond normal business hours will lead to a higher evaluation during the certification process. These commenters expressed concern about the fairness of this practice, stating that some one-stop centers many not be able to stay open past normal business hours due to lease agreements or security concerns (*e.g.*, needing to hire an additional security guard).

Departments' Response: Providing nontraditional hours of operation, such as on Saturdays or after 5 p.m. on weekdays, is seen as a critical element in servicing difficult to reach populations, such as low-wage, low-skill, and other employed workers, and homeless individuals. Therefore, this will remain one of the required elements to be taken into account when evaluating the effectiveness of one-stop centers. The Departments have revised the regulatory text at § 678.800(b) to reflect that such hours should be provided where there is such a need by the workforce population, as identified by the Local WDB. It should be noted that this is only one factor to take into consideration when evaluating a one-stop center for certification, and while operating a one-stop center beyond normal business hours will count positively toward a center's evaluation, this will in no way negatively affect the

evaluations of other one-stop centers in the State that may not be able to offer such services.

Comments: Another commenter asserted that the regulation's emphasis on expanding operating hours would require additional staff and relocations to larger facilities to accommodate these staff.

Departments' Response: In some instances, this may be true, but the Departments encourage creative ways of implementing these nontraditional hours with the resources the one-stop centers and Local WDBs have available to them. Innovation is one of the driving principles behind WIOA, including in how services are delivered to difficult to reach populations and individuals with barriers to employment.

Other Comments

Comments: Another commenter said that States should determine standards for one-stop centers with input from Local WDBs.

Departments' Response: Under sec. 101(d)(6) of WIOA, State WDBs are responsible for assisting the Governor in developing statewide policies affecting the coordinated provision of services through the one-stop delivery system, including developing objective criteria and procedures that Local WDBs will use to assess the effectiveness and continuous improvement of one-stop centers. In addition, one-stop centers must adhere to the requirements in sec. 121 of WIOA and these implementing regulations.

Comments: A commenter suggested amending this section to encourage States to develop technology-based strategies to ensure that wraparound, or comprehensive, services are available outside of normal business hours.

Departments' Response: The Departments encourage the development of technology-based strategies to deliver services to customers in innovative and comprehensive ways, both during normal business hours and nontraditional hours, and the Departments have concluded that the regulations support such activity as written. No changes to the regulatory text were made in response to this comment.

Comments: Another commenter said that the NPRM does not provide enough guidance on how to decide the number and location of comprehensive one-stop centers, explaining that these decisions require significant collaboration among several stakeholders.

Departments' Response: While sec. 121(e) of WIOA and § 678.300(c) require that at least one comprehensive one-stop center be established in a local area, many local areas will require the establishment of multiple centers to serve their populations properly. This is highly dependent on individualized factors in each local area. This determination is best carried out at the State and local planning level. WIOA sec. 121(a) requires the establishment of the one-stop delivery system, consistent with the approved Unified or Combined State Plan, through the Local WDB for a local area and with the agreement of CEO for the local area. It is these entities that should determine the proper number and location of one-stop centers, by drawing on their knowledge of the area's needs. The Departments made no change to the regulatory text in response to the comment.

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

In addition to the requirement for a physical center in each local area where all required one-stop partners must provide access to their programs, services and activities, consistent with sec. 121(e)(2)(B) of WIOA,,§§ 678.310 and 678.320 provide that the one-stop delivery system may also provide partner 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. The Departments added a reference to 29 CFR part 38, the implementing regulations of WIOA sec. 188.

Comments: A commenter recommended that affiliated sites not be required to have operators; however, the commenter also said that the entities delivering services at these sites should be signatories to the MOU.

Departments' Response: As required by sec. 121(c) of WIOA, an MOU is an agreement among the one-stop partner programs and the Local WDB; therefore, the entities delivering services—*i.e.*, the partner programs—will be signatories to the MOU. A local area's one-stop operator may be in charge of running affiliated sites as well as the comprehensive one-stop center. In other cases, other arrangements for operations of the affiliate sites may be specified in the MOU. The operator may be assigned different responsibilities, which are dependent on the terms of the selection process and the operator agreement(s) reached between the operator(s) and the Local WDB.

Comments: One commenter suggested that affiliated sites should not have to provide access to all required partners, since physical staffing is determined locally.

Departments' Response: Since affiliated sites are not required to provide access to all partner programs, as stated in § 678.310(a), no change to the regulatory text is necessary.

Comments: Another commenter asked whether VR agencies are required to participate in affiliated sites.

Departments' Response: To clarify, neither the VR program, nor any other partner program, is required to participate in affiliated sites by these regulations or by statute; partner programs are required only to participate in the operation of the one-stop delivery system and must provide access to their programs through the comprehensive one-stop centers. The Departments encourage the use of affiliated sites to serve a local area's population better, but decisions concerning this implementation are ultimately made by the local areas. These affiliated sites should, first and foremost, supplement and enhance customer access to services, and should be seen as access points that are in addition to the local area's comprehensive one-stop centers.

Comments: One commenter asked whether an adult education provider in a CBO is considered an affiliated site.

Departments' Response: Yes, an adult education provider, or any other partner program, located in a CBO, may be considered an affiliated site. If any partner program in a CBO is considered an affiliated site, that program must follow all of the requirements of this section.

Section 678.315 Can a stand-alone Wagner-Peyser Act Employment Service office be designated as an affiliated one-stop site?

This section sets forth the prohibition against standalone Wagner-Peyser Act Employment Services offices. WIOA requires that the Wagner-Peyser Act Employment Service program be colocated with one-stop centers. A Wagner-Peyser Act Employment Service office cannot, by itself, constitute an affiliated site. In those cases where the Wagner-Peyser Act Employment Service program is located in an affiliated site, there must be staff of at least one other partner in that affiliated site that is physically present more than 50 percent of the time the center is open.

Comments: A commenter asked whether one partner agency that administers multiple partner programs can satisfy the 50 percent presence requirement. This commenter reasoned that multiple partners should be able to

meet the 50 percent requirement collectively.

Departments' Response: In light of the comments and upon considering the requirement for physical presence of non-Wagner Peyser program staff more than 50 percent of the time, the Departments have concluded that it is appropriate to allow a combination of partner program staff members to meet this requirement, and the Departments have revised the regulatory text to reflect this.

If there is only one qualifying partner program (*i.e.*, partner programs other than local veterans' employment representatives, disabled veterans' outreach program specialists, or UC programs) in addition to the Wagner-Peyser Act program at an affiliated site, then that partner program alone must meet the more than 50 percent threshold. If there is more than one qualifying partner program in the affiliated site, such programs together must have staff present to provide coverage more than 50 percent of the time the site is open.

Comments: A commenter also recommended that electronic access should be included to meet the more than 50 percent requirement. Another commenter agreed, and also added that it may not be financially feasible to have staff in affiliated sites more than 50 percent of the time.

Departments' Response: While the Departments appreciate and encourage partners' use of technology to better, and more comprehensively, serve customers of the one-stop delivery system, the Departments have not revised the regulatory text to permit such activities in order to meet the more than 50 percent physical presence requirement for non-Wagner-Peyser Act partner programs. Doing so would defeat the purpose of this requirement, which is to have staff other than Wagner-Peyser Act staff physically present for a majority of the time that an affiliated site is open.

Comments: A few commenters requested flexibility in determining staffing at affiliated sites to meet local needs best, stating that the 50 percent threshold may result in some programs being overstaffed while Wagner-Peyser Act services are understaffed. Another commenter agreed that this requirement is burdensome and does not take into account existing long-term lease agreements.

Departments' Response: In determining the number and placement of affiliated sites, Local WDBs should consider how their one-stop delivery system could deliver services most effectively across the local area with the resources that are available. In making these adjustments, Local WDBs should consider the services that are needed in each location, how services are delivered in the comprehensive one-stop center, where the one-stop center is located, and where current affiliated sites are located. This may require the opening of new affiliated sites, or the consolidation of existing offices that would be considered affiliated sites under WIOA. The Departments recognize that such adjustments take time, but the Departments expect this process to begin as soon as possible.

Comments: Another commenter asked how this requirement would affect existing standalone Wagner-Peyser Act offices.

Departments' Response: This requirement will mean that either a non-Wagner-Peyser Act partner program will need to colocate at the formerly standalone Wagner-Peyser Act office; the Wagner-Peyser Act program will need to move to another space that can support colocation with a non-Wagner-Peyser Act partner program; or the Wagner-Peyser Act program will need to shift operations to a comprehensive one-stop center, of which the program is a required member, or to another affiliated site. As stated in § 678.315, Wagner-Peyser Act programs may no longer exist in standalone offices.

Comments: One commenter recommended strengthening the language about how required partners are to operate in integrated partnerships with Wagner-Peyser Act services. The commenter stated that many local areas have flexibility to determine whether to colocate with Wagner-Peyser Act services.

Departments' Response: The Departments are not altering the regulatory text to address the language concerning how required partners are to operate in partnership with Wagner-Peyser Act services. WIOA recognizes the Wagner-Peyser Act program's role in the one-stop delivery system and has made Wagner-Peyser Act one of the core programs. The Departments have determined that Wagner-Peyser Act services are vital to the successful operation of one-stop centers, and have, through administrative guidance, strongly encouraged access to these services throughout the public workforce system.

Comments: A few commenters expressed concern about the lack of specific instructions for how State workforce agencies are supposed to fund the colocation of Wagner-Peyser Act services. The commenters recommended that States do not need to use their Wagner-Peyser Act program allocations for this action.

Departments' Response: Given the diversity in how States have structured their Wagner-Peyser Act employment services, the regulation provides States with discretion in developing an appropriate plan for relocation. Any plan, including the identification of funding to be used to carry out relocation, must comply with applicable Federal cost principles. The Departments did not make changes to the regulatory text in response to this comment.

Comments: One commenter recommended that States be required to have a conflict-resolution process in place for on-site staff disputes, which may help alleviate one of the major challenges of program colocation.

Departments' Response: While the Departments recognize the utility of such a process and may recommend the implementation of such a process in many instances, the Departments have decided it is best to provide Local WDBs with flexibility in determining how to operationalize the colocation of programs, as well as integrated service delivery. For this reason, the Departments will not require a conflict-resolution process for on-site staff disputes, and have made no changes to the regulatory text.

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

The Departments received no comments for this section and made no substantive changes to the regulatory text. However, the Departments have rephrased the first sentence of the paragraph to improve clarity and readability. The phrase ''such as having in place processes to make referrals to'' was stricken from its original position; ''one-stop center'' was added after ''comprehensive;'' and the phrase ''for example, by having processes in place to make referrals to these centers and the partner programs located in them'' was inserted at the end of the first sentence. The new sentence reads as follows: ''Any network of one-stop partner or specialized centers must be connected to the comprehensive one-stop center and any appropriate affiliate one-stop centers, for example, by having processes in place to make referrals to these centers and the partner programs located in them.'' The Departments have made these changes to make this sentence more understandable than originally phrased and do not intend to change the meaning of the sentence or paragraph.

3. One-Stop Partners and the Responsibilities of Partners (20 CFR Part 678, Subpart B; 34 CFR 361.400 Through 361.440; 34 CFR 463.400 Through 463.440)

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 educational or occupational skills, earn a postsecondary certificate or degree, obtain guidance on how to chart careers, or are employers seeking skilled workers. A genuinely 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 regulation, the Departments describe requirements relating to such one-stop partnerships. Specifically, this subpart identifies the programs that are required partners and their roles and responsibilities, the other entities that may serve as partners, and the types of services provided.

The Departments changed several sections of this subpart in response to comments. While small changes to the regulatory text were made in § 678.410, much more significant changes were made to § 678.415(e), which changed the default one-stop partner under the Perkins Act from the State agency administering that program to a local postsecondary recipient of Perkins funds. Changes to the requirements for local TANF partners have also been made in § 678.430(a)(2) and (d). Two additions were also made to the human services that may be provided as business services in § 678.435(b)(4).

Section 678.400 Who are the required one-stop partners?

This section lists the one-stop partners required under sec. 121(b)(1)(B) of WIOA. Beyond the partners previously required under WIA, WIOA adds the TANF program, administered by HHS, and the Ex-Offender program, administered by DOL under sec. 212 of the Second Chance Act of 2007, to the list of required partners.

Comments: A commenter requested clarification on participation for career and technical education programs and also a clearer definition of employment and training programs. The commenter expressed concern that without a clear definition of these terms, nearly any entity can claim to be an employment and training program. Further, the commenter requested that States be able to define these terms.

Departments' Response: Within the context of these regulations, these terms are used in reference to programs authorized under specific Federal statutes. The ''career and technical education programs'' referred to in § 678.400(b)(6) are those authorized by the Perkins Act at the postsecondary level. The ''employment and training activities'' listed in this section are either those carried out under the CSBG or those carried out by HUD, as provided in § 678.400(b)(9) and (10), respectively. Under these categorical restrictions, the Departments are not concerned that nearly any entity could claim to be an employment and training program. Section 121(b)(1)(B) of WIOA, as implemented by § 678.400, lists intentionally broad categories of required partners so as to bring more local partner programs into the comprehensive one-stop center and the broader one-stop delivery system to provide more comprehensive services for the one-stop centers' customers. For this reason, the Departments are not changing the regulatory text concerning these terms. The Departments have determined that it is within the best interests of the one-stop delivery system and its customers for States to adhere to these broad categorical definitions. Furthermore, narrowing these definitions would exclude some programs explicitly included by Congress as the regulatory language mirrors the statutory text in WIOA secs. 121(b)(1)(B)(vi), (ix), and (x).

Comments: A commenter asked whether CSBG programs have to be physically located at the one-stop center.

Departments' Response: If a CSBG program carries out employment and training activities, then these activities must be accessible at the comprehensive one-stop center, either through a physical presence or through another means of ''access'' as defined by the regulations in § 678.305(d), because these programs are required one-stop partners under sec. 121(b)(1)(B) of WIOA. Section 678.305(c) specifically requires customers to have access to one-stop partner programs in a comprehensive one-stop center, including employment and training activities carried out under the CSBG program. Furthermore, § 678.305(d) defines ''access'' as including, but not limited to, having partner program staff physically present at the one-stop center. That is, one-stop partner programs do not need to be physically present in a comprehensive one-stop center, but they must provide access to their services in the ways described in § 678.305(d).

Comments: One commenter said that the Perkins program needs to determine who the Perkins one-stop partner will be. Another commenter stated that § 678.400 needs to be reconciled with the Perkins Act and asserted that career and technical education programs do not have authority to enter into an MOU, although a postsecondary entity does have such authority.

Departments' Response: The NPRM specified that the State Eligible Agency serves as the one-stop partner for the Perkins program. As discussed below in this preamble, the Departments have determined that an eligible recipient at the postsecondary level, or a consortium of eligible recipients at the postsecondary level in the local area is the most appropriate entity to serve as the one-stop partner in a local area. This change is reflected in § 678.415(e) and is discussed in the corresponding preamble section below.

Comments: Another commenter recommended that all Federal grantees that have employment and training components in their grant should be required one-stop partners.

Departments' Response: While the Departments encourage the inclusion of such entities as additional one-stop partners, the list of required partners in § 678.400(b) is the statutorily mandated list of required partners. The Departments do not have authority to require additional programs to be one-stop partners. However, several entities such as those mentioned by the commenter are explicitly listed in sec. 121(b)(2)(B) of WIOA and § 678.410 as acceptable additional one-stop partners, subject to approval of the Local WDB and CEO.

Section 678.405 Is temporary assistance for needy families a required one-stop partner?

This section provides further clarification that the Governor may determine that TANF will not be a required one-stop partner in a local area(s), but must notify the Secretaries of Labor and HHS in writing of this determination. This implements sec. 121(b)(1)(C) of WIOA. It should be noted that the Governor's decision to exclude TANF from being a required one-stop partner is distinct and separate from the decision to include or not to include TANF in a Combined State Plan. TANF remains one of the many options of programs to be included in a Combined State Plan. Its status as a required one-stop partner does not mean it is required to be included in a Combined State Plan. For all sections regarding TANF, the HHS, which administers the program, was consulted extensively.

Comments: A few commenters expressed support for TANF being a required one-stop partner. Other commenters remarked that adding TANF as a one-stop partner will lead to improved services for job seekers. However, one commenter recommended that the Departments include stronger language about including TANF as a required one-stop partner. This commenter said that if TANF is such an important partner, it should not be so easy for Governors to opt out.

Departments' Response: While the Departments agree that TANF is an important partner in the one-stop delivery system, WIOA requires—at sec. 121(b)(1)(C)—that Governors be able to determine that TANF will not be a required one-stop partner through written notice to both the Secretary of Labor and the Secretary of HHS. It should be noted, however, that even if the Governor decides not to require TANF to be a one-stop partner, local TANF programs may still work in collaboration or partnership with the local one-stop centers to deliver employment and training services to the TANF population, unless inconsistent with the Governor's direction. Additionally, the local TANF program also may find other avenues of providing TANF services to one-stop customers that may not reach ''partner'' status.

Comments: One commenter recommended that the regulations should clarify that TANF employment and training activities must be offered at one-stop centers, with other TANF-funded activities included at the discretion of the local TANF agency and Local WDB. This commenter reasoned that requiring all TANF activities at one-stop centers would be a substantial cost and administrative burden.

Departments' Response: Access through the one-stop delivery system is required only for TANF activities related to work, education or training, the initiation of an application, and career services as specified in § 678.430(a)(2). TANF is a required one-stop partner unless the Governor opts not to require TANF participation in either a specific local area or the entire State. The cost of the various activities associated with the one-stop operators should be one of the factors considered by the Governor in making this decision.

Comments: A commenter stated that even if the Governor opts out, local TANF programs might still be required to be one-stop partners. Other commenters expressed support for local TANF programs to be permitted to opt in as one-stop partners, even if the Governor opts out. Another commenter expressed concern that the proposed regulations would permit a local TANF agency official to defy a Governor's decision not to include TANF as a required one-stop partner. The commenter recommended that this clause should be deleted, stating that a Governor's decision regarding TANF as a required one-stop partner must be respected.

Departments' Response: While local TANF programs are allowed to be one-stop partners, they cannot be required to do so if the Governor has determined that TANF is not required to be a partner. However, the Departments agree that local TANF programs should be permitted to work in collaboration and partnership with the local one-stop centers and have determined that allowing local TANF programs to make this decision, in conjunction with Local WDBs, is in the best interest of serving one-stop customers to the fullest extent possible, unless doing so is inconsistent with the Governor's direction. The Departments recognize the importance of increasing access to TANF programs, and have determined that allowing these programs' voluntary inclusion, when not required by a Governor and when not prohibited by the Governor's direction, is consistent with the spirit of WIOA. The Departments have modified the regulatory text to indicate that local TANF programs may become partners at the local one-stop centers unless the Governor directs or orders otherwise. While a Governor may choose not to require TANF programs to be one-stop partners, the Departments do not want to create barriers to local TANF programs becoming partners in the local one-stop center when there is a mutual desire to do so. The Departments have concluded that the availability of TANF services to one-stop customers is an important element of the one-stop vision. Furthermore, the Departments have interpreted WIOA sec. 121(b) as providing separate authority to local areas to include additional one-stop partners, including TANF, which is not overridden by a Governor electing to exclude TANF from being a required partner. However, as administrator of the State TANF program, the Governor is empowered under the Social Security Administration (SSA) to direct the actions of local TANF programs and may choose to limit a local program's ability to opt in. It should be noted here that any additional partners not required by sec. 121(b)(1)(B) of WIOA, but permitted by sec. 121(b)(2)(B), can participate as a one-stop partner only with the agreement of the CEO and Local WDB.

Comments: A commenter urged the Departments to ensure that a decision regarding whether TANF is a required one-stop partner should be separate from the decision regarding including TANF in a Combined State Plan.

Departments' Response: The Governor's decision to exclude TANF as a required one-stop partner must be made through direct written notification of such a decision from the State's Governor to the Secretaries of Labor and HHS. By contrast, at any time, a Governor can opt to include or not include TANF in a Combined State Plan, whether or not TANF is a required one-stop partner in the State.

Comments: Another commenter asked how TANF being a required partner instead of a core partner translates into level of service delivery for clients.

Departments' Response: The regulations do not differentiate between core programs and required one-stop partners with respect to level of service delivery. All required one-stop partners are expected to provide comparable levels of service delivery to one-stop customers, regardless of whether they are core programs under WIOA. No changes to the regulatory text were made in response to this comment.

Comments: One commenter stated that this is an opportunity for the TANF program to partner with schools.

Departments' Response: While the TANF program's inclusion in a State's one-stop delivery system may, in fact, provide an opportunity for TANF programs to partner with schools, this is a decision that should be made at the local level and will not be required by the Departments. As such, no changes to the regulatory text were made in response to this comment.

Section 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. Section 678.410 reinforces 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 WDB and CEOs approve.

Comments: A few commenters recommended that the regulations should strongly encourage partnerships with disability service providers, as increasing the employment of persons with disabilities is a key goal of WIOA. Another commenter stated that SNAP employment and training programs would include the Basic Food

Employment and Training (BFET) and Able-Bodied Adults Without Dependents (ABAWD) programs. The commenter also asked whether § 678.410(b)(6) includes programs funded by the Office of Refugee Resettlement (ORR). Another commenter urged one-stop centers that have youth services to partner with Runaway and Homeless Youth (RHY) providers. The commenter explained that RHY providers have best practices for dealing with traumatized youth. One commenter looked forward to working with refugee English language training organizations and other organizations as potential one-stop partners.

Departments' Response: Each one of the comments above suggests including programs as one-stop center partners. Local partners representing any one of these programs that provides services or serves participants who are in need of the career development or job placement services of the one-stop delivery system would be appropriate additions to the one-stop delivery system in a given local area and could be added as additional partners under § 678.410(b)(6). Inclusion in the one-stop center of these and other programs is outlined in the local area strategic plan, and in the specifications for the selection of one-stop operators and service providers in the local areas. In response to these and other comments, which are addressed below, wording has been added to this section to clarify that the list of optional one-stop partners is not exhaustive. The Departments have determined that no additional specific regulatory language is needed.

Comments: A commenter recommended that the Departments add a reference to local or regional labor market information, which should be used to drive strategic planning and one-stop partner decisions regarding the appropriate mix of services required in local areas.

Departments' Response: Many factors, including labor market information, can inform what local partners should include in a one-stop center. The Departments have not changed the examples of optional one-stop partners in the regulation, but have clarified that the list in § 678.410 is not exhaustive, by changing ''including'' to ''including, but not limited to'' in the catch-all provision of paragraph (b)(6). It should be noted that the term ''including'' is, by definition, nonexclusive, and that this addition is made for the sake of emphasis and should not to be interpreted as suggesting that any other use of the term ''including'' in these or any other regulations denotes exclusivity. The Departments agree that partners suggested by commenters can be appropriate and useful one-stop partners but have concluded that it is easier to communicate this flexibility by clarifying that the list is not exhaustive, rather than trying to list every potential partner.

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

This section provides a general definition of the entities that carry out the programs identified in §§ 678.400 and 678.410 and serve as the one-stop partners. The regulation defines an entity as the grant recipient, administrative entity, or other organization responsible for administering the funds of the specified program in the local area. The term ''entity'' does not include service providers that contract with, or are subrecipients of, the local administrative entity. The regulation notes that for programs that do not have local administrative entities, the responsible State agency should be the one-stop partner.

Section 678.410(d) lists the entity that acts as the WIOA title I one-stop partner for national programs in any particular local area. While YouthBuild was listed in the NPRM as one of these national programs, the paragraph failed to list which entity would serve as the one-stop partner. Just as for the Indian and Native American and Migrant and Seasonal Farmworker programs, the grantee of the YouthBuild program is the entity that will serve as the one-stop partner in a local area. The regulatory text has been amended to convey this and correct the omission in the NPRM.

Comments: A commenter asserted that proposed § 678.415(e), which designates the Perkins State eligible agency as the local one-stop partner for purposes of negotiating the MOU, ''lacks any support in the text of the law and would make an already complicated negotiation process that much more complex.'' Several commenters recommended revising the paragraph to state that the entity that carries out the program is the local area's Perkins eligible institution, rather than the State eligible agency. Further, this commenter recommended that the Departments remove the clause about the State eligible agency delegating its responsibilities.

Departments' Response: In response to these comments, the Departments agree that the local eligible recipient is a more appropriate one-stop partner for the Perkins program and have changed the regulatory text in § 678.415(e) to provide that the Perkins one-stop partner is the eligible recipient at the postsecondary level, or a consortium of eligible recipients at the postsecondary level in the local area. This change is aligned to the statutory text in WIOA sec. 121(b)(1)(B)(vi). The regulatory text also has been revised to state that the Perkins one-stop partner may request assistance from the State eligible agency in completing its responsibilities as a one-stop partner.

Comments: A few commenters interpreted proposed § 678.415(c) to mean that if the State's VR program is under an umbrella agency that is not primarily concerned with vocational rehabilitation, the designated VR partner will be the director of the designated State unit.

Departments' Response: Under § 678.415(c), if the designated State agency—which these commenters refer to as an ''umbrella agency''—is not primarily concerned with VR, then the designated State unit for the VR program would be the local partner.

Comments: One commenter stated that it is unclear from this section whether the Local WDB or its chosen title I provider is the entity that serves as the one-stop partner and recommended that the Local WDB not be considered the one-stop partner in this case.

Departments' Response: The Departments agree with the commenter that the Local WDB is not a one-stop partner, unless it is a specific program provider as well. The Departments have concluded that the proposed regulatory text is clear on this issue and have made no changes to the regulatory text.

Comments: Another commenter agreed with the Job Corps center being the one-stop partner, but suggested also including the providers who conduct recruitment for the Job Corps program.

Departments' Response: Determination of such an inclusion in the local one-stop delivery system is best left to the Local WDB. These providers will remain permissible one-stop partners but will not be required, and the Departments decline to change the regulatory text in response to this comment.

Comments: One commenter suggested allowing the State TANF agency to delegate its responsibilities under § 678.415(a), as other mandatory partners are permitted to do.

Departments' Response: The Departments' interpretation of WIOA is that the local TANF program is the required one-stop partner that, therefore, holds the responsibilities mentioned by this commenter. Matters concerning the roles of entities in

carrying out TANF must be addressed under the TANF authorizing statute.

Comments: Some commenters expressed support for not requiring the one-stop partner to have responsibilities in local areas where that program or activity is not carried out.

Departments' Response: The final regulation continues to reflect this policy.

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

This section 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) of § 678.420. 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 delivery system must be proportionate to the benefits received and also must adhere to the partner program's Federal authorizing statute and to Federal cost principles requiring that costs are reasonable, necessary, and allocable. The requirement in § 678.420(e), to provide representation on State and Local WDBs, is new in WIOA and is required only of core programs; WIA only required one-stop partner representation on Local WDBs, and required it for all one-stop partner programs. The Departments have begun issuing guidance and providing the system with technical assistance on matters related to this section and will continue to do so.

Responsibilities Related to Infrastructure Cost Contributions

Comments: A commenter asked whether the statement in this section that references Federal laws on administrative costs refers to the established ceilings on the infrastructure contributions that can be expected from certain programs, such as VR.

Departments' Response: This is the intent of the rule and, as such, the Departments have made no changes to the regulatory text in response to this comment.

Comments: A commenter stated that partner programs would be more likely to contribute to infrastructure costs if the individual programs' authorization were amended to include that expectation.

Departments' Response: Revisions to the authorizing statutes and regulations of individual programs are beyond the scope of this regulation.

Comments: Another commenter stated that it would be very challenging to establish equitable funding to support a one-stop delivery system without stronger language and guidance governing the required one-stop partners.

Departments' Response: The Departments have released, and will continue to release, guidance relating to this and many other issues. The Departments concluded that the guidance will be sufficient in assisting one-stop partners in supporting a one-stop delivery system and decline to make a change to the regulatory text.

Comments: A few commenters said that § 678.420(b) can be construed to mean that YouthBuild programs must contribute money to their local one-stop delivery system. The commenters expressed concern that YouthBuild programs would have to pay into the one-stop delivery system for infrastructure support when the money is needed to operate the program.

Departments' Response: As a statutorily required one-stop partner program, YouthBuild is required by sec. 121(b)(1)(A)(ii) of WIOA to contribute to the infrastructure costs of any one-stop center in which it participates, based on proportionate use and relative benefit received. The Departments do not have authority to change this requirement and have made no changes to the regulatory text in response to these comments.

Comments: A commenter requested additional guidance on proportional benefits received and also on costs associated with title II providers contributing to one-stop infrastructure.

Departments' Response: The portion of this preamble addressing public comments and changes made to the provisions in subpart E relating to ''One-Stop Operating Costs'' also addresses many of these issues.

Other Comments

A few commenters recommended rewording this section to state that not all one-stop partners are required to be members of the State and Local WDBs.

Departments' Response: After considering this comment, the Departments have concluded that the language of the proposed regulatory text is clear that not all one-stop partners are required to be members of the State and Local WDBs. No changes to the regulatory text were made in response to this comment.

Comments: One commenter asked what recourse a Local WDB would have if States allocate the majority of their program funding to more populous areas, leaving rural areas underfunded.

Departments' Response: The allocation of funds by programs is beyond the scope of this regulation and WIOA. As such, the Departments have no ability or authority to create such a recourse mechanism. As good faith partners in the one-stop delivery system, however, the Departments expect that programs will operate in a manner that best serves the needs of a State.

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

WIOA requires one-stop partners to deliver applicable program-specific career services. This regulation clarifies that an applicable career service is a service identified in § 678.430 and is an authorized program activity.

Comments: A few commenters requested clarification on what services must be physically available in one-stop centers. Another commenter said that proposed § 678.425 does not describe how or where these services must be provided and suggested that customers should be able to receive in-person assistance with the required partners. Another commenter expressed support for eliminating the sequence of services, as this would provide staff with greater flexibility to serve customers.

Departments' Response: The Departments have not made changes to § 678.425. Section 678.305(b)(1) specifically states that comprehensive one-stop centers must provide career services described in § 678.430. The language is not qualified by the phrase ''access to,'' meaning that career services must actually be provided in the comprehensive one-stop centers. With respect to programs and activities to which the one-stop partners must provide access, as set forth in § 678.305(b)(2) through (4), the regulations describe requirements concerning physical presence of staff and in-person assistance in § 678.305(a), (c), and (d). Paragraph (a) of § 678.305 requires that at least one title I staff person be physically present in a comprehensive one-stop center. Paragraph (c) of § 678.305 requires customers to have access to one-stop partner programs in a comprehensive one-stop center, and paragraph (d) defines ''access'' as including, but not limited to, physical presence of partner program staff appropriately trained to provide information to customers about the programs, services, and activities available through partner programs. That is, one-stop partner programs do not need to be physically present in a comprehensive one-stop center, but they

must provide access to their services in the ways described in § 678.305(d).

Section 678.430 What are career services?

Unemployment Insurance Claims Filing and Assistance. Section 678.430 specifies the career services that one-stop partners must provide through the one-stop delivery system. Paragraph (a)(10) provides that core services include providing meaningful assistance to individuals seeking assistance in filing a claim for unemployment compensation.

Comments: Several commenters addressed the proposed definition of ''meaningful assistance.'' In particular, one commenter expressed support for the definition as it allows for technology to be used to provide the assistance. However, this commenter joined many others in expressing strong disagreement with the discussion in the preamble to the NPRM that one-stop customers referred to a phone-based service for UI claims be sent to a dedicated phone line for one-stop customers, rather than the general State UI queue. These commenters asserted that this requirement is not in WIOA; would be costly and difficult to maintain during times of high call volume; fails to take advantage of existing UI claims filing and assistance technology infrastructure in many States; and gives priority to individuals who are able to travel to one-stop centers, thereby disproportionately affecting individuals who are unable to travel to one-stop centers due to distance, lack of transportation options, or disability. A few commenters also stated that this requirement conflicts with the fact that most UI claims are done remotely through self-service options, including mobile applications and Web sites. One commenter asked for the definition of ''within a reasonable time.'' Another commenter said that the definition of ''meaningful assistance'' is not clear.

Departments' Response: The Departments disagree with the comments regarding a dedicated phone line for one-stop customers using UI services. States are not required to have a dedicated phone line for one-stop customers, but a phone line would provide a direct linkage for providing services remotely as required by § 678.305(d). More importantly, simply referring one-stop customers to the general UI queue, without otherwise making trained staff available does not qualify as ''meaningful assistance.'' Therefore, if local areas choose to provide meaningful assistance through technological means, trained staff must be available such as through a dedicated phone line.

In response to the comments regarding concerns that the ''meaningful assistance'' requirement to help individuals file UI claims is overly burdensome, the Departments note that § 678.430(a)(10)(i) provides flexibility to States regarding implementation by providing a menu of options for States to meet the requirement. The regulation does not mandate the service delivery methodology. Options include the ability to provide the service remotely as long as it is provided by trained and available staff within a reasonable time. The Departments also note that this requirement is targeted to individuals who need assistance and is not intended to replace State processes for taking claims remotely, either online or by phone. The Departments have not provided a definition of reasonable time because that varies by circumstances. The Departments have made no changes to the regulatory text in response to these comments.

Comments: Many commenters raised concerns about private entities or contractors providing assistance with filing UI claims, asserting that this should be considered an inherently governmental function that must be conducted by State merit staff. These commenters said that if UI staff is not present in one-stops to fulfill this function, Employment Services staff could do so. A few commenters also recommended that ''State merit'' be inserted before ''staff'' in proposed § 678.430(a)(10)(i)(A) and (B). A commenter expressed concern regarding the definition of ''filing,'' suggesting that it should not be the function of one-stop or Wagner-Peyser Act staff to file UI applications.

Another commenter asked for guidance on defining ''and assistance'' in the requirement to provide ''information and assistance regarding filing claims for unemployment compensation.'' Another commenter expressed support for the proposed expanded definition of ''enhanced career services'' including UI claims filing assistance and eligibility assessments.

Departments' Response: The Departments decline to make changes to § 678.430(a)(10) to refer to State merit staff. The assistance requirement only encompasses helping the individual navigate the State's claims filing process and providing the individual with general information on their responsibilities as a claimant. These functions are informational in nature and not directly connected to determining the claimant's eligibility for benefits. The requirement does not encompass speaking specifically to the individual's potential eligibility for benefits or making any determinations regarding the individual's eligibility for benefits, which are inherently governmental functions that must be provided by UI merit staff. The Departments note that it has been permissible for non-State merit staff to carry out similar functions, for example, reviewing compliance with State work search requirements as part of the Reemployment and Eligibility Assessment program for many years. The Departments reiterate the importance that, if these functions are carried out by non-UI staff, States must ensure that the staff is well trained. The Departments expect to provide additional guidance and technical assistance to States on the implementation of these provisions. For the reasons stated above, the Departments are not revising the regulatory text in response to these comments. For more information about the impact of WIOA implementation merit staffing for the Wagner-Peyser Act, see 20 CFR 652.215.

Temporary Assistance for Needy Families

Comments: Several commenters addressed the Departments' request for comment regarding the identification and inclusion of TANF employment, related supported services, and TANF intake functions as career services that must be provided in one-stop centers. For example, some commenters suggested that because there are so many ways of delivering TANF intake services (*e.g.*, electronically), States should have flexibility in determining whether TANF intake services should be physically located in the one-stop centers.

Departments' Response: The Departments recognize the need, and utility, of providing States flexibility in implementing TANF intake services and have added two paragraphs to § 678.430. Paragraph (a)(2) of § 678.430 states, in pertinent part, that ''[f]or the TANF program, States must provide individuals with the opportunity to initiate an application for TANF assistance and non-assistance benefits and services . . .'' This provides States with flexibility as to how this is achieved. As a required partner, however, TANF must still provide access (as defined by § 678.305(d)) to employment services and related support services. To this end, paragraph (d) has been added to § 678.430, stating that ''[i]n addition to the requirements in paragraph (a)(2) of this section, TANF

agencies must identify employment services and related support being provided by the TANF program (within the local area) that qualify as career services and ensure access to them via the local one-stop delivery system.''

Comments: Another commenter suggested that required partners should be required to provide TANF outreach and intake at one-stop centers.

Departments' Response: As TANF is a required one-stop partner by default, and only is excluded from the one-stop delivery system through a decision by the Governor, TANF outreach and intake services must be provided at any one-stop center for which TANF is a partner.

Comments: One commenter asserted that including TANF intake functions as career services would require significant cross training of other program staff in their State. For these reasons, the commenter supported the continuation of the colocation/co-enrollment model for TANF services at one-stop centers. Another commenter asked whether State agency staff were properly cross trained to conduct TANF intake.

Departments' Response: The Departments recognize that some services come at higher costs than others, and this is one of the many factors that must be weighed in determining how best to deliver services. In addition, the question of what constitutes ''proper'' training on the TANF program for local one-stop workforce staff will depend on the TANF benefits and services that are offered at the local one-stop center.

Comments: A few commenters stated that requiring one-stop centers to process TANF applications that are not related to employment is unhelpful and should not be considered career services.

Departments' Response: As mentioned above, the Departments' review and consideration of comments made on the NPRM, particularly the language regarding intake, application processing, and initial eligibility determinations for TANF assistance and non-assistance benefits at one-stop centers, prompted the Departments to modify the requirement from how it was proposed in the NPRM. This modified requirement, found in final § 678.430(a)(2), requires that, at a minimum, the one-stop centers must enable a family to initiate an application (as defined by the State agency) for TANF assistance and non-assistance benefits and services. One-stop centers could accomplish this by having paper application forms available at the one-stop center or by having information or links to the application on the one-stop center's Web site.

The Departments have determined that allowing customers in need of career services to have the opportunity to initiate an application for TANF benefits at one-stop centers is not counterproductive or unhelpful. On the contrary, providing for a family's unmet needs via a TANF benefit is crucial to ensuring progress and success in meeting career service objectives.

The Departments affirm the NPRM preamble explanation on the identification and delivery of career services (restated below) absent a definition of career services in the TANF statute.

The TANF statute does not include a definition for career services. Accordingly, the TANF State grantees must identify any employment and related support services that the TANF program provides (within the particular local area) that are comparable with the career services as described in this section.

Comments: A few commenters remarked that there is no universal English as a Second Language (ESL) test under TANF or other employment and training programs and suggested that ESL providers are better at conducting language proficiency testing than employment service providers. Another commenter suggested that one-stop providers should be expected to provide services to linguistically and culturally diverse populations.

Departments' Response: The regulations do not require a specific ESL test as part of the initial assessment of skills, or to gain meaningful access to TANF or other Federal programs. They leave the selection and use of assessment tools, and qualified administrators of such tools, up to the partner program or service provider, as appropriate to individual participants. If any one-stop partner or service provider receives funds directly or indirectly from HHS or other Federal agencies, it is required under title VI of the Civil Rights Act of 1964 and its implementing regulations, to take reasonable steps to ensure meaningful access to its programs by persons with limited English proficiency. Title VI also prohibits Federal grant recipients from utilizing methods of administration that have the effect of discriminating against persons based on their race, color, or national origin. In some cases, a provider's failure to provide language assistance to linguistically or culturally diverse populations could be a violation of title VI. However, the title VI requirement to take reasonable steps to ensure meaningful access does not mean that jurisdictions are required to provide universal ESL training. While individual jurisdictions may need to provide ESL training and testing to TANF family members in some cases, universal ESL training is not a statutorily mandated requirement.

Other Career Services

Comments: A commenter suggested that career services also should include a pre-screening for eligibility for supportive services such as the Children's Health Insurance Program (CHIP), SNAP, the Earned Income Tax Credit, TANF, and transportation services alongside the initial assessment of skill levels.

Departments' Response: Paragraph (a)(2) of § 678.430 requires that, along with intake, an orientation to the other services and programs provided at the one-stop center must be given to participants, and paragraph (a)(5) requires referrals to, and coordination of, activities with other programs and services. The Departments have determined that this strikes a balance between the burden on one program's staff to be knowledgeable about other partner programs and the benefit that this knowledge can be to participants. Requiring all staff to do pre-screening for the programs identified by the commenter would take time away from providing actual programmatic assistance to participants, as well as delay other participants from receiving services.

Comments: Other commenters requested additional guidance on the initial assessment process. The commenters asked whether there is a specific point in service delivery when initial assessments should be provided to customers, what the vision and intent is of this assessment, and how the assessment is to be used. Another commenter asked whether there are any standardized tools to be used to conduct this assessment.

Departments' Response: The Departments intend to issue joint guidance on this subject in the near future.

Comments: One commenter said that the assessment should be tailored to include an evaluation of women's ''interest and aptitude for higher-wage, nontraditional careers.''

Departments' Response: The Departments have decided not to change the regulatory text in response to this comment. The Departments recognize the importance of placing women in higher-wage, nontraditional careers, but note that local areas have discretion to undertake such an evaluation as part of

the initial assessment of skill levels required in § 678.430(a)(3).

Comments: A commenter recommended rewording paragraph (b)(1) of § 678.430 to state, ''Comprehensive and specialized assessments of the skill levels, interests, values, aptitudes, and service needs of adults and dislocated workers . . .''

Departments' Response: The Departments have decided not to change the regulatory text in response to this comment. The assessment of skill levels could very well include these elements, but the Departments had determined that the inclusion of such elements is best left up to the Local WDB and partners to decide, given that they are in a position to adapt these processes to local area needs.

Comments: Another commenter suggested that these assessments should include disability-related barriers to employment and the development of an action plan to reduce these barriers, as well as information on how to access common disability-related services. This commenter also recommended that when to disclose a disability and how to request a reasonable accommodation should be part of career counseling.

Departments' Response: Disability-related barriers to employment and information on how to access disability-related services are elements of the assessment process that the Departments encourage Local WDBs and partner programs to implement, but the Departments have decided not to change § 678.430(b)(1) in response to the comment at this time. The assessment process is meant to be molded to best fit a local area's employment environment and the needs of the participants, potential employers, and the community. Moreover, as written, § 678.430(b)(1)(ii) specifically indicates that assessments may include in-depth interviewing and evaluation to identify employment barriers, which could include disability-related barriers.

Comments: A commenter expressed support for the inclusion of financial literacy as an allowable activity. The commenter stated that bundling financial education with workforce development leads to improved employment and financial outcomes. Another commenter suggested that there should be financial literacy programs specifically targeting individuals with disabilities.

Departments' Response: The Departments agree with the commenter's statements about the bundling of financial education with workforce development. While the Departments have chosen not to change § 678.430(b)(9) to specifically include financial literacy programs targeting individuals with disabilities, the Departments encourage Local WDBs to implement such plans as they determine are necessary to meet the needs of a local area.

Comments: One commenter recommended that one-stop center partners should work with local institutions to ensure that one-stop customers are banked (*e.g.,* have banking accounts) to reduce reliance on predatory lending.

Departments' Response: The Departments recognize the need to combat predatory lending and encourage Local WDBs to make such partnerships a part of their financial literacy services programs. However, the Departments decline to change the regulatory text to mandate such relationships because they may not be appropriate for every local area. The Local WDB is in the best position to determine if such a service is needed in a particular local area.

Comments: Another commenter recommended that transportation should be put in a separate paragraph to emphasize that transportation for youth includes transportation to one-stop centers and work sites. The commenter also suggested that referrals to organizations that assist with housing, food, and obtaining identification documents should be provided at one-stop centers.

Departments' Response: The provision of information about the availability of, and the referral to, transportation provided through TANF are included in WIOA sec.134(c)(2)(A)(1)(ix) and in § 678.430(a)(9) as a career service. The commenter's recommendation about transportation is adequately addressed in the regulatory provision as drafted, and the Departments have decided that it is not necessary to include it in a separate paragraph. The Departments have also determined that § 678.430(a)(9), requiring information and referrals to be provided for other supportive services and assistance, would encompass referrals to other services as suggested by the commenter. While the list in the regulation does not specifically mention some of these services, it is a non-exhaustive list. Local WDBs are free to provide information and referrals to any supportive services that they determine would benefit one-stop participants in a local area.

Comments: Another commenter said that it might be confusing to differentiate between basic and individualized career services.

Departments' Response: The Departments have decided to make a distinction and separation between these terms. Basic services are those made available to each individual who accesses a one-stop center, while individualized services are those that are tailored to each participant to best meet his or her needs.

Comments: A commenter suggested that if career services are classified as ''pre-enrollment'' and ''required enrollment,'' Local WDBs could determine the customer flow without having to worry about cost issues.

Departments' Response: While the Departments have determined that some career services are more appropriate for those in pre-enrollment or those enrolled in a program, the Departments have determined that it is best to leave this distinction to the Local WDBs, as they are in better positions to recognize and respond to the needs of the local area.

Comments: A couple of commenters stated that § 678.430(a) potentially conflicts with § 678.305, and suggested that the Departments rephrase it to read: ''Basic career services must be made available in accordance with the methods outlined in § 678.305, at a minimum. . .''

Departments' Response: The Departments disagree, having found, after examination of the text, no conflicting language or intent in these two sections. No changes to the regulatory were made text in response to this comment.

Comments: Another commenter suggested adding ''and recognized postsecondary credentials'' to § 678.430(a)(4)(i)(A) to place additional emphasis on the benefits of such credentials.

Departments' Response: The Departments have not made such a change in the regulatory text, but postsecondary credentials and their importance in the employment environment of a local area will be emphasized by title II and other educational programs.

Comments: One commenter expressed disagreement with § 678.430, asserting that it restricts what WIOA allows. The commenter recommended that States should be permitted to develop guidelines to help local areas determine how to deliver services.

Departments' Response: After consideration, the Departments have not found this section to restrict WIOA's allowances and, in fact, the Departments have determined that § 678.430 is unrestrictive regarding what services a one-stop center may provide to a local area. The list of career services here are

required, but the list should not be read as excluding additional career services that a Local WDB may decide the local area needs. Nothing in this regulation prohibits States from developing guidelines on the deliverance of services, and the Departments encourage States to do so.

Comments: A few commenters requested guidance on how to deliver career services when multiple one-stop partners might provide similar services.

Departments' Response: The coordination among partners over which partner or partners will provide a service at any particular one-stop center or affiliated site is a subject that must be agreed upon and described in the MOU.

Comments: A commenter asked for clarification on the definitions of ''group counseling'' and ''individual counseling.''

Departments' Response: ''Group counseling'' involves two or more participants addressing certain issues, problems, or situations that may be shared by the group members, while ''individual counseling'' is a one-on-one session that may go into greater detail about a particular participant's needs.

Comments: A few commenters recommended that States be given flexibility in determining follow-up time frames and whether follow-up services are appropriate.

Departments' Response: The 12-month time frame requirement for follow-up services to be conducted is established by WIOA sec. 134(c)(2)(A)(iii). No change to the regulatory text was made in this section in response to the comments.

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

The one-stop delivery 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. Section 678.435(a) lists required business services. Section 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.

Comments: A commenter encouraged the Departments to improve the marketing of one-stop services to employers, because many employers that could benefit substantially from these services are not aware that there are one-stop services available to them.

Departments' Response: While the Departments encourage Local WDBs and one-stop operators to increase efforts to reach out to local business industries and sectors, and to form and foster these relationships and partnerships is required by both the regulations in the section and WIOA, the Departments have determined this is a decision best left up to the Local WDBs. This will ensure that these efforts can be customized to fit the particular employment environment of the local area and remain malleable to the changing employment landscape.

Comments: Several commenters recommended that employers be provided with an individual liaison at the one-stop center.

Departments' Response: Individual liaisons can be an effective mechanism for serving employers. However, each local one-stop center should structure business services to best meet the needs of the employers that they serve; the Departments decline to require that all one-stop centers use this structure, although it may be a best practice that should be encouraged. The Departments also note that the duties of the one-stop operator under § 678.620(a) may include the coordination of service delivery by required one-stop partners and service providers. This could reasonably include interacting with employers on a regular basis to ensure that appropriate service providers are meeting the employers' needs. For these reasons, no change was made to the regulatory text concerning this topic. However, the Departments will continue to engage with business customers to determine the best ways to determine effectiveness in serving employers and to improve those services continuously.

Comments: Several commenters recommended eliminating references to sector partnerships in this section. The commenters asserted that it is important to distinguish between developing and implementing sector partnerships and simply providing career or training services to employers in a particular industry. Further, the commenters said that while sector partnerships are described as a required activity in § 678.435(a), paragraph (c) describes sector partnerships as one of several permissible activities that Local WDBs may undertake. The commenters suggested that the Departments should revise the language to state that Local WDBs should ensure that business services provided at one-stop centers can support sector partnerships in local areas.

Departments' Response: The Departments view the development of industry and sector partnerships as a critical business service that local areas must explicitly provide as required by WIOA sec. 134(c)(1)(A)(v). Regarding the commenters' statements about § 678.435(a) and (c), these paragraphs do not describe the same services. Paragraph (a) refers to ''industry or sector partnerships,'' while paragraph (c)(1) refers to ''industry sector strategies,'' which, as is noted in the regulatory text, could include strategies involving industry partnerships. Because these are separate services and not references to the same or duplicative services, the Departments have concluded that no change to the regulatory text is necessary. Moreover, while it is important for business services provided through one-stop centers to properly support industry sector partnerships, to change the regulatory text to specify this could have the unintended consequence of making this appear as a priority above providing these services to non-partner employers that seek them out.

Comments: One commenter requested additional guidance regarding the implementation of sector partnerships, particularly the role of the convener (*e.g.,* Local WDBs). Another commenter said that the limited instructions in the NPRM regarding sector partnerships might indicate that they are not a high priority and result in delayed implementation.

Departments' Response: The Departments have concluded that the regulatory text does not indicate these sector partnerships are a low priority, but rather the regulatory text indicates that the details of how these partnerships are structured and operate are best left to Local WDBs with agency guidance, as they are in a better position to know the individual needs of a local area.

Comments: The Departments received a number of comments that discussed the types of services that should be available to employers. One commenter suggested that one-stop centers should be able to provide services for employers interested in hiring individuals with disabilities. Another commenter said that the list of services to employers should be expanded to include services that are important for

hiring and retaining employees with disabilities, including ''information on work experience options and tax credits, assistance and information on job accommodations and assistive technologies, and disability awareness training.''

Departments' Response: The Departments have considered the suggestions regarding the types of services that should be available to employers, and have decided to amend the regulatory text to include some, but not all, of the suggestions.

Business services related to job accommodations and assistive technology for individuals with disabilities have been included at § 678.435(b)(4)(vi) to encourage not only these specific practices, but also the provision of other disability hiring services and general disability awareness. Information on local, State, and Federal tax credits is already listed as a possible business service to be provided under § 678.435(c)(6). The Departments do not consider information on work experience options, suggested by the commenter, as a business service and have not added this to § 678.435(c).

Comments: Another commenter also suggested including individuals with disabilities in job fairs and customized recruitment events and expanding the list of services to include assistance on legal requirements and best practices around accommodating individuals with disabilities.

Departments' Response: The Departments recognize the need to provide access to these services. However, the Departments have concluded not to make this addition to this section of the regulation because the Departments have determined that this level of detail is not necessary. All WIOA services are subject to the nondiscrimination requirements of WIOA sec. 188 and its implementing regulations at 29 CFR part 38. Additionally, the Departments have made technical assistance on holding effective and inclusive job fairs available and will continue to provide guidance and resources regarding appropriate accommodations.

Comments: A couple of commenters expressed support for § 678.435 and suggested additional services to employers including metrics, recordkeeping, and data analysis; affirmative action planning and assistance with goal attainment; assessment of employer needs; accessibility reviews; cultural awareness of specific disabilities; mentoring; on-the-job evaluation; and disability management for existing workforces. Another commenter said that businesses could use assistance developing ''position descriptions'' to better define the skills required for positions, as well as assistance locating information on where certifications are awarded.

Departments' Response: While the Departments recognize the advantages of providing these and other services, the Departments also recognize that providing an all-encompassing list of possible business services is an impossibility and would restrict creative thinking about methods of service provision, the encouragement of which is at the heart of WIOA. Because of this, the list of possible business services in the regulation will remain a non-exhaustive list and the Departments made no changes to the regulatory text in response to these comments.

Comments: One commenter recommended that the Departments should clarify their use of the phrase ''labor laws'' to ensure that it is clear this includes all Federal employment discrimination laws.

Departments' Response: The Departments recognize the need for clarity in this language and have revised the regulatory text to include employment and discrimination laws in § 678.435(b)(4)(vii).

Comments: Another commenter suggested that Job Corps should be a required partner in the sector partnerships required in § 678.435(a).

Departments' Response: To fully support the development of sector-based strategies, the Departments are providing States, local areas, and regions with flexibility. The Departments strongly encourage that sector partnerships include a variety of entities, including training and education programs like Job Corps. Given the range of potential partners and the variety of industries and career pathways that may be included in a sector strategy, the Departments are not placing further regulatory requirements around partnerships, but will encourage such partnerships through guidance and technical assistance.

Comments: One commenter asked whether the services provided in § 678.435(b) but conducted by business intermediaries need to be located in the one-stop centers.

Departments' Response: WIOA sec. 134(d)(1)(A) requires that business services, which are listed as a permissible local employment and training activity at WIOA sec. 134(d)(1)(A)(ix), be provided through the one-stop delivery system. No change to the regulatory text was made in response to this comment.

Comments: Another commenter recommended that the Departments clarify in the regulations that it is an allowable activity for local areas to provide business services and develop relationships with the business community that will last beyond a change in one-stop operator or career services provider.

Departments' Response: The Departments encourage Local WDBs to develop strategies to establish and sustain lasting partnerships and provision of business services. These business services may be provided by the Local WDB or through effective business intermediaries working in conjunction with the Local WDB, or through other public and private entities in a manner determined appropriate by the Local WDB and in cooperation with the State, consistent with § 678.435(c). No change has been made to this portion of the regulatory text in response to the comment.

Section 678.440 When may a fee be charged for the business services in this subpart?

WIOA allows customized employer-related services to be provided on a fee-for-service basis. Section 678.440 clarifies that there is no requirement that a fee-for-service be charged to employers. The Local WDBs, however, should examine available resources and assets to determine an appropriate cost structure. These Boards may also provide such services for no fee. The regulatory text was revised to add paragraph (d) to explain that fees earned are program income.

Comments: One commenter expressed support for this section as proposed. Another commenter said that each program should be permitted to determine whether to charge a fee, instead of the Local WDB making that decision.

Departments' Response: After considering this comment, the Departments have concluded that Local WDBs are in the best position to determine what business services are needed in a local area and what fee, if any, should be associated with the provision of these services. The Departments encourage Local WDBs to consult with partner programs when making such decisions, keeping in mind that any fees collected by partners are program income allocable to partner programs in proportion to the partner programs' participation in the activity. In this case, program income must be expended by the partner in accordance with the partner program's authorizing statute, implementing regulations, and Federal cost principles identified in

Uniform Guidance to ensure consistency with program income disbursement requirements. Additionally, the partner must consult its program statute and grant requirements to determine which method to use when disbursing program income as described in the Uniform Guidance at 2 CFR 200.307(e).

Comments: One commenter expressed concern that employer services beyond the provision of no-charge services under the Wagner-Peyser Act have not been discussed.

Departments' Response: Local WDBs are not limited to only those business services discussed in this and other sections. They may also provide other business services that meet the workforce investment needs of area employers. If the Wagner-Peyser Act program provides funds for a business service, a fee cannot be charged. The Departments have concluded that the regulations sufficiently address business services and will not modify the regulatory text in response to this comment. Further joint guidance, however, will be released on this topic.

Comments: A few commenters expressed concern about the prohibition on charging a fee for certain services. These commenters asked whether ''appropriate recruitment and other business services on behalf of employers'' includes activities such as career expos, job fairs, and sector convening events. The commenters said that these events can be quite costly, and suggested that this section state that no fee, above a cost recovery fee, may be charged for services described in § 678.435(a).

Departments' Response: Events such as career expos, job fairs, and sector convening events are not subject to the prohibition on charging fees as they are services provided under § 678.435(b) and (c). For example, Wagner-Peyser Act funds are used for general labor exchanges, but these are limited to situations such as the use of a job board. These larger events are more tailored for employers, for which fee-for-service is allowed. WIOA sec. 134(d)(1)(A)(ix) discusses activities to promote business services and strategies to meet workforce needs of employers, which may be provided on a fee-for-service basis.

4. Memorandum of Understanding for the One-Stop Delivery System (20 CFR Part 678, Subpart C; 34 CFR 361.500 Through 361.510; 34 CFR 463.500 Through 463.510)

This subpart describes the requirements for the MOU between the Local WDB, CEO, and the one-stop partners relating to the operation of the one-stop delivery system in the local area. The Local WDB acts as the convener of MOU negotiations and shapes how local one-stop services are delivered. One comment concerning the extension of existing MOUs to cover one-stop operations in PY 2016 was very pertinent and, as explained below, helped inform the Departments' decision on the implementation of the State funding mechanism, although this decision did not affect the regulatory language in subpart C. As explained in greater detail below, the Departments promulgate this subpart with no substantive changes.

Comments: A commenter suggested that Governors should be permitted to opt out of the MOU requirement if a comparable mechanism already exists and achieves the desired results.

Departments' Response: While the Departments recognize that existing mechanisms may already be in place in many States and local areas, bypassing the WIOA MOU process is not an option, because partner participation in the MOU is required by WIOA sec. 121(b)(1)(A)(iii). Any existing mechanisms will need to be supplanted by the WIOA MOU mechanism.

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

Section 678.500 describes what must be included in the MOU executed between the Local WDB, 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.

Comments: A commenter recommended allowing existing MOUs in place under WIA to extend for the first program year of WIOA to acknowledge the unlikelihood of negotiating MOUs before the deadline.

Departments' Response: The Departments note the first year of implementation for WIOA MOU provisions was PY 2015 (July 1, 2015 to June 30, 2016), which concluded prior to the effective date of these regulations.

Comments: A commenter asked who specifically is supposed to write the MOU and wondered whether they can trust Local WDBs to write their own agreements.

Departments' Response: Neither WIOA nor the regulations address which entity writes the MOU, but § 678.500(a) specifies that the MOU must be a ''product of local discussion and negotiation'' among the Local WDB, chief elected official, and the one-stop partners,'' who all must sign it, according to paragraph (d), and which must include procedures for amending and reviewing it, according to paragraphs (b)(5) and (6). The Departments have determined that these provisions, and those in § 678.510, include adequate safeguards for the drafting of the MOUs, and that specifying a single entity to draft the MOU would be too prescriptive.

Comments: A commenter asked, for single-area States, if the State WDB assumes the MOU negotiation responsibilities, or whether the Governor/mayor assumes these responsibilities.

Departments' Response: WIOA and the regulations do not assign negotiation responsibilities to a single party, and the regulations specify the joint nature of the responsibility among the parties. Therefore, no specific governmental entity is required by these regulations to assume MOU negotiation responsibilities, in single-area States.

Comments: A few commenters supported the inclusion of provisions in this section that would allow one-stop partners to share client data through MOUs and confidentiality agreements.

Departments' Response: WIOA and the regulations are silent on the inclusion of data sharing agreements in the MOU, but the Departments have concluded that the MOU may include such agreements, consistent with all applicable laws and regulations including 34 CFR 361.38 (covering VR program privacy safeguards). No change to the regulatory text was made in response to these comments.

Comments: A commenter said that the regulations should clarify that MOUs must be in accordance with 34 CFR 361.38.

Departments' Response: The Departments agree; MOUs must not contain any provisions that violate the requirements of 34 CFR 361.38, which covers the protection, use, and release of personal information within the VR program. This applies specifically to § 678.500(b)(3), which requires that MOUs include methods for referring individuals between the one-stop operators and partners for appropriate services and activities, as there are specific guidelines to be followed in 34 CFR 361.38(e) regarding the release of participating individuals' information. As there are no specific requirements applying to the sharing of information, but rather only a requirement that the MOU provide the method of referrals from one partner program to another partner program, the Departments are not referencing the requirements of 34 CFR 361.38 in the regulatory text,

although such requirements will be mentioned in guidance released to aid in the implementation of the one-stop delivery system.

Comments: Another commenter said that the MOU should include a specific process to ensure individuals are screened to determine the best set of services to receive at the one-stop center.

Departments' Response: The Departments agree that individuals should receive the services that best meet their needs, but do not agree that the regulations should prescribe a screening process, especially given WIOA's movement away from the sequential delivery of services provided under WIA. The Departments will address this issue in guidance, if necessary, and through technical assistance.

Comments: A few commenters requested additional guidance on MOU requirements, including whether the MOU should address partnerships that do not involve financial commitments, like housing agencies.

Departments' Response: All one-stop partners must be signatories to an MOU, and all must use a portion of their funds to maintain the one-stop delivery system including their proportionate share of one-stop infrastructure costs, whether this is through cash contributions, non-cash contributions, or third-party in-kind contributions. These requirements are covered in much greater detail in subpart E of this part.

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

Section 678.505 establishes that a Local WDB and one-stop partners may develop a single ''umbrella'' MOU that applies to all partners, or develop separate agreements between the Local WDB 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.

Comments: One commenter expressed support for the option to utilize an umbrella MOU or individual MOUs with each partner. Another commenter agreed that the umbrella MOU is the best approach, and said that MOUs for all local areas should be in a consistent format. In addition, a commenter asserted that WIOA sec. 121(c)(1) requires each Local WDB to enter into one MOU with all of the partners.

Departments' Response: The Departments interpret sec. 121(c)(1) as permitting a single umbrella MOU that encompasses all partner programs, and the Departments encourage the use of such MOUs, but they are not required. No change to the regulatory text was made in response to this comment. The Departments will provide suggestions about the MOU in guidance and through technical assistance. However, because the MOU is the product of local discussion and negotiation developed by the Local WDB, with the agreement of the chief elected official and the local one-stop partners, which relates solely to the operation of the one-stop delivery system in that particular local area, the determination of an MOU's format is best left to the Local WDBs, as long as the MOU meets the requirements outlined in § 678.500 and any requirements mandated by the State.

Comments: A different commenter expressed opposition to umbrella MOUs, saying that they will result in inaccurate cost allocations and inappropriate service delivery decisions.

Departments' Response: The Departments have determined that there is no reason why umbrella MOUs will be less effective than multiple MOUs in addressing cost allocation and service delivery decisions in most situations. No change to the regulatory text was made in response to this comment.

Comments: A commenter remarked that statewide organizations, such as VR, could have to enter into several dozen MOUs to cover all local areas.

Departments' Response: This is correct. Any program that is a partner in a one-stop center, whether they are a partner in one or more, must sign an MOU with the appropriate Local WDB.

Comments: A commenter suggested that the State WDB and any statewide partners negotiate on a ''mandatory agreement template'' that can be used by Local WDBs in their MOUs with these statewide agencies. Another commenter agreed and supported the development of a standard MOU for use with all Local WDBs.

Departments' Response: While there is nothing to preclude the use of such a strategy, the Departments have determined not to require, encourage, or discourage such a method in order to leave the MOU mechanism as flexible and adaptable to local area situations as possible.

Comments: A commenter said that partner programs operating outside of the workforce area (*e.g.,* INA programs, Job Corps) should not be required to sign MOUs. Rather, the commenter said, these programs should commit to taking referrals from local areas and vice versa.

Departments' Response: If a program is a required one-stop partner under WIOA sec. 121(b)(1) and the corresponding regulations found in subpart B of this part, then that program must sign an MOU with the Local WDB for each local area where it is a partner. According to WIOA sec. 121(b)(1)(A), required partners are limited to those entities that carry out programs or activities in a local area. Likewise, if a program is not required to be a partner but is approved by the Local WDB and CEO as an additional partner, that partner program must sign the respective MOU. The Departments have determined that, as this is required by WIOA, no changes to the regulatory text regarding what entities are required to sign MOUs are necessary.

Section 678.510 How must the Memorandum of Understanding be negotiated?

Section 678.510 describes the collaborative and good-faith approach Local WDBs and partners are expected to use to negotiate MOUs. ''Good-faith'' negotiations may include fully and repeatedly engaging partners, transparently sharing information, and maintaining a shared focus on the needs of the customer. Section 678.510(a) allows Local WDBs, CEOs, and partners to request assistance from a State agency responsible for the program, the Governor, State WDB, or other appropriate parties when negotiating the MOU. The Departments acknowledge that additional guidance and technical assistance will be needed on MOU requirements and negotiating infrastructure funding agreements. The Departments will issue guidance on this topic. Ongoing technical assistance will be made available to the public workforce system as well.

5. One-Stop Operators (20 CFR Part 678, Subpart D; 34 CFR 361.600 Through 361.635; 34 CFR 463.600 Through 463.635)

This subpart addresses the role and selection of one-stop operators. Unlike the other subparts in this Joint WIOA Final Rule, this subpart is administered primarily by DOL. 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 part 678, this portion of the preamble refers mainly to DOL. For this reason, any reference to ''the

Department'' throughout this subpart D discussion is a reference to DOL.

Comments: As noted, the Department received and evaluated numerous public comments on this topic. Several commenters expressed support for the Department's proposal to require competition for one-stop operators, primarily on the grounds that competition leads to better services and outcomes for job seekers. Others raised concerns, as detailed below.

Department's Response: It is the conclusion of the Department that the requirement to use a competitive process for the selection of the one-stop operator is required by statute, as is the requirement for continuous improvement through evaluation of operator performance and regularly scheduled competitions. Competition is intended to promote efficiency and effectiveness of the one-stop operator by regularly examining performance and costs. The Department recognizes the challenges associated with competitive selection, including the additional costs such a process carries with it, the statutory requirement for a competitive process is clear. Additionally, competitive procurement processes are not uncommon in State and local government, and the Department encourages the consideration of methods used by other State and local government entities in streamlining their own process, as well as consideration of State and local procurement laws and the Uniform Guidance. Even with such a reference, however, additional guidance and technical assistance will be needed on MOU requirements and negotiating infrastructure funding agreements. Ongoing guidance and technical assistance will be made available to all parts of the public workforce system as well.

Section 121(d)(2)(A) of WIOA only allows for selection of a one-stop operator through a competitive process. This subpart 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 subpart requires States to follow the same policies and procedures they use for procurement from non-Federal funds as allowed under the Uniform Guidance at 2 CFR 200.317. All other non-Federal entities, including subrecipients of a State (such as local areas), are required to use a competitive process based on the procurement standards in the Uniform Guidance set out at 2 CFR 200.318 through 200.326.

Unlike under WIA, there is no ''designation'' or ''certification,'' separate from the competitive selection requirements, of any entity as a one-stop operator, including a Local WDB. For Local WDBs, WIOA imposes an additional step beyond the competitive selection. Section 107(g)(2) of WIOA states that a Local WDB may be designated or certified as a one-stop operator only with the agreement of the CEO in the local area and the Governor. DOL interprets this provision to create an additional requirement for situations in which a Local WDB is selected to be a one-stop operator through the competitive process as required under WIOA sec. 121(d)(2)(A) and as described in this subpart at § 678.605(c). In situations in which the outcome of the competitive selection process is the selection of the Local WDB itself as the one-stop operator, WIOA sec.107(g)(2) requires that the Governor and CEO approve the selection.

The DOL received many public comments regarding the impact of competition on local services. In response to these comments, changes were made to § 678.605, simplifying the language regarding the procedures to be followed in conducting a one-stop operator selection competition. Some minor changes were also made to §§ 678.620 and 678.635 for clarity and consistency.

Section 678.600 Who may operate one-stop centers?

Sections 678.600(a) through (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 entities. Consortia, like single entities, must be selected through a competitive process. Eligible entities identified in WIOA sec. 121(d)(2)(B). Section 678.600(c)(6) clarifies that a Local WDB, with the approval of the chief elected official and the Governor, may serve as the one-stop operator. Section 678.600(c)(7) clarifies that another interested organization or entity, which is capable of carrying out the duties of the one-stop operator, may serve as the one-stop operator. Section 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.

Section 678.600 states that a one-stop operator may be a single entity or a consortium of entities, and that if a consortium consists of one-stop partners, it must include a minimum of three of the one-stop partners described in § 678.400.

Comments: One commenter stated that these two provisions of § 678.600(a), when taken together, do not make clear whether a single one-stop partner may be a one-stop operator. The commenter further stated that a one-stop operator may be a single one-stop partner, based on WIOA's intent and current practice, but requested that the regulations clarify this point.

Department's Response: The commenter is correct in that a single one-stop partner may serve as a one-stop operator. Paragraph (c) of § 678.600 lists the types of entities that may be selected as the one-stop operator. This repeats the eligible entities from WIOA sec. 121(d)(2)(B), adding paragraph (c)(6) which states that a Local WDB, with the approval of the CEO and the Governor, may serve as a one-stop operator. Paragraph (c)(7) states that an interested organization of any other type that is capable of carrying out the duties of one-stop operator may serve as the operator. A single entity that is also a one-stop partner may serve as operator, but in cases where more than one partner form a consortia to serve as operator, WIOA requires that the consortia contain a minimum of at least three one-stop partners. The Department declines to make any substantive change to the regulatory text and will be issuing guidance on this topic, as well as for competition for one-stop operators.

Comments: A few commenters requested clarification on the phrase, ''practices that create disincentives to providing services to individuals with barriers to employment that may require longer-term career and training services.'' Paragraph (e)(2) requires that State and Local WDBs ensure that one-stop operators 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. One commenter specifically recommended that one such practice that should be ''barred'' is sending older workers to self-service or the Senior Community Services Employment Program, both of which would prevent those workers from being counted in performance evaluations.

Department's Response: The Departments have reiterated throughout the proposed regulations that all individuals with barriers to employment must be fairly evaluated for services, and services are to be made available and accessible in an equitable manner throughout the one-stop delivery system. Local WDBs must ensure that

one-stop operators do not create barriers that limit services to such individuals. WIOA sec. 188 and the corresponding regulations provide guidance on such issues for protected classes.

Comments: A few commenters expressed concern about the selection of certain entities as one-stop operators. For example, one commenter expressed concern that private entity management would not be efficient or cost-effective for rural areas. Further, the commenter stated that a private entity could have difficulty providing quality service to rural areas due to inadequate expertise, models, or knowledge of living and working in such areas.

Department's Response: The final regulations guard against the concerns expressed by the commenters. Section 678.605 requires that the Local WDB is to make the ultimate selection of the one-stop operator based on the principles of full and open competition. A sound competitive process will objectively evaluate bidders' proposals on factors that may consider costs and the ability to meet the needs of the local area.

Comments: A commenter expressed concern that partner infrastructure and one-stop operating costs could be impacted by the profit motivation of a private for-profit entity acting as a one-stop operator.

Department's Response: The Department does not share this concern. Procurement standards under the Uniform Guidance at 2 CFR 200.323(b), require that profit must be negotiated separately from the price in addition to a cost analysis and/or price analysis. Records documenting or detailing the procurement history including the negotiation and analysis of profit must be maintained by all entities (2 CFR 300.318(h)(i)). This provides transparency in the actual operating costs versus profits for any entity, including for-profit entities, selected under a competitive procurement. Section 683.295 of the DOL WIOA Final Rule addresses the earning of profit. WIOA allows private for-profit entities to be one-stop operators (sec. 121(d)(2)(B)(iv)); therefore, the regulations are consistent with WIOA.

Private for-profit entities also are required to adhere to the Uniform Guidance at 2 CFR part 200. DOL's adoption of the Uniform Guidance at 2 CFR 2900.2 expands the definition of 'non-Federal entity' to include 'for-profit' and 'foreign' entities. As such, any private for-profit entity that is a direct grant recipient or subrecipient of a DOL award must adhere to the Uniform Guidance.

Comments: A commenter urged the Departments to provide maximum flexibility and more defined authority to State WDBs to select the one-stop operator. Additionally, the commenter asked what it means to be an operator, how the operator will be paid, and how firewalls and conflicts of interest are defined.

Department's Response: These final regulations provide maximum flexibility to States and local areas in selecting one-stop operators for the one-stop delivery system as long as the competitive process is consistent with the Uniform Guidance at 2 CFR part 200 and/or with State procurement policies. WIOA sec. 121(d)(1) states that Local WDBs select the one-stop operator, but they must have the agreement of the CEO. Governors and CEOs must concur in cases where the Local WDB acts as the operator itself. In single-area States, the State WDB fulfills the requirements of a Local WDB by selecting the one-stop operator. A competitive selection process creates a level playing field where applicants must propose how to respond to the unique needs and requirements set forth by the Local WDB. Competition is the most effective way to ensure that providers can effectively and efficiently serve as one-stop operators. No changes to the regulatory text were made in response to this comment.

Regarding the role of a one-stop operator, § 678.620(a) only requires that the one-stop operator must coordinate the service delivery of required one-stop partners and service providers. A nonexclusive list of other roles that can be assigned to the one-stop operator also exists in paragraph (a) of § 678.620, but the assignment of these or other roles is always at the discretion of the Local WDB.

Comments: One commenter requested clarity regarding who may approve the Local WDB serving as the one-stop operator when the CEO and the Governor are the same individual.

Department's Response: The comment appears to be addressing concerns about the treatment of single-area States. In single-area States and outlying areas where the CEO and Governor are the same individual, the Governor approves the designation of the Local WDB as one-stop operator after the completion of a competitive process. Single area States will follow their own procurement policies per the Uniform Guidance at 2 CFR 200.317. State procurement policies may include additional procurement methods beyond those included in the Uniform Guidance or may allow for a non-competitive selection of a government entity. In cases where there is no competition, the State and State WDB must work together to establish necessary internal controls and firewalls to provide the public with assurances that although a competitive process is not conducted, there is no conflict of interest. The Department will be issuing guidance on this topic and will follow the issuance of guidance with technical assistance.

As stated above, the competitive process applies to both State and locally operated one-stop delivery systems; WIOA is clear that neither Governors nor State WDBs have the sole authority to designate one-stop operators, except under the conditions of a sole source method of procurement as stated in WIOA sec. 123(b). States are expected to conduct a competitive process for the selection of a one-stop operator, with appropriate protections from conflict of interest, per the State's own procurement policies and procedures.

Section 678.605 How is the one-stop operator selected?

Comments on the Proposed Competition Process

DOL examined the comments received and reviewed the statutory provisions upon which this section is based. WIOA made significant changes to the requirements regarding the selection of one-stop operators. As noted in the preamble to the NPRM, unlike the situation under WIA, WIOA sec. 121(d)(2)(A) only allows selection of a one-stop operation to be made through a competitive process.

Comments: A number of commenters generally questioned the complexities and specificities of the process described in the NPRM.

Department's Response: After considering those comments, the Department has revised the regulatory text by deleting much of the specific contract-related language in the proposed regulations as applied to non-Federal entities other than States. The language now more generally requires that those entities follow the competitive process in accordance with local policies and procedures and the principles of competitive procurement in the Uniform Guidance at 2 CFR 200.318 through 200.326. This provides maximum flexibility in implementing the competition requirement. Furthermore, as noted in revised paragraph (c) of § 678.605, any reference to ''noncompetitive proposals'' in the Uniform Guidance should be read as ''sole source selection'' for the purposes of § 678.605(c).

The competitive selection process permits more than one method of procurement, and procurement options are outlined in the Uniform Guidance at 2 CFR 300.320. Discussions based on comments made evident that there are many different methods of procurement used appropriately throughout the public workforce system. Moreover, such methods are generally based on the Uniform Guidance when Federal funds are involved. The Department has determined that it is unnecessary to be overly prescriptive in defining the methods of procurement in these regulations. It is the intention of the Department to provide extensive guidance and technical assistance on acceptable methods of procurement, using the Uniform Guidance as a basis. The Department responds to specific substantive public comments on this topic in the remainder of this Final Rule preamble section.

Comments: Many commenters suggested that existing one-stop operators that are performing well should be grandfathered into WIOA and permitted to continue operating without competitive procurement, which would reduce the burden of the competitive process and ensure continued system stability during the transition to WIOA. Some of the commenters further recommended that Local WDBs and CEOs should have the authority to waive the competitive procurement process after 4 years based on performance and accountability and only conduct a competitive procurement if their evaluations determine it is warranted.

Department's Response: The requirement in WIOA to use a competitive process for the selection of the one-stop operator is an unequivocal statutory requirement, which is clearly set out in WIOA sec. 121(d)(2)(A). Because of this statutory requirement, the competitive selection process for one-stop operators in all local areas cannot be waived. No changes to the regulatory text were made in response to these comments. Past performance, however, is an evaluation factor that may be considered in the competitive process, potentially giving weight to those bidders demonstrating successful performance as a one-stop operator.

Comments: A commenter stated that requiring competitive procurement for its one-stop operators would be detrimental to the State's workforce because any new operator would have to invest in new infrastructure, which would take time and money away from implementing programs. Further, this commenter stated that the existing State employees, who are unionized, could be laid off if new operators were selected.

Department's Response: Costs and burdens placed on the one-stop delivery system by the selection of a new one-stop operator is one of many factors that may be taken into account by a Local WDB or State WDB under the terms of the competitive selection process. Other factors may include, but are not limited to, performance results, performance results by targeted population, certification results, and price. Single-area States will follow their own procurement process per the Uniform Guidance at 2 CFR 200.317. State procurement policies may include additional procurement methods beyond those included in the Uniform Guidance, including sole source procurement. In appropriate instances, the State and State WDB must work together to establish necessary internal controls and firewalls to provide the public with assurances that there are no conflicts of interest. Further, the Department hopes that any disruption to existing public workforce system employees will be limited under the new competitive procurement policies. However, the Department is also confident that the intent of Congress in these provisions was to increase competition among the publicly funded WIOA programs. The implications of collective bargaining agreements will have to be taken into consideration within the provisions of State or Federal procurement and other legal requirements. As such, no changes were made to the regulatory text in response to this comment.

Comments: A few commenters suggested that sole sourcing should be permitted when a public agency is selected as the one-stop operator, reasoning that a competitive process would disrupt delivery of workforce services to job seekers and employers. Another commenter urged that rural areas should be exempt from the competitive process, while a different commenter recommended that single-area States should be exempt from the competitive process.

Department's Response: As stated above, sole source selection is allowable as long as the situation falls within the guidelines and requisite conditions of State and local procurement policies and procedures and the conditions outlined in the Uniform Guidance. The Local WDB must be able to demonstrate that it conducted sufficient market research and outreach to justify sole source selection. No change to the regulatory text was made in response to these comments.

Comments: Some commenters stated that requiring a competitive process would divert resources away from delivery of services.

Department's Response: While the Department recognizes the challenges associated with competitive selection, including the additional costs, the statutory requirement for a competitive process for selection of a one-stop operator is clear. Additionally, competitive procurement processes are not uncommon in State and local government, and the Department encourages the consideration of methods used by other State and local government entities in streamlining their own processes, as well as State and local procurement laws and the Uniform Guidance. No change was made to the regulatory text in response to these comments.

Comments: A commenter recommended that the regulations permit Local WDB personnel to staff one-stop operators and service providers, with the agreement of the CEO and Governor, which would provide more flexibility to the CEO to determine the most efficient and effective one-stop delivery system for their area.

Department's Response: The Department has determined that such staffing is allowable, as long as the Local WDB is selected in accordance with the requirements of the regulations and proper firewalls are in place. As the commenter noted, in such circumstances the agreement of the Governor and CEO is required as an additional step in the approval of the Board as the one-stop operator.

Comments: One commenter recommended that if there is no cost associated with the selection of a consortium as a one-stop operator, there should be no competition.

Department's Response: As noted, WIOA imposes the requirement of a competitive process. The fact that a particular entity, such as the consortium mentioned by the commenter, would be at no cost, however, might be taken into account by the Local WDB under the terms of the selection.

Comments: Several commenters disagreed with the Department's interpretation of the relationship between WIOA secs. 107(g)(2) and 121(d)(2)(A). The commenters asserted that WIOA sec. 107(g)(2), which states that a Local WDB may be designated or certified as a one-stop operator only with the agreement of the CEO and the Governor, is a separate and unrelated provision from WIOA sec. 121(d)(2)(A), which requires a competitive selection process for the one-stop operator. They

suggested that a Local WDB can be designated as a one-stop operator solely under WIOA sec. 107(g)(2), without having to undergo the competitive process described in WIOA sec. 121(d)(2)(A).

Department's Response: The Departments received and evaluated numerous public comments on this topic. It is the conclusion of the Departments that the requirement to use a competitive process for the selection of the one-stop operator is required by statute, as is the requirement for continuous improvement through evaluation of operator performance and regularly scheduled competitions. Competition is intended to promote efficiency and effectiveness of the one-stop operator by regularly examining performance and costs.

The relationship between these two provisions of WIOA was duly noted and considered by the Departments. After extensive consideration, the Departments have not changed their interpretation of the relationship between WIOA secs. 107(g)(2) and 121(d)(2)(A) as providing that a Local WDB may be designated or certified as a one-stop operator, with the agreement of the CEO and the Governor, only after being selected through a competitive process for the one-stop operator. In the Departments' view, the two provisions read together implement Congress' emphasis on increasing competition among the publicly funded WIOA programs, while also giving the CEO and the Governor the flexibility to approve the competitive selection of a Local WDB as a one-stop operator. The Departments read sec. 121(d)(2)(A) as establishing the governing requirement for competitive selection of one-stop operators with sec. 107(g)(2) imposing an additional requirement when the competitive process results in the selection of the Local WDB. No change to the regulatory text was made in response to these comments.

Comments: A few commenters also stated that the Governor should have the authority to designate the one-stop operator in single-area States or States that have a statewide planning region.

Department's Response: All areas, even single-area States, must use a competitive process to determine the one-stop operator by following the Uniform Guidance and State procurement procedures. Sole source selection is available but only if the applicable conditions exist under the State procurement policies and procedures. No change to the regulatory text was made in response to these comments.

Comments: One commenter also recommended that the Department establish a workgroup of single-area States to provide advice for the Final Rule.

Department's Response: Because of the extensive participation of stakeholders, including single-area States and representatives of State governments in the development of the NPRM and in the opportunity to comment on the NPRM before issuance of this Final Rule, the Department determined that it is not necessary to establish a separate workgroup, although workgroups aimed at serving other purposes may still be established.

Comments: Several commenters described potential issues that could arise from a mandate for competitive procurements. They said that there could be: (1) Issues with organized labor representing local workers; (2) delays in service due to staff time being spent on the procurement process; (3) CEOs, who have liability for funding who are unable to choose the best solution for their local area; and (4) loss of local control. A few commenters suggested that requiring competition would increase the liability of the CEO, contribute to loss of local control, and increase the overall cost of operation by dismantling existing, efficient systems that utilize leveraged funding.

Department's Response: The Department is required by WIOA sec. 121(d)(2)(A) to mandate competitive selection of one-stop operators and cannot waive that requirement. Local WDBs should evaluate risk during all stages of the competitive selection process. Leveraged funding or a pledge for matching funds may be considered as a scoring factor when evaluating bidders' proposals for one-stop operator selection, if the solicitation describes how such scoring will be awarded. By following the Uniform Guidance, any such liability of CEOs is mitigated by corresponding protections in the eventual contract. Additionally, the Department encourages Local WDBs to work with local partners and one-stop operators to use innovative and creative ways of mitigating these issues. No change to the regulatory text was made in response to these comments.

Comments: A commenter remarked that while there are likely situations in which there is cause to procure one-stop operators competitively, it is not always the case that Local WDBs are unable to oversee the local workforce system while also serving as the one-stop operator.

Department's Response: The Department agrees, as did Congress. WIOA allows Local WDBs to serve as a one-stop operator with the concurrence of the CEO and the Governor, if the Board is selected under a competitive process as provided in the Final Rule. No change to the regulatory text was made in response to this comment.

Comments: A few commenters asked for clarification on whether the rule for competitive bidding is applied only at the regional or State sub-area level (such as a workforce development area), or if it also applies to operators who are site managers of one-stop sites.

Department's Response: The requirements for the competitive selection of one-stop operators under WIOA would apply only to those procurements carried out by State or Local WDBs. All direct grant recipients and subrecipients of a Federal award must adhere to the procurement standards found in the Uniform Guidance. No change to the regulatory text was made in response to these comments.

Comments: Several commenters expressed concerns about the financial impact of requiring Local WDBs to conduct competitive procurements, as this would be a new cost that could significantly impact limits on administrative costs. A few commenters also asserted that the proposed process of essentially vetting possible candidates prior to issuing a RFP is costly and repetitive. Some commenters said that having a one-stop operator at all is not cost effective.

Department's Response: The Department recognizes that there is a cost burden associated with conducting competitive procurements. Both WIOA and the Uniform Guidance encourage efficiencies in administrative operations through streamlining of services or building from an existing network of services. To the maximum extent practical, the Department encourages States and local areas to leverage their administrative support for procurement to reduce burden.

Comments: A few commenters stated that Congress was intentional in requiring one-stop operators to be selected through a competitive process. These commenters suggested that the Final Rule should not allow contracts to be awarded to entities who then subcontract the work back to State or local agencies on a noncompetitive basis.

Department's Response: The Department agrees that the requirement of using a competitive process for the selection of the one-stop operator cannot be subverted by subcontracting the position of one-stop operator on a noncompetitive basis. By aligning the one-stop operator competitive process

with the procurement requirements in the Uniform Guidance, there are stringent conflicts of interest and documentation requirements that will also apply to one-stop operator competitions. The Uniform Guidance requirements also apply to the award of subcontracts. Application of the Uniform Guidance requirements will ensure the integrity of the process. For this reason, the Department sees no need to change the regulatory language in response to this comment.

Comments: A few commenters also said that the regulations should clarify that one-stop service providers must also be competitively procured. One commenter recommended that the final regulations should ensure that either the adult and dislocated worker service provider is also required to perform the responsibilities of the one-stop operator, and the Local WDB must hold a competition to procure a provider to fill this mixed role; or, if operator and service provider contracts are bid separately, an entity must be allowed to compete for and perform both roles. The commenter went on to recommend that Local WDBs should be required to bid every contract competitively, or request letters of intent at a minimum, and only select an operator through a noncompetitive method if there are no qualified candidates.

Department's Response: The competitive processes outlined in the Uniform Guidance are applicable to procurement transactions with a contractor and not to a sub-awardee such as an adult or dislocated workers service provider. It is when WIOA requires competitive procurement process such as with the one-stop operators and youth service providers that States and Local WDBs must adhere to such requirements.

Comments: A commenter stated that there are competitive selection processes available other than those listed in the proposed regulations. The commenter suggested that invitations to negotiate, professional services solicitations, and other approaches that emphasize performance over price should be considered. Another commenter requested clarity regarding whether ''competitive process'' requires an RFP. They recommended that ''competitive process'' be defined to include all methods permitted under State procurement laws.

Department's Response: The commenters are correct in stating that a variety of competitive selection processes exist within approved procurement practices. As a result, the regulatory text has been changed from what was proposed in the NPRM to allow for greater flexibility in defining the competitive process to be followed by non-Federal entities other than States. The regulations now state that where States are engaging in a competitive process, competitions should be based on the State procurement policies as defined in State administrative procedures and should be the same process used for procurement with non-Federal funds. The policies and procedures may encompass many of the areas suggested by the commenters. The regulations also state that where local areas or Local WDBs are engaging in a competitive process, competitions should be based on the local procurement policies as defined in local administrative procedures that must be consistent with all provisions of the Uniform Guidance. The policies and procedures may encompass many of the areas suggested by the commenters. All other entity types follow the Uniform Guidance requirements for procurement, which also contain flexibility in procurement methods, as well as the type of contract vehicle used. For example, the Uniform Guidance does permit sole source as a method of procurement under certain conditions. It was determined to be unnecessary for the Department to be overly prescriptive in defining the methods of procurement in these regulations.

The Department has determined that this approach provides sufficient flexibility to enable a range of operators, including current one-stop operators, State agencies, Local WDBs, or consortia of required partners to be selected under a competitive process as one-stop operators.

Comments: Another commenter asked for clarification on whether ''selection'' is the same as ''procurement,'' and whether the selection of a one-stop operator is always ''procurement,'' and which parts of the Uniform Guidance apply to such a selection process.

Department's Response: While selection is typically understood as being a part of the procurement process—which typically goes through a series of phases that may include planning, evaluation, negotiation, selection, implementation and closeout—when discussing WIOA one-stop operators in this Final Rule, selection refers to the competitive process by which one-stop operators are chosen. This process may involve a number of methods of procurement as they are described in the Uniform Guidance. The Uniform Guidance describes the process and methods that must be followed to conduct procurement.

Comments: The commenter further stated that the solicitation announcements need to reach a minimum number of vendors to ensure a variety of capable vendors have the ability to bid. In addition, the commenter suggested that selection of one-stop operators should include the ability to serve linguistically and culturally diverse participants.

Department's Response: The Department declines to change the regulatory text in response to this comment. Determining the number of vendors is best left to the Local WDB, based on the needs identified in the local area. Typically, two or more vendors or bidders would be adequate in meeting the minimum requirement of competition, which may already be specified in the State procurement process.

Comments: Another commenter asked how providers of career services are selected. The commenter also asked whether this must involve a competitive process.

Department's Response: Career services are provided by the various partner programs participating in the one-stop center, the details of which are set out and agreed upon in the MOU. As mentioned above, these partners are not required to be procured in a competitive process under WIOA, but they may be under State or local procurement policies.

Comments: Other commenters stated that the Governor should be allowed to recommend the RFP process for their State.

Department's Response: The Governor, in consultation with the State WDB and chief elected official does have the authority under these regulations to choose the type of RFP process for their State that is consistent with State policy and the Uniform Guidance. No change to the regulatory was made text in response to these comments.

Comments: A few commenters requested additional guidance on how a WDB could compete in the procurement process, either alone or as part of a consortium. Another commenter asked if, in single-area States, the State WDB assumes the responsibilities in WIOA sec. 107(d)(10)(A), or if the Governor is authorized to identify a State entity to conduct the competition.

Department's Response: As noted, the Department has revised the regulatory text to allow greater flexibility in defining the competition process for non-Federal entities other than a State, deleting much of the language related to specific procurement methods in the proposed regulations. The Department

provides this flexibility because, as it became apparent through the discussion of comments, there are many different methods of procurement throughout the public workforce system, which are generally based on the Uniform Guidance when Federal funds are involved and which the Department would consider sufficient to meet the requirement for competitive selection of the one-stop operator. It was unnecessary for the Department to be overly prescriptive in defining the methods of procurement in these regulations, and provisions of proposed § 678.605(c) prescribing certain methods have been removed.

Length of Time Required Between Competitions

Comments: A few commenters addressed the Department's question seeking comments regarding the length of time required between competitions for one-stop operators. In particular, a few commenters recommended that the timelines should be determined by States. Other commenters stated that 4 years, as proposed in the NPRM, is appropriate. A few commenters agreed that 4 years between competitions is appropriate, but they suggested that there be an option to extend additional years if performance expectations are met or exceeded. A few commenters suggested allowing more flexibility for States regarding the length of contracts, such as providing guidance that recommends contracts of 3 to 5 years, or allowing the award of 5-year contracts that have an initial base year followed by 4 option years that can be executed if the operator is performing well. A few commenters recommended 6 years between competitions, as that timeline would align with two 3-year certification periods for one-stop operators. Another commenter suggested that local areas should be permitted to extend an operator's contract once by 2 years to reward high performance.

Department's Response: After considering these comments and recommendations, the Department decided to retain the period of 4 years as it is consistent with the other time periods contained in WIOA for resubmission of State Plans as well as re-certification of one-stop centers. The Department has determined that there is not a sufficient reason to shorten this period to 3 years, extend it beyond 4 years, or to leave the timeline determination to individual States. Instead, maintaining the proposed 4 years between competitions is consistent with WIOA's goals of a periodic reexamination of local plans and supporting successfully performing one-stop centers.

Comments: A commenter remarked that, given the timelines for competitive procurement and certification criteria updates, both processes will be conducted simultaneously every 12th year. The commenter suggested that the Department adjust these timelines to be event-driven, rather than simply time dependent.

Department's Response: While the Department recognizes the difficulties that the timing may cause, after considering the comments and suggested changes, the Department concluded that leaving these processes on set timelines, as opposed to event-driven timelines, is the best way to insure integrity in the process and will reap the best outcomes for the one-stop delivery system. As such, the Department has made no changes to the regulatory text in response to this comment. Guidance and technical assistance on this section regarding competition will be made available to all parts of the public workforce system.

Section 678.610 When is the sole-source selection of one-stop operators appropriate, and how is it conducted?

Section 678.610 explains when and how sole-source selection of one-stop operators is appropriate as a part of a competitive procurement process. The text has been changed from the NPRM to delete the references to the specific acceptable processes in proposed § 678.605(d)(3) and to indicate that State and local entities must follow their own procurement rules in addition to the Uniform Guidance, as appropriate. It also includes requirements about maintaining written documentation regarding the entire selection process, and developing appropriate conflict of interest policies. It states that a Local WDB may 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 and procedures the Local WDB has in place when also serving as the one-stop operator. This is consistent with the Departments' interpretation of sec. 107(g)(2) of WIOA—the section adds an additional check in situations where a Local WDB is selected to be operator.

Comments: Several commenters recommended allowing the Governor to designate the one-stop operator when the State is a single-area State, particularly if the State has a history of meeting performance standards. Several commenters also recommended allowing CEOs to designate the one-stop operator without a competitive process so as not to interrupt program continuity, particularly if the operator is already performing well.

Department's Response: WIOA requires the selection of one-stop operators through a competitive process. The Governor or CEOs may not designate an operator without a competitive process. No change to the regulatory text was made in response to these comments. It is possible for the Governor to select an organization, such as the State WDB, by sole source selection after a competitive process. Otherwise, Local WDBs are responsible for conducting a competitive process to select a one-stop operator, which must also be consistent with the Uniform Guidance. The Department encourages Local WDBs to plan for the competitive process and allow for transition time to minimize any disruption and ensure program continuity. Local WDBs 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. Under § 678.610(d), the Governor must approve the conflict of interest policies and procedures that the Local WDB has in place when also serving as one-stop operator. This is consistent with DOL's interpretation of WIOA sec. 107(g)(2)—the section adds an additional check in the situations where a Local WDB is selected to be operator.

Comments: One commenter also suggested that local areas already operating under a consortia model with demonstrated success be permitted to be sole sourced. Another commenter stated that very large, complex local areas should be able to sole source a ''system operator'' provided that the individual one-stop operators are procured through a competitive process.

Department's Response: While WIOA requires selection of the one-stop operator through a competitive process, under the Uniform Guidance there is the flexibility for sole source as a method of procurement; however, there are conditions that must be met to allow for sole source selection. The Local WDB must be able to demonstrate it conducted sufficient market research and outreach to make that determination. Additionally, § 678.615(b) and (c) require robust conflict of interest policies and procedures 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 WDB.

The Department notes that this section is particularly 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 WDBs and other current one-stop operators, may compete and be selected as operator under the competition requirements in this subpart if they are able to do so under applicable procurement policies and procedures. However, appropriate firewalls must be in place to ensure that the current operator is not involved in conducting the competitive process, as that would be an inherent conflict of interest. No change to the regulatory text was made in response to this comment.

Comments: A commenter stated that the Department should reconcile §§ 678.610 through 678.625 with 20 CFR 679.410 to ensure that both one-stop operations and career services are awarded competitively. The commenter provided one exception to this rule: that the Governor and CEO agree that there are insufficient providers available for a competition.

Department's Response: WIOA does not link one-stop operator competition with competition for career services providers. That decision is left to the State and/or Local WDB, and the Department declines to require this by regulation. Competitions for certain types of services are neither expressly prohibited nor required by WIOA. State and Local WDBs are in the best position to determine how extensively to require service provider competitions in their respective areas.

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

Section 678.615(a) states that Local Boards may compete for and be selected as one-stop operators, as long as appropriate firewalls and conflict of interest policies and procedures are in place. Section 678.615(b) allows State or local agencies to compete for, and be selected as, one-stop operators. However, there must also be strong firewalls, internal controls, and conflict of interest policies and procedures in place.

Comments: A few commenters stated that they interpret the Uniform Guidance on conflict of interest to mean simply that the specifications and requirements for the procurement must be drawn up by a neutral third-party, and that Local and State WDB members can take part in the selection, award, or administration of the one-stop operator contract so long as no member will see an increase in pay or benefits upon award of the contract.

Department's Response: Competitions must be undertaken pursuant to § 678.605. States are required to follow the same policies and procedures used for procurement with non-Federal funds while other non-Federal entities are required to follow local procurement policies and procedures and the requirements in the Uniform Guidance at 2 CFR 200.318 through 200.326. These policies and procedures may allow or require many of the commenter's suggestions. For example, the Uniform Guidance does permit sole source as a method of procurement under certain conditions. The Local WDB must be able to demonstrate it conducted sufficient market research and outreach to make that determination. 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 WDBs and other current one-stop operators, may compete and be selected as operator under the competition requirements in this subpart if they are able to do so under the relevant procurement policies and procedures. In the alternative, they may be selected under appropriate sole source processes. However, 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.

The Department wants to make clear that this approach provides sufficient flexibility to enable a range of operators to compete and be selected, including current one-stop operators, State agencies, Local WDBs, or consortia of required partners.

Comments: Several commenters also asserted that effective firewalls, internal controls, and conflict of interest policies already exist in the workforce development system and have been reviewed by the States and DOL.

Department's Response: While the Department agrees that some effective firewalls, internal controls, and conflict of interest policies already exist in the workforce development system, no change to the regulatory text was made in response to this comment. The procurement standard in the Uniform Guidance provides guidance on written codes of conduct covering real, apparent, and organizational conflicts of interest for persons involved in the procurement process.

Comments: One commenter stated that one-stop operators can be staffed by Local WDBs as long as firewalls and conflict of interest policies are in place, which can include a WDB/CEO agreement with organizational charts.

Department's Response: The Department agrees that, as long as the requisite firewalls and conflict of interest policies and procedures are in place, a Local WDB can compete to fill the one-stop operator position. To be placed in this position, of course, the Local WDB must win the competition and then be approved by the Governor and CEO. While such agreements and organizational charts are a useful tool to define firewalls, proper firewalls must go beyond these tools.

Comments: One commenter asked the Department to define the term ''firewall'' as it relates to this section. A group of Federal elected officials urged the Departments to establish strong organizational conflict of interest provisions in the Final Rule to ensure fair competition.

Department's Response: The Department has determined that the Uniform Guidance, used in concert with State procurement procedures, establishes adequate standards for conflict of interest policies. Also, § 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 apparent conflicts of interest that could arise for a State or local agency applying to a competition run by a Local WDB. In order to ensure flexibility for State and local entities in designing one-stop delivery systems, the Department declines to define these terms further in the final regulations.

Comments: A few commenters said that they do not believe it is possible for a sufficient firewall to be established to eliminate a real or apparent conflict of interest when a Local WDB competes to be a one-stop operator. Even if an alternate entity were involved in developing the procurement requirements, according to these commenters, the Local WDB would still need to be involved in developing and approving them. Other commenters agreed and requested that single-area States be granted flexibility on, and waivers of, this provision. Two commenters asserted that in small States where there is very little competition (*e.g.*, a one-stop operator may also be a service provider), it is not cost effective to implement firewalls.

Department's Response: While the Uniform Guidance does provide

flexibility, some State and local procurement policies may prevent a Local WDB from competing under an RFP if it is not possible to establish a sufficient firewall to avoid a real or apparent conflict of interest. The Department declines to revise § 678.615 to provide for a waiver or other flexibility concerning the requirement for firewalls and conflict of interest policies and procedures because avoiding a real or apparent conflict of interest is essential to a fair competitive process. The Department encourages States and local areas to review their procurement policies and procedures to ensure that they are consistent and contain appropriate firewalls and conflict of interest policies and procedures to provide a fair and open competitive process.

Comments: A few commenters suggested that because the Governor has the authority, in agreement with the CEO, to select the Local WDB as the one-stop operator, firewalls and conflict of interest policies are not necessary. Another commenter agreed with this suggestion, adding that firewalls and conflict of interest policies are not necessary because the CEO would have oversight responsibilities.

Department's Response: The Department disagrees. The Uniform Guidance, where applicable, calls for a written code of conduct policy that includes real, apparent, and organizational conflict of interest procedures to provide a fair and open competitive process. Entities serving as one-stop operators at the time these regulations are promulgated, including States, Local WDBs, and other current one-stop operators, may compete and be selected as the operator under the competition requirements in this subpart, if allowable under applicable procurement policies and procedures. Appropriate firewalls, however, must be in place to ensure that the current operator is not involved in conducting the competitive process, as that would be an inherent conflict of interest. Such firewalls pertain to the elected leadership of the State or local area as well as to the Boards. The Uniform Guidance, where applicable, and § 678.615(b) and (c) require robust conflict of interest policies that will create internal firewalls within the State agency to address the real and perceived conflicts of interest that could arise when a State or local agency applies to a competition run by a Local WDB. No change to the regulatory text was made in response to these comments.

Comments: One commenter expressed support for the Department's requirement to establish appropriate firewalls and internal controls.

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

Section 678.620(a) describes the role of the one-stop operator without prescribing a specific and uniform role across the system. The minimum role that an operator must perform is coordination of all one-stop partners and service providers.

A change was made to this section for clarity. The regulatory text was revised to modify the list of potential roles for the one-stop operator, as chosen by the Local WDB, changing it from ''coordinating service providers within the center and across the one-stop system . . .'' to ''coordinating service providers across the one-stop delivery system.''

Comments: Several commenters addressed the Department's question regarding whether all of the functions listed in proposed § 678.620(b) are accurately described as inherently the responsibility of the Local WDB. Some commenters agreed that all of these items are inherently the responsibility of the Local WDB. One commenter stated that some of the Local WDB responsibilities may have changed or been devolved to the operator or fiscal agent as the one-stop delivery system has evolved under WIA. A Local WDB recommended that the Department remove this paragraph because it adds confusion, particularly when the Local WDB or fiscal agent is also the one-stop operator. The commenter suggested that CEOs should be responsible for determining who is responsible for each function. Another commenter also stated that, rather than prohibiting certain actions, the NPRM should provide guidance to operators regarding how to deal with conflicting responsibilities. The commenter stated that this is particularly necessary for small States and single area States where agencies serve multiple roles in the system.

Department's Response: The Department considers these provisions necessary and consistent with WIOA. The Department is aware that the requirements related to formally procuring the one-stop operator may be new in many areas, and that the roles and responsibilities for Boards, operators, and service providers under WIOA may differ from those under WIA. Some roles will continue and others will be modified in response to the new requirements and vision presented by WIOA. Transitioning to a new, more integrated system of service under WIOA will take time and technical assistance from all agencies involved. Some guidance is already available to the system in the form of TEGLs on a variety of subjects, such as ''*Workforce Innovation and Opportunity Act Transition Authority for Immediate Implementation of Governance Provisions*'' (TEGL No. 27–14), ''*Vision for the Workforce System and Initial Implementation of the Workforce Innovation and Opportunity Act*'' (TEGL No. 4–15), ''*Guidance on Services Provided through the Adult and Dislocated Worker Program under the Workforce Innovation and Opportunity Act (WIOA or Opportunity Act) and Wagner Peyser, as Amended by WIOA, and Guidance for the Transition to WIOA Services*'' (TEGL No. 3–15), and ''*Workforce Innovation and Opportunity Act (WIOA) Youth Program Transition*'' (TEGL Nos. 23–14 and 8–15), among others, which can be found at *http://wdr.doleta.gov/directives/All_WIOA_Related_Advisories.cfm*.

Furthermore, WIOA does not permit CEOs to be solely responsible for selecting who carries out each function of a one-stop center; this is something to be set forth in the MOU, as agreed upon by all the local partners and the Local WDB. No change to the regulatory text was made in response to these comments.

Comments: Several commenters stated that the requirement in § 678.620(b) that one-stop operators establish firewalls and conflict of interest policies if they are also a service provider implies that the organization's head would need to establish firewalls between himself and his own staff who are delivering services.

Department's Response: The Department would like to stress that there must be appropriate firewalls between staff providing services and staff responsible for oversight and monitoring of services. The same person or department cannot both provide services and oversee the provision of those services. This may require examination of the organizational structure of a State or local system to ensure that adequate firewalls are in place to ensure appropriate oversight and monitoring of services. Because the WIA system operated under similar internal controls for nearly 2 decades, the Department does not anticipate that the WIOA requirements regarding firewalls, conflict of interest policies, and procurement procedures will be major obstacles to WIOA implementation. The Department also has determined that the provisions of the Uniform Guidance at 2 CFR part 200 sufficiently address these issues. No

change to the regulatory text was made in response to these comments.

Comments: Commenters also asked whether, if the organization that wins the one-stop operator competition is not also the WIOA title I service provider, there would have to be another competition for this service provider and thus another level of administration.

Department's Response: The Department has concluded that State and Local WDBs are in the best position to determine how extensively to require service provider competitions in their respective areas, and the Department encourages States and local areas to review their procurement policies and procedures against the Uniform Guidance to ensure that they are consistent and contain appropriate conflict of interest policies and procedures to provide a fair and open competitive process.

Comments: A commenter suggested that when there is a potential conflict of interest, the State WDB should be required to certify those one-stop centers. Another commenter asked how one-stop operators will be audited to ensure that internal controls are utilized.

Department's Response: The State sets the criteria for certification of one-stop centers, and Federal representatives and State agencies will continue to monitor the entire public workforce system under WIOA. As part of such monitoring and oversight responsibilities, States and Federal representatives will review an entity's compliance with the Uniform Guidance, the soundness of its internal controls, and its internal control framework. Further, States and local agencies are audited either independently or under a State's comprehensive audit on an annual or biannual basis, which includes an examination of the State and local agencies' internal controls and internal controls framework. No change to the regulatory text was made in response to this comment.

Comments: One commenter said that there was not enough clarity regarding staff oversight in one-stop centers. The commenter asked who is responsible for performance outcomes and operations when there are Combined Plan partners, and also, that CEOs be permitted to make this determination. Another commenter agreed that Governors should be able to determine appropriate roles for one-stop operators and Boards.

Department's Response: Some operating guidance on this subject has already been released in TEGL No. 27–14 (''*Workforce Innovation and Opportunity Act Transition Authority for Immediate Implementation of Governance Provisions*''), and much more is in development, especially around performance outcomes of Combined State Plan partners. The Department presumes that staff oversight and other roles and responsibilities of WDBs and operators will be set in each State and local area by the WDB, in accordance with guidance provided by the Department, the Governor, and the provisions of the Uniform Guidance in 2 CFR part 200 regarding the use of Federal funds. There must be appropriate firewalls between staff providing services and staff responsible for oversight and monitoring of services; however to ensure this, the Department has concluded that additional regulatory language is not required. Having proper firewalls in place will ensure that the same person or department does not oversee its own provision of services. This may require examination of the organizational structure of an organization to ensure that adequate firewalls are in place to ensure appropriate oversight and monitoring of services. No change to the regulatory text was made in response to these comments.

Comments: A few commenters requested clarification of the term ''another capacity'' in § 678.620(b).

Department's Response: The text from § 678.620(b) in the NPRM reads, in part, ''[a]n 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 20 CFR 679.430 of this chapter for demonstrating internal controls and preventing conflict of interest.'' The Department has clarified this language, which now refers to ''acting in its other role,'' instead of ''serves in another capacity.'' As revised, § 678.620(b) now reads, ''An entity serving as a one-stop operator, that also serves a different role within the one-stop delivery system, may perform some or all of these functions when it is acting in its other role, if it has established sufficient firewalls and conflict of interest policies and procedures. The policies and procedures must conform to the specifications in 20 CFR 679.430 of this chapter for demonstrating internal controls and preventing conflict of interest.'' The Department has determined that the term ''other roles'' is more readily understood. These could include such roles as service providers, State agencies, or Local WDBs.

Comments: One commenter suggested that the Department should define the role of a ''system coordinator,'' which would unify a network of one-stop operators in large local areas into a more cohesive local system.

Department's Response: The Department has declined to revise the regulatory text to define such a role, as this is a function of the Local WDB. WIOA does not identify a system coordinator role. Local areas have the ability to coordinate regionally and develop local or regional plans. Any coordination would be established as part of the local planning process.

Comments: One commenter stated that one-stop operators should be allowed to participate in the local plan development only if there are appropriate firewalls and conflict of interest policies in place.

Department's Response: The one-stop operator will be a contractor under the Local WDB. The Local WDB is tasked with oversight and monitoring of the one-stop operator. Therefore, if the operator participates in the development of the local plan, there must be adequate conflict of interest policies and firewalls in place to ensure the one-stop operator staff who are participating do not provide input on any policies associated with oversight and monitoring of their own actions. The Department has determined that this does not require the addition of regulatory language to this section, as §§ 678.615, 678.620, and 678.625 require firewalls and conflict of interest policies to prevent conflicts of interest in the selection of a one-stop operators, in the one-stop operator's role, and in the functioning of the State and Local WDBs.

Comments: One commenter recommended that the regulations should clarify that the one-stop operator chosen through the competitive procurement process is responsible for carrying out the required activities of WIOA sec. 134(c)(1)(A), both directly and through the one-stop required partners.

Department's Response: The Department has determined that it is important to provide flexibility to local areas to define the role of one-stop operator to meet the needs of the local area and that § 678.620 provides this flexibility. No change to the regulatory text was made in regard to this comment.

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

Section 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 a 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 as a service provider.

Comments: Some commenters expressed that the process described in the NPRM for the grant recipient to operate the one-stop center and/or provide career services is difficult to follow. They expressed concern that the process as described could lead to ''unintended, questionable procurements.''

Department's Response: After considering these comments and examining the language of WIOA sec. 121(d), the Departments have determined that the process for separating the functions of operator and service provider is clear. A one-stop operator cannot participate in the selection of a provider to perform services in which the operator intends to compete. Specifically, the operator cannot participate in the planning, development, review, negotiation, and selection phases of the competitive procurement process and then also submit its own proposal. Moreover, proper firewalls must be in place, as well as internal controls, to separate the functions of oversight, monitoring, and evaluation of its role as service provider in order for a one-stop operator to also serve as a service provider. The Department will continue to provide guidance and technical assistance to the public workforce system in this regard.

Comments: One commenter asserted that Congress could not have intended for the WIOA competition provision to be the catalyst for a regulatory structure that would entrench service providers and insulate them from competition while competing out only the more tangential oversight position of one-stop operator, which typically has a much smaller total impact on the quality of services delivered to one-stop users. The commenter remarked that the one-stop operator and service provider roles have been ''substantially intertwined'' over the years, with WIA sec. 117(d)(2)(D) even suggesting that operators were also expected to be service providers. The commenter stated that it has been common practice at many one-stop centers for the roles of operator and service provider to be bid concurrently, and common practice in other one-stop centers for service providers to be assigned various operator duties as part of their service provider role.

Department's Response: The Departments encourage Local WDBs to review current service providers strategically and plan for the competitive process, allowing for a period of transition to minimize any disruption and ensure program continuity. WIOA does not link one-stop operator competition with competition of providers of services in the one-stop. That decision is left to the State and/or Local WDB. No change to the regulatory text was made in response to this comment.

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

Section 678.630 addresses the concern about whether State merit staff can continue to work in a one-stop center where the operator is an entity other than the State. State merit staff support numerous programs at the one-stop center, including Wagner-Peyser Act programs, VR, UI, and the JVSG program. Section 678.630 clarifies that State merit staff may continue to work in the one-stop center so long as a system for the management of merit staff in accordance with State policies and procedures is established. 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, as State merit staff are governed by the requirements attached to specific programs that must be in the one-stop center regardless of operator.

In response to concerns about staffing, the last sentence of § 678.630 has been revised to clarify that continued use of State merit staff for the provision of Wagner-Peyser Act services or services from other programs with merit staffing requirements must be included in the competition for and final contract with the one-stop operator when Wagner-Peyser Act services or services from other programs with merit staffing requirements are being provided.

Comments: Several commenters remarked that local staff do not have the same protections as State merit staff, and new contractors often bring in their own staff when taking over programs. Additionally, these commenters asserted that it would be cost-prohibitive for potential applicants to retain many public employees because they are typically fully vested and may be unionized.

Department's Response: DOL acknowledges the concerns and points regarding the State merit staffing requirement. The benefits of merit staffing in promoting greater consistency, efficiency, accountability, and transparency have been well established, and the Department intends to continue the respective UI, Wagner-Peyser Act, and VR merit staffing requirements under WIOA. While there is no merit staffing requirement under other WIOA core programs, the Department has determined, consistent with 20 CFR 652.215 that Wagner-Peyser Act and VR staff must meet the requirements of merit staff. A revision to the regulatory text, as discussed above, has been made to § 678.630 to respond to concerns about staff.

Comments: Some commenters, including a few unions, urged the Department to require that UI and ES agencies be parties and agree to the establishment of the NPRM's ''system for management of merit staff.''

Department's Response: UI and Wagner-Peyser Act programs will be party to the establishment of such a system through their participation and decision-making on State or Local WDBs as required partners, and through their good-faith negotiations during the MOU process. The Department has made no changes to the regulatory text in response to these comments.

Comments: Some of these commenters also suggested that the Department should revise § 678.630 to require UI and ES agencies to agree to inclusion of local merit staff in the competition and final contract, to be consistent with proposed 20 CFR 652.216.

Department's Response: The Departments decline to make revisions to policies regarding local merit staffing.

Comments: One commenter stated that the NPRM, which includes VR in the list of State merit staff, conflicts with the responsibility of the designated State agency (DSA) or designated State unit (DSU) in sec. 101(a)(2) of the Rehabilitation Act of 1973 ''by inferring that the State Board and one-stop operator may establish State policies regarding the management of'' VR staff. The commenter also stated that the NPRM may conflict with RSA Technical Assistance Circulars 12–03 and 13–02. Another commenter expressed support for including VR as State merit staff, as this will provide flexibility for States to integrate VR staff within one-stop centers.

Department's Response: In accordance with this section, State VR personnel are permitted to perform functions and activities in a one-stop center where the one-stop operator is a non-governmental entity.

This section does not circumvent the requirements governing the State VR Program at 34 CFR part 361. In particular, if State VR personnel are

performing functions and activities in a one-stop center operated by a non-governmental entity, the requirements related to the responsibility for administration and the non-delegable functions of the designated State unit at 34 CFR 361.13(c) remain in place.

Contrary to the commenter's suggestion, neither the State WDB nor the one-stop operator would assume sole management of State VR personnel employed by the designated State unit responsible for the administration of the VR services program, because such responsibility rests fully with the designated State unit for the VR program. Rather, the State WDB and the one-stop operator would establish a system for management of State VR personnel in accordance with State policies and procedures, consistent with program specific requirements such as that described in 34 CFR 361.13(c).

Comments: A few commenters recommended that CEOs or Local WDBs should be permitted to determine the best staffing mix for their local areas.

Department's Response: WIOA sec. 107(f) and 20 CFR 679.400 of the DOL Final Rule describe the Local WDB's authority to hire and the appropriate roles for Board staff and § 678.620 describes the role of the one-stop operator in comparison to Local WDB functions. Local WDBs may establish appropriate staffing within the confines of these requirements, but nothing in these provisions would change staffing requirements established pursuant to other laws, such as the Wagner-Peyser Act merit-staffing requirement. The Department made no changes to the regulatory text in response to these comments.

Comments: One commenter asserted that, because WIOA does not specifically amend, address, or rescind the Employment Services merit staff exemption granted to Colorado, Massachusetts, and Michigan under the Wagner-Peyser Act, this exemption remains in full effect.

Department's Response: The benefits of merit staffing in promoting greater consistency, efficiency, accountability, and transparency have been well established and DOL has proposed continuing Wagner-Peyser Act merit staffing requirements under WIOA. Nonetheless, WIOA is silent on the continuation of this exemption, and there is no need to address it in these regulations. However, to prevent significant disruptions in service delivery and to help facilitate implementation of WIOA, the Secretary of Labor has elected to continue all current exemptions to the Wagner-Peyser Act merit staffing requirement. This continuation applies only to the current exemptions; the Department has no immediate plans to expand this authority within States that have been granted this administrative flexibility or to additional States, and such grants could be subject to termination in the future at the discretion of future DOL leadership.

Section 678.635 What is the compliance date of the provisions of this subpart?

While no significant policy changes have been made to this section, the date by which Local WDBs must demonstrate they are preparing for the one-stop operator competition process has been changed from June 30, 2016 to [90 days from publication of this Final Rule], in order to give Local WDBs an adequate amount of time to actively respond to the requirements of these regulations.

Comments: A few commenters requested flexibility to delay competitive selection if a State determines that breaking a lease in existence prior to PY 2014 exceeds the three percent funding cap for that local area's title I or Wagner-Peyser Act funding for PY 2016. The commenters requested guidance or technical assistance if the cost of maintaining current programming in existing one-stop centers exceeds the caps.

Department's Response: DOL has issued operational guidance on the continuation of contracts during the WIA to WIOA transition, and depending on the State or local interpretation of a lease agreement, this guidance may be relevant. Please see TEGL No. 38–14, ''*Operational Guidance to Support the Orderly Transition of Workforce Investment Act Participants, Funds, and Subrecipient Contracts to the WIOA*,'' which can be found at *http://wdr.doleta.gov/directives/All_WIOA_Related_Advisories.cfm*.

Comments: A commenter stated that DOL should adjust the implementation date of this provision to July 1, 2017 from June 30, 2017 to coincide with the beginning of the new program year, instead of the last day of the previous program year.

Department's Response: After considering this comment, the Department has adjusted the date in § 678.635(a) to July 1, 2017 in order to be consistent with the program year.

Comments: A few commenters expressed support for regulatory language that would allow Local WDBs to continue competitively procured one-stop operator contracts that are executed before the June 30, 2017 effective date.

Department's Response: No regulatory text changes were made in response to these comments. The Department recommends following the guidance that has been released for continuing, adapting, and terminating (if necessary) one-stop services contracts that can be applied to one-stop operator contracts, which can be found in TEGL No. 38–14, ''*Operational Guidance to Support the Orderly Transition of Workforce Investment Act Participants, Funds, and Subrecipient Contracts to the Workforce Innovation and Opportunity Act*,'' which can be found at *http://wdr.doleta.gov/directives/All_WIOA_Related_Advisories.cfm*.

Other Comments on One-Stop Operators

Comments: A few commenters stated that neither WIOA nor the NPRM state that the Local WDB is required to pay the one-stop operators. They also recommended that Governors be able to set policies for one-stop operators.

Department's Response: A competitive process is required for the selection of the one-stop operator by the Local WDB, and it is expected that a sizable portion of the bid-on costs would be the salary of the one-stop operator's staff. One-stop operator roles and responsibilities are defined in WIOA and these regulations, and existing and future operational guidance and rules will delineate how these policies are set at the local level. WIOA sec. 121(d)(1) delegates the majority of the authority to set these policies to the Local WDB. No change to the regulatory text was made in response to these comments.

Comments: A commenter recommended making this section more collaborative with ED, to be consistent with the rest of the NPRM. The commenter expressed concern that this topic is only under DOL's auspices when both Departments oversee the entities involved in the one-stop delivery system.

Department's Response: The Department agrees; this is a joint regulation and the comment responses, in addition to most existing operational policies, have been developed through collaboration between the Departments of Labor and Education. It is the intention of the Departments to continue to provide joint guidance and training to our respective systems of service in a collaborative manner.

Comments: Another commenter suggested that the Department should establish labor standards for staff working in the one-stop delivery system.

Department's Response: The Department appreciates the concerns giving rise to this suggestion, but the establishment of labor standards for

occupations in State or local governmental entities carrying out the provisions of WIOA is outside the scope of these regulations, as well as the Departments' administrative authority. No change to the regulatory text was made in response to this comment.

6. One-Stop Operating Costs (20 CFR Part 678, Subpart E; 34 CFR 361.700 Through 361.760; 34 CFR 463.700 Through 463.760)

The regulations governing one-stop partner funding of infrastructure costs and other shared costs are 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;

(5) Ensure that costs are appropriately shared by one-stop partners by basing contributions on proportionate use of the one-stop centers and relative benefit received, 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 OMB's Uniform Guidance set forth in 2 CFR chapter II, part 200 (Uniform Guidance); 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.

Infrastructure costs are the responsibility of all one-stop partner programs, whether they are physically located in the one-stop center or not. Each partner's contribution to these costs, however, may vary, as these contributions are to be based on the proportionate use and relative benefit received by each program, consistent with the partner programs' authorizing laws and regulations and the Uniform Guidance at 2 CFR part 200. Section 121(h)(1)(A) of WIOA establishes two funding mechanisms—a local funding mechanism and a State funding mechanism. Under WIOA sec. 121(c), the Local WDBs must enter into MOUs that cover, in part, the amount each partner will contribute toward the one-stop center's infrastructure costs. The Departments strongly encourage Local WDBs to reach agreement. If the Local WDB fails to reach agreement with each of the partners with regard to the amount each partner will contribute to the one-stop delivery system's infrastructure costs pursuant to WIOA sec. 121(h)(1)(A)(i)(I), the local area is considered to be at an impasse. When a local area fails to reach such agreement, the State funding mechanism is triggered pursuant to WIOA sec. 121(h)(1)(A)(ii).

As discussed in more detail in the analysis of comments regarding § 678.725, the State funding mechanism, in the event a local area fails to reach agreement with the one-stop partners, will not be triggered prior to PY 2017. In other words, the failure of a local area to reach an agreement with regard to the funding of the one-stop centers' infrastructure costs for PY 2017 (which begins July 1, 2017), would trigger the State funding mechanism, in order to provide that funds are available to pay for the one-stop delivery system's infrastructure costs in PY 2017. In specific instances, the triggering of the State funding mechanism will be based on the guidance developed by the Governor under § 678.705(b)(3) as to the timeline for notifying the Governor that the local area was unable to reach agreement. The same would be true for each subsequent program year. States and local areas may continue to negotiate local funding agreements as they have under WIA for the purposes of PY 2016.

The Departments have determined this interpretation is most consistent with the plain meaning of the statutory provision, because all negotiations for purposes of the one-stop delivery system's infrastructure costs for PY 2016, which begins on July 1, 2016, as well as the implementation of a State funding mechanism, would need to occur well before the start of PY 2016 in order to provide funding for the one-stop delivery system in PY 2016. However, sec. 121(h)(1)(A)(ii) makes clear that the State funding mechanism does not apply until negotiations fail to result in an agreement after the start of PY 2016, which, by necessity, would make it applicable beginning with PY 2017, and then for all subsequent program years.

For PY 2017 and all subsequent program years, when a local area fails to reach an agreement, thereby triggering the implementation of the State funding mechanism pursuant to sec. 121(h)(1)(A)(ii), the Governor, or in some cases other officials as described in § 678.730(c)(2) and in more detail below, after consultation with State and Local WDBs and CEOs, will determine the amount each partner must contribute to assist in paying the infrastructure costs of one-stop centers. The Governor, or other official in consultation with the Governor, as appropriate, must calculate amounts based on the proportionate use of the one-stop centers and relative benefit received by each partner and other factors stated in § 678.737(b). The amounts contributed by each one-stop partner in a local area will be based on an infrastructure cost budget determined either by local agreement, as stated in § 678.735(a), or by formula, as stated in § 678.735(b)(3) and in accordance with the remainder of § 678.745 and sec. 121(h)(3)(B) of WIOA. Section 678.738(c) sets forth the limitation for one-stop partners' contributions under the State funding mechanism, based on a percentage of their statewide funding allocation, in accordance with WIOA sec.121(h)(2)(D)(ii).

Comments: A commenter expressed support for the proposed regulations in this subpart. Another commenter requested technical assistance and additional clarity on these provisions. One commenter asked that the Departments describe the expectations in this subpart and in subpart C for each one-stop partner program, individually and separately, because each program has its own requirements for administrative costs and infrastructure contributions based on its authorizing statute.

Departments' Response: The Departments have issued operating guidance that describes the Departments' views on how these provisions will work. The expectations for each partner program will be further defined in guidance on one-stop infrastructure negotiations, and technical assistance will be provided to the public workforce system following publication of these regulations. To describe these details in regulatory language would be overly prescriptive; the Departments decline to change the regulatory text in response to this comment. Required Federal partner programs often operate under different authorizing statutes in addition to WIOA. Those administering agencies will issue program-specific guidance and technical assistance on infrastructure costs and negotiating MOUs in addition to any joint guidance regarding WIOA implementation. The costs of the one-stop delivery system are not only supported by infrastructure funding, but also by the payment of other shared costs that may be part of the MOU.

Comments: A commenter stated that this subpart would have the effect of

worsening or reducing collaboration between local programs. The commenter went on to say that partners do not know how to implement WIOA's options for sharing local infrastructure costs.

Departments' Response: The Departments disagree with this general assessment, and the Departments are aware of many States and local areas where infrastructure and cost sharing agreements have been working well for some time. The intent of WIOA is to continue and enhance the collaboration of partners, with more specific guidelines, and the Departments intend to provide further guidance and technical assistance regarding the sharing of local infrastructure costs and other shared costs. No change to the regulatory text was made in response to this comment.

Comments: A few commenters expressed support for a separate funding line item for one-stop infrastructure costs.

Departments' Response: Since a separate line item was not authorized in WIOA, nor included in any of the Departments' appropriations, the Departments are not authorized to implement separate funding for infrastructure costs. No change to the regulatory text was made in response to these comments.

Section 678.700 What are the one-stop infrastructure costs?

Section 678.700 provides the definition for infrastructure costs based on sec. 121(h)(4) of WIOA. In addition, 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 subpart G of this part.

Jointly funding services is a necessary foundation for an integrated service delivery system. Section 678.700(c) explains that a partner's contributions to the costs of operating and providing services within the one-stop delivery 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 that costs must be allowable, reasonable, necessary and allocable. These requirements and principles will help one-stop partners identify an appropriate cost allocation methodology for determining partner contributions. There are a variety of methods to allocate costs, for instance: based on the proportion of a partner program's occupancy percentage of the one-stop center (square footage); the proportion of a partner program's customers compared to all customers served by the one-stop; the proportion of partner program's staff compared to all staff at the one-stop; or based on a partner program's use of equipment or other items that support the local one-stop delivery system. A detailed discussion of the Departments' responses to public comments received on this section follows immediately below.

Comments: One commenter asked whether infrastructure costs are applicable only to partners physically located in the one-stop centers or to all partners.

Departments' Response: Infrastructure costs are applicable to all one-stop partner programs, whether they are physically located in the one-stop center or not. Each partner's contribution to these costs, however, may vary, as these contributions are based on the proportionate use and relative benefit received, consistent with the partner programs' authorizing laws and regulations and the Uniform Guidance at 2 CFR part 200.

Comments: Another commenter said that the Departments need to provide sufficient guidance on the expectations for certain programs to ensure that cost negotiations take place and contributions occur.

Departments' Response: Since the issuance of the NPRM, infrastructure funding guidance has been released by the Departments, and more guidance and technical assistance documents will be released throughout the operational lifetime of the regulations.

Comments: One commenter suggested that because the NPRM essentially requires title I programs to police the participation of other programs regarding infrastructure costs, they would discourage optional one-stop partners from participating at all.

Departments' Response: Governors and State WDBs must create the framework for funding and required partner programs must operate within that framework, both at the State and local levels. Local WDBs will follow this framework, which must be inclusive of required partner programs as well as other programs that are additional partners in the one-stop centers in that local area. Once negotiated MOUs are in place, the State will monitor their operations, along with the other fiscal procedures of local areas, as they do now. The Local WDBs will be responsible for ensuring that all of the one-stop infrastructure costs are paid according to the provisions of the MOU, as they are the entity with which the partner programs will be signing the MOU. No change to the regulatory text was made in response to this comment.

Comments: A commenter said that proposed § 678.700(c) should begin, ''Each entity described in . . .'' to clearly indicate that partners must contribute funds for infrastructure, regardless of whether a partner wants to have a service delivery mechanism separate from the one-stop center.

Departments' Response: The Departments have determined that the regulation is clear as proposed, and have concluded that this change is not needed and would cause unnecessary confusion.

Comments: Another commenter suggested that Perkins Act funds should not be shifted to infrastructure support.

Departments' Response: As a statutorily required partner of the one-stop center under WIOA, a Perkins eligible recipient at the postsecondary level, or a consortium of eligible recipients at the postsecondary level in a local area, will now be involved in the development of local MOUs, which spell out the services to be provided through the one-stop centers. All partners must contribute to the one-stop infrastructure costs according to WIOA, as is described in more detail in § 678.720(a). No change to the regulatory text was made in response to this comment.

Comments: One commenter expressed concern that, given the ''proportionate use by or benefit to the partner program'' clause in this part, TANF or Basic Food Employment and Training could incur a significant cost due to the volume of clients served by these programs. The commenter also asked if this funding is in addition to the funds already provided for employment services.

Departments' Response: With regard to the TANF program, only those funds used for the provision or administration of employment and training programs are considered in infrastructure and MOU negotiations under WIOA. The Departments wish to clarify that there are numerous methods for allocating costs, of which a proportion of customers is only one. One-stop partners will negotiate MOU's and infrastructure funding agreements that meet the needs of the local areas and the partner programs.

Comments: A few commenters objected to the funding structure described in the NPRM, stating that there is a discrepancy in how contributions are calculated and how funds are reallocated. Specifically, the commenter suggested that the State WDB formula—as discussed in § 678.745—redistribute funds under

what was proposed as the State funding mechanism in the NPRM using different factors than what is used to calculate proportionate share.

Departments' Response: The Departments have determined that the referenced discrepancy does not exist. There will be differences in the application of the framework for infrastructure funding used among local areas, but required partner programs will have consistent requirements across all programs. As the commenter suggested, however, the use of the State WDB formula as proposed in the NPRM created ambiguities in determining what local partner programs should contribute. Because of this and other comments, the formula has been reworked to provide a more stable, and practicable tool for the Governor to use. These changes are detailed in § 678.745 and the associated Preamble discussion.

Comments: A few commenters said that contributions from partner programs must be consistent with their authorizing statutes and all other legal requirements under WIOA.

Departments' Response: The Departments agree that all required partner programs must also comply with the provisions of their own authorizing statutes, in addition to WIOA, and have determined that the regulations reflect this requirement.

Comments: A few commenters asked if only partners colocated within the one-stop must contribute, or if all partners that benefit from the centers must also contribute.

Departments' Response: As mentioned above, all one-stop partners must contribute to infrastructure funding, but will do so based upon a reasonable cost allocation methodology whereby infrastructure costs are charged based on each partner's proportionate use of the one-stop centers and relative benefit received. This would still apply even if the program is not located at the one-stop center, if it is a required partner.

Comments: A commenter asked why the UI system is not a mandatory funding partner.

Departments' Response: This is an incorrect assumption. As a required one-stop partner under WIOA sec. 121(b)(1)(B)(xi), a partner providing UI services must contribute its proportionate share of the infrastructure costs, as is required by WIOA sec. 121(b)(1)(A)(ii).

Comments: Another commenter recommended that TANF should not be required to pay infrastructure costs.

Departments' Response: As a one-stop partner, a TANF program must provide infrastructure cost funding according to its proportionate use of the one-stop centers and relative benefit received, as is required by WIOA, unless the Governor exercises the option not to include TANF as a required partner. See WIOA sec. 121(b)(1)(C). If the Governor has exercised the option so that an entity carrying out a TANF program is not a required one-stop partner, but it chooses to become one voluntarily, the program must provide its share of infrastructure costs as do all required partners. No change to the regulatory text was made in response to this comment.

Comments: A few commenters said that the Departments should make it clear that title I funds can support title II based on the definition of ''training'' in WIOA sec. 134(c)(3).

Departments' Response: Program funds are for the benefit of the participants enrolled in training authorized in that particular title. Funds provided by partners to support infrastructure and shared costs of the one-stop delivery system are intended to benefit the participants of all programs. Guidance also has been released on the subject in both TEGL No. 2–15, ''*Operational Guidance for National Dislocated Worker Grants pursuant to the Workforce Innovation and Opportunity Act,''* and TEGL No. 04–15 ''*Vision for the One-Stop Delivery System under WIOA,''* among others, as well as corresponding ED documents, such as TAC–15–01 and Program Memorandum OCTAE 15–3, which are associated with TEGL No. 04–15. All DOL WIOA operating guidance can be found at *http://wdr.doleta.gov/directives/All_WIOA_Related_Advisories.cfm*, and all associated ED documents may be found at *www2.ed.gov/about/offices/list/osers/rsa/wioa-reauthorization.html* and *www2.ed.gov/policy/adulted/guid/memoranda.html*.

Furthermore, an additional section of regulatory text on this subject was added to the DOL WIOA Final Rule at 20 CFR 680.350. No change to the regulatory text was made in response to these comments.

Comments: Multiple commenters urged the elimination of the one-stop delivery system proposed infrastructure payments, and some remarked that the NFJP should be exempt from this requirement because NFJP grantees often operate in satellite locations in rural areas where the communities face transportation barriers. Some of these commenters discussed the extensive outreach necessary in these communities and remarked that NFJP grantees would not have to sacrifice their identity or their close partnerships with one-stop delivery systems if the Departments allow them this exemption.

Departments' Response: The Departments cannot eliminate the one-stop delivery system infrastructure payments for any of the required partner programs, as the infrastructure cost contributions are required by sec. 121(b)(1)(A)(ii) of WIOA. While NFJP grantees are required partners and are required to provide infrastructure funding for the one-stop centers, they will contribute amounts in direct proportion to their use in accordance with the provisions of these regulations and Departmental guidance. No change to the regulatory text was made in response to these comments.

Comments: Several commenters stated that, if deemed necessary, infrastructure payments should be no greater than the value received by NFJP programs, and some commenters suggested that in-kind contributions should be considered as a valid form of payment.

Departments' Response: WIOA requires partners to contribute infrastructure funds according to the partners' proportionate use and relative benefit received. The regulations allow noncash and third-party in-kind contributions as valid forms of payment for infrastructure costs. The Uniform Guidance related to in-kind contributions applies here, and additional guidance regarding noncash and in-kind contributions and shared costs has been released by the Departments. No change to the regulatory text was made in response to these comments.

Comments: A commenter suggested that NFJP grantees should continue to be required partners on State and Local WDBs if NFJP is forced to make a financial contribution.

Departments' Response: The Departments recognize that many important system partners with experience with specific populations—such as certain required one-stop partner programs, tribal organizations, other Department program grantees, and those serving the disadvantaged and disabled populations—are no longer required members of WDBs. However, 20 CFR 679.320(c) of the DOL-only Final Rule requires that the Local WDB must be comprised of workforce representatives that can include one or more representatives of community-based organizations that have demonstrated experience and expertise in addressing the employment, training, or education needs of individuals with barriers to employment. Further, 20 CFR 679.320(e)(4) says the CEO has the

flexibility to appoint ''other appropriate individuals,'' which does not preclude any organization that the CEO deems appropriate. The Departments encourage the CEO to ensure that Local WDB members represent the diversity of job seekers and employers in their local areas, which includes ensuring adequate representation on the Local WDB. Section 679.320 in the DOL WIOA Final Rule implements the WIOA sec. 107(b) Local WDB membership requirements. No change to the regulatory text was made in response to this comment.

Comments: Several commenters addressed the Departments' request for comment on the types of costs that should be included as infrastructure costs. One commenter reasoned that staff development and training is an appropriate use of funds to maintain the one-stop delivery system as described in § 678.700(c). The commenter also asked if the Departments are acknowledging that costs described in paragraphs (a) and (b) are allowed by the required program authorizing statutes. Another commenter asked if infrastructure costs include personnel costs such as facility maintenance, and one commenter asked if they include copy machine leases. A different commenter suggested that infrastructure costs should include one-stop marketing, IT and communication costs, and administrative costs of operating one-stop centers. A couple of commenters suggested that certain one-stop operation personnel costs, such as receptionist, IT support, building security, and manager, should be funded from infrastructure costs. Another commenter agreed, reasoning that if they are not, such costs would fall on WIOA title I–B funds.

Departments' Response: Section 121(h)(4) of WIOA defines one-stop infrastructure costs as ''the nonpersonnel costs that are necessary for the general operation of the one-stop center, including rental costs of the facilities, the costs of utilities and maintenance, equipment (including assessment-related products and assistive technology for individuals with disabilities), and technology to facilitate access to the one-stop center, including the center's planning and outreach activities.'' This definition is also in § 678.700(a). The Departments will provide additional guidance regarding infrastructure costs, but addressing all potential specific items of cost that could be included or excluded from infrastructure costs, based on this definition, is beyond the scope of these regulations.

WIOA allocates equitably the cost responsibility for operating the one-stop delivery system across partner programs; therefore, it is not the intention that any one partner bear a disproportionate share of the costs. The Departments do not agree with the conclusion that if the costs identified by the commenters are not included in infrastructure costs they will fall on WIOA title I funds. Costs that are related to services shared by partners that do not fall into the definition of infrastructure costs should be treated as other shared costs according to WIOA sec. 121(i)(2) and § 678.760 of these regulations.

Comments: One commenter stated that infrastructure costs should be aggregated and addressed at the State level.

Departments' Response: It is not possible to accomplish this by Federal regulation. Funds are separately appropriated to States under a variety of authorizing statutes. The Governor, in working with the State WDB, will develop guidance that, among other things, outlines a framework for identifying infrastructure contribution from each required partner, as discussed in § 678.705 of these regulations. If consensus cannot be reached on an infrastructure funding agreement locally, the Governor will implement the State funding mechanism to determine one-stop partner contributions, as discussed in §§ 678.725 through 678.745. No change to the regulatory text was made in response to this comment.

Comments: A commenter expressed support for including assistive technology as a required infrastructure cost.

Departments' Response: Section 121(h)(4) and § 678.700(a)(3) provide that equipment, including assistive technology for individuals with disabilities, is an infrastructure cost. However, neither of these provisions describes assistive technology as a required infrastructure cost, and the Departments have determined that designating any particular cost as a required infrastructure cost is beyond the scope of these regulations. As previously indicated in this Preamble, the Departments intend to issue guidance regarding specific items of allowable infrastructure costs and will address one-stop center accessibility costs in that guidance. No change to the regulatory text was made in response to this comment.

Comments: A few commenters recommended that costs associated with adopting the common identifier should be funded by the Departments, not from infrastructure costs. One commenter asked for examples of common identifier costs. Another commenter agreed that common identifier costs should be included as common infrastructure costs.

Departments' Response: Costs associated with the common identifier may be included as infrastructure as well, however there is no separate source of funding to allocate from the Federal level for common identifier costs. Examples of common identifier costs would be the cost of new signage, changing material templates, and changing electronic resources, but it would not include any sort of advertising campaign promoting the one-stop center under the new common identifier. No change to the regulatory text was made in response to these comments.

Comments: Several commenters stated that infrastructure cost levels should be set at the State level for adult education programs, rather than requiring local negotiations between each adult education program and each one-stop partner.

Departments' Response: Section 678.415(b) of the regulation specifies that the appropriate entity to serve as a partner for the adult education program is the State eligible agency or entity and the State eligible agency or entity for AEFLA may delegate its responsibilities to act as a local one-stop partner to one or more eligible providers or consortium of eligible providers. As part of these delegated responsibilities to serve as a one-stop partner, a local adult education entity would assume the roles and responsibilities of one-stop partners under sec. 121(b)(1)(A), which would include contributing to infrastructure costs. No change to the regulatory text was made in response to these comments.

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

Section 678.705 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 approach to the Governors' guidance across States. This allows for one-stop certification, competition of the one-stop operator, and inclusion of infrastructure funding agreement terms into the local State Plan in appropriate timeframes. Based on comments received, the Departments have concluded that the Governor's guidance and technical assistance will be of greatest value to the public workforce system in implementing the provisions

of the sections that follow. A detailed discussion of the Departments' responses to public comments received on this section follows immediately below.

Comments: A commenter asked whether the Governor may dictate the cost categories and allocation methods, or whether the Governor may provide flexibility to local partners in these areas. Another commenter said that the Departments should issue guidance on cost sharing, allocation, and allowable costs. One commenter recommended that in cases where the Governor needs to intervene to establish local contributions, the contributions should be supported with similar funding sources for all contributors. Another commenter said that guidance on funding should allow for flexible contributions from required partners.

Departments' Response: The Departments have determined that the language in § 678.705 is consistent with the cost principles contained in the Uniform Guidance and those of the authorizing statutes and, thus, provides sufficient parameters within which to define costs, cost allocation, and other principles of cost sharing. For purposes of clarity, specific references to the Uniform Guidance have been added to § 678.705. Furthermore, paragraph (b)(2) also has been revised to clarify that cost allocation should be based on proportionate use of the one-stop centers and relative benefit received. The Governor may not dictate cost categories or allocation methods that are not consistent with the Uniform Guidance. There are a variety of methods to allocate costs that are consistent with the Uniform Guidance, for instance, based on: The proportion of a partner program's occupancy percentage of the one-stop center (square footage); the proportion of a partner program's customers benefitting by coming to the one-stop; the proportion of partner program's staff among all staff at the one-stop center; or the percentage of a partner program's use of equipment at the one-stop center. This portion of the regulation can be complex, and the Departments will continue to issue guidance and provide technical assistance to the public workforce system.

The DOL's previous Financial Management Technical Assistance Guide published for WIA remains useful for an overview of cost allocation methodologies. See *http://www.doleta.gov/grants/pdf/TAG_PartI.pdf* and *http://www.doleta.gov/grants/pdf/TAG_PartII_July2011.pdf*. The Departments jointly will work to update this guide and provide technical assistance on cost allocation in the future.

Comments: A few commenters said there needs to be guidance for local partners to contribute to the one-stop infrastructure costs. The commenter said that these costs need to be defined as program costs.

Departments' Response: In addition to the provisions of these regulations, guidance for local partner contributions will be available from Departmental policy guidance documents, and from the State agencies administering partner funds. However, local required partners and their CEOs also must recognize that funds must be used in accordance with the related authorizing statutes, and consistent with the requirements of the Uniform Guidance. While infrastructure costs may be considered as program costs for DOL WIOA programs—which are primarily WIOA title I programs—this is not the case for all local area partner programs. Other authorizing statutes may have differing interpretations. Further guidance and technical assistance is forthcoming on this issue.

Comments: A few commenters requested additional guidance for the Governor to assist in establishing roles and defining equitable and efficient methods for negotiation. A commenter said that the rule should give guidance on what roles the Departments envision to ensure that the Governors' recommendations are appropriate.

Departments' Response: Since the issuance of the NPRM, the Departments have released infrastructure funding guidance that includes roles and responsibilities, and more guidance and technical assistance documents will be released throughout the operational lifetime of the regulations. No change to the regulatory text was made in response to these comments.

Comments: A commenter said that this section should refer to WIOA sec. 121, concerning infrastructure spending ceilings for certain programs.

Departments' Response: The Departments decline to adopt this recommendation. While the infrastructure funding caps for certain programs under the State funding mechanism are covered in § 678.738(c), they do not apply to contributions of local programs pursuant to the local funding mechanism. No change to the regulatory text was made in response to this comment.

Comments: A couple of commenters said that the regulations need to provide a ''fail safe'' for local areas in case the State is not negotiating in good faith or fails to meet the requirements of the MOU. The commenter recommended that this would be a plan consisting of MOU terms and cost allocation plans that would go into effect if either condition above occurs.

Departments' Response: The Departments are not authorized by WIOA to implement a ''fail safe'' plan as the commenter suggested. WIOA and this Joint WIOA Final Rule (at § 678.750) require that the Governor have an appeals process for the State funding mechanism that would allow one-stop partners to appeal a Governor's funding determination. In addition, 20 CFR 683.600 of the DOL WIOA Final Rule would include Local WDBs and CEOs as ''other interested parties'' that may file grievances under the State established procedures required by WIOA sec. 181(c)(1). No change to the regulatory text was made in response to these comments.

Section 678.710 How are infrastructure costs funded?

Section 678.710 indicates that sec. 121(h)(1)(A) of WIOA establishes two methods for funding the infrastructure costs of one-stop centers: A local funding mechanism and a State funding mechanism. Both methods utilize the funds provided to one-stop partners by their authorizing statutes. There is no separate funding source for one-stop infrastructure costs. The Departments received no comments on this section and made no changes to the regulatory text.

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

To use the local funding mechanism, Local WDBs, in consultation with CEOs, must engage one-stop partners early in discussions about one-stop center locations, costs, and other services, so that all parties can make decisions cooperatively and reach consensus about funding infrastructure costs. WIOA does not place any limitations on contributions under the local mechanism; however, partner programs' contributions must be in compliance with their Federal authorizing statutes and other applicable legal requirements, including administrative cost limitations, and represent each partner's proportionate share, consistent with the Uniform Guidance. Under this section, agreement is achieved when all of the one-stop partners sign an MOU with the Local WDB, which includes a final agreement regarding funding of infrastructure that includes the elements listed in § 678.755, or an interim funding agreement that includes as many of these elements as possible. A detailed discussion of the Departments'

responses to public comments received on this section follows immediately below.

Comments: One commenter said that partners should pay an equitable share of the infrastructure costs, not a proportionate share based on relative benefits.

Departments' Response: WIOA sec. 121(h)(1)(B)(i) and sec. 121(h)(2)(C) specifically require funding allocations under both the local or State funding options to be based on proportionate use and relative benefit received. The first and preferred option is through methods agreed on by the Local WDB, CEOs, and one-stop partners. If no agreement can be made, then the State funding mechanism applies. Both mechanisms are based upon Federal cost principles contained in the Uniform Guidance. No change to the regulatory text was made in response to this comment.

Comments: A commenter stated that the regulations should clarify that the Local WDB has the responsibility for maintaining and preparing the records necessary to periodically review and reconcile partner shares of infrastructure costs against actual expenditures to ensure equity.

Departments' Response: The Departments disagree; specifics of the roles and responsibilities of local entities is something to be worked out in the MOU, not in Federal regulation. Additionally, MOUs are required to be reviewed no less than once every 3 years as required by WIOA sec. 121(c)(2)(A)(v). No change to the regulatory text was made in response to this comment.

Comments: Another commenter asked for a definition of ''proportionate share.'' One commenter said that the Governor should set policy regarding ''proportionate benefit.'' Another commenter requested guidance on calculating proportionate use.

Departments' Response: There is no specific Federal definition of proportionate share, proportionate benefit, or proportionate use, and none of these terms are defined in WIOA. In a general sense, proportionate share is the share of each partner program's infrastructure costs based upon its proportionate use of the one-stop centers and relative benefit received from that use. The concept of proportionate share, consistent with the partner programs' authorizing statutes and regulations and the Uniform Guidance at 2 CFR part 200, is used by Federal cost principles in the Uniform Guidance, among others. The Departments are aware of the complex nature of arriving at a generally accepted method of calculating proportionate share in a given State or local area and will address this issue through additional fiscal guidance and training. No additional regulatory text is required.

Comments: Several commenters in the adult education field asked for guidance regarding the duties and functions of the Local and State WDBs in small States and single-area States.

Departments' Response: Because WIOA is an evolving system, there is no standard list of all of the possible duties and functions of Local and State WDBs. While WIOA establishes required duties and functions for State and Local WDBs, discussed further in this subpart, each State and Local WDB will develop State and local plans that define their visions and roles and may expand upon these duties and functions. Pursuant to WIOA's Sunshine Provisions, the State and local plans are available for public inspection and Board meetings must be open to the public, which ensures transparency and accountability for all State and Local WDBs.

Comments: A few commenters said that the Departments should issue guidance on simply bypassing the local infrastructure funding process and using the State funding process instead.

Departments' Response: WIOA does not provide authority for bypassing the local funding mechanism. The State funding mechanism is only triggered after the Governor is informed that consensus could not be reached at the local level.

Comments: Many commenters said that the Departments should clarify that both cash and in-kind contributions are permitted in both the local and State funding mechanisms. One commenter asked for clarification on how in-kind contributions should be calculated as an alternative to direct payments. A few commenters asked for clarification of the phrase ''fairly evaluated in-kind contributions'' and also asked to know who makes this determination. Another commenter said that infrastructure funding should be cash-only. One commenter said that the Departments should update their guidance for in-kind contributions to ensure that such contributions are weighted appropriately. A few other commenters said that provision of alternative communication services (*e.g.,* Braille, deaf interpreters) should be considered an in-kind contribution for the VR program.

Departments' Response: These comments assisted the Departments in making certain adjustments in this part of the regulations. WIOA sec. 121(c)(2) outlines the required content of the local MOU. This includes a description of how the costs of operation of the one-stop delivery system will be funded. Operating budgets for one-stop centers encompass two types of costs that are specifically outlined in the law: Infrastructure costs, defined in WIOA sec. 121(h)(4), and additional costs relating to the operation of the one-stop delivery system that do not constitute infrastructure costs, described in WIOA sec. 121(i)(1), which includes the cost of career services under WIOA sec. 134(c)(2) and may include shared services, defined in WIOA sec. 121(i)(2). WIOA sec. 121(c)(2)(A)(ii)(I) establishes in-kind contributions as valid forms of payment for operations.

The regulatory text in § 678.715 has been revised to clarify that cash, non-cash, and third-party in-kind contributions may be provided by, or on behalf of, one-stop partners to cover their proportionate share of infrastructure costs and to provide further agreement on the terms with definitions provided in the Uniform Guidance. These terms are further defined in § 678.720(c).

Non-cash contributions, which are separate from third-party in-kind contributions, are comprised of receipts for current expenditures incurred by one-stop partners on behalf of the one-stop center and non-cash resources such as goods or services, or the documentation of supporting costs for items owned by the partner's program and used by the one-stop center.

For example, imagine a partner's proportionate share of the one-stop operating costs is $15,000. The partner does not have sufficient cash or other resources to fund its share fully, and wishes to donate (not for its own individual use) gently used surplus computer equipment. The computers at the time of the donation have a value determined in accordance with the requirements of 2 CFR 200.306 of $10,000. The partner would be able to use the $10,000 value as part of the resources provided to fund the shared costs.

Third-party in-kind contributions are contributions of space, equipment, technology, nonpersonnel services, or other like items to support the infrastructure costs associated with one-stop center operations, by a non-one-stop partner to support the one-stop center in general (rather than a specific partner), or contributions by a non-one-stop partner of space, equipment, technology, nonpersonnel services, or other like items to support the infrastructure costs associated with one-stop center operations, to a one-stop partner to support its proportionate share of one-stop infrastructure costs.

There are two types of third-party in-kind contributions: General contributions to one-stop operations (*i.e.,* those not connected to any individual one-stop partner) and specific contributions made to a particular one-stop partner program.

For example, a general in-kind contribution could be a city government allowing the one-stop to use city space rent-free. These in-kind contributions would not be associated with one specific partner, but rather would go to support the one-stop generally and would be factored into the underlying budget and cost pools used to determine proportionate share. The result would be a decrease in amount of funds each partner contributes, as the overall budget will have been reduced.

The second type of in-kind contribution could be a third-party contribution to a specific partner to support one-stop infrastructure. For example, an employer partner provides assistive technology to a VR program that then gives it to the one-stop center. So long as assistive technology was in the one-stop operating budget's infrastructure costs, the partner could then value the assistive technology in accordance with the Uniform Guidance and use the value to count towards its proportionate share. Prior to accepting in-kind contributions from a partner (via a third-party donor), there would need to be agreement among the partners on cost allocation methodology to ensure that other infrastructure operating costs are sufficiently covered through cash and noncash contributions.

Both non-cash and in-kind contributions must be valued consistent with 2 CFR 200.306 and reconciled on a regular basis to ensure that they are fairly evaluated and meeting the partners' proportionate share.

All partner contributions, regardless of the type, must be reconciled on a regular basis (*i.e.,* monthly or quarterly) to ensure each partner program is contributing no more than its proportionate share, in accordance with the Uniform Guidance at 2 CFR part 200. No other change to the regulatory text is made in response to these comments.

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

Section 678.720 explains the funds that one-stop partners may use to pay for one-stop infrastructure costs. In funding the one-stop infrastructure costs, partner programs must satisfy the requirements of their authorizing 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, when allowable under a partner program's authorizing statute, administer these programs and activities to meet all applicable legal requirements and goals. It is important to note that the different Federal statutes and regulations of partner programs define administrative costs slightly differently. Some programs' statutes and regulations define all of the infrastructure costs listed in § 678.700 as administrative costs, while other programs' statutes and regulations define some of the infrastructure costs as administrative costs, and some as program costs. Under § 678.720 of these final regulations, one-stop partner programs must adhere to the administrative and program cost limitations and requirements to which they are subject.

Several changes were made to this section in response to public comments received by the Departments on the NPRM. In § 678.720(a), language was added clarifying that, for WIOA title I programs, infrastructure costs may be considered program costs. Also in paragraph (a), a distinction was made between title II programs and programs authorized under the Perkins Act. Because the proposed Joint Final Rule had designated the State eligible agency under the Perkins Act as the required one-stop partner, it consequently required that infrastructure costs be paid from the funds reserved by the State eligible agency for State administrative expenses. The joint Final Rule, instead, designates that the Perkins one-stop partner is the eligible recipient at the postsecondary level, or a consortium of eligible recipients at the postsecondary level in a local area. Consequently, the joint Final Rule requires that infrastructure costs under the Perkins Act be paid from funds available for Perkins postsecondary recipients' local administrative expenses, or from other funds made available by the State. The Joint Final Rule also changes the source of infrastructure funding for the title II program, specifying that these costs be paid from the funds available for local administrative expenses or from non-Federal resources that are cash, in-kind or third-party contributions.

Also the Departments added a new paragraph (c) and associated subparagraphs to § 678.720 in response to requests for further clarification, which cover the distinctions between and definitions of cash, non-cash, and third-party in-kind contributions to meet partner programs' infrastructure costs contribution obligations. In addition, the Departments provided operating guidance and technical assistance to the public workforce system, and will continue to provide such assistance, as needed. A detailed discussion of the Departments' responses to public comments received on this section follows immediately below.

Comments: A commenter indicated that this section ''is in error in its implication of Perkins State administration funding to support local one-stop infrastructure.'' This commenter asserted that directing Perkins Act State administration is a violation of the uses of funds for such dollars as articulated in Perkins Act sec. 112(a)(3). The commenter recommended revising § 678.720(a) to read: ''In the case of partners administering the Carl D. Perkins Career and Technical Education Act of 2006, these funds shall include local administrative funds available to local eligible institutions or consortia of such institutions.'' The commenter further stated that Perkins Act funds are not divided among secondary and postsecondary career and technical education programs; the distribution between the eligible recipients only takes place at the local level, and this section and § 678.740(d) should be revised to apply only to local-level funding instead of the Perkins eligible agency and the State's administrative dollars. Another commenter agreed, stating that the regulations appear to require duplicate Perkins funds, including both State and local Perkins administrative funds. The commenter similarly indicated that this is a new use of Perkins State administrative funds. Another commenter interpreted the intent of this section to mean that when the Perkins State eligible agency delegates authority to local entities to serve as one-stop partners, the State agency may require the use of local administrative funds in lieu of State administrative funds.

Departments' Response: The Joint WIOA NPRM designated the State eligible agency under the Perkins Act as the required one-stop partner, and consequently required that infrastructure costs be paid from the funds reserved by the State eligible agency for State administrative expenses. The Final Rule instead designates that the Perkins one-stop partner is the eligible recipient at the postsecondary level, or a consortium of eligible recipients at the postsecondary

level in the local area. The Departments have determined that this change is consistent with WIOA sec. 121(b)(1)(B)(iv) which designates local one-stop Perkins partners as the entity that carries out career and technical education programs at the postsecondary level, authorized under the Perkins Act, in a local area. However, the Departments have concluded the State's involvement could be valuable at the negotiation stage and have modified §§ 678.415(e) and 678.720(a) to provide that the local recipients at the postsecondary level may request assistance from the State eligible agency in completing its responsibilities in negotiating local MOUs. To meet their obligations to cover their proportionate share of infrastructure costs, Perkins postsecondary recipients may use funds available for local administrative costs under the Perkins Act, or draw from other funds made available by the State, at the State's discretion.

Comments: A commenter stated that Perkins funds are not divided among secondary and postsecondary career and technical education programs; rather, the distribution between the eligible recipients only takes place at the local level, and §§ 678.720 and 678.740(d) of the NPRM should be revised to apply only to local-level funding instead of the Perkins eligible agency and the State's administrative dollars.

Departments' Response: As stated above, this comment was taken into consideration in making the final regulatory text changes indicating that the Perkins one-stop partner is the eligible recipient at the postsecondary level, or a consortium of eligible recipients at the postsecondary level in the local area.

Comments: A commenter stated that the regulations appear to require duplicate Perkins funding, including both State and local Perkins administrative funds. The commenter said that this is a new use of Perkins State administrative funds.

Departments' Response: Perkins State funds are no longer required to be used to pay for infrastructure costs, as outlined above, but may be made available by the State, at the State's discretion.

Comments: A commenter said that § 678.720(a) of the NPRM limits title II contributions to no more than five percent of the Federal AEFLA funds received by the State. The commenter said that the Departments should direct States to distribute a share of other title II funds to local partners to pay for infrastructure costs.

Departments' Response: The Departments do not have the authority to direct the States to do this. Section 233(a)(2) of WIOA specifically provides that up to five percent of the AEFLA funds allocated to local eligible providers shall be used for administrative costs, including costs related to the one-stop partner responsibilities in sec. 121(b)(1)(A). These responsibilities include contributing to infrastructure costs. Under sec. 233(a)(1), 95 percent of the funds allocated to local eligible providers must be used for carrying out adult education and literacy activities. However, under sec. 233(b), if the five percent cost limit is too restrictive to permit the local eligible provider to cover the local administrative costs, including the payment of infrastructure costs, the local eligible provider negotiates with the State eligible agency to determine an adequate amount to be used for non-instructional purposes. No change to the regulatory text was made in response to this comment.

Comments: A few commenters asked if the approach described in § 678.720(a) would allow ''the Federal funding stream to sidestep its responsibility to cover costs relative to the benefit received by the program.''

Departments' Response: As described at the beginning of this section, changes have been made to the local funding mechanism to explain partner responsibilities and make clear that programs must contribute their proportionate share based on proportionate use and relative benefit received.

Comments: Some commenters stated that because WIOA sec. 121 does place a cap on infrastructure funding for the VR program, § 678.720 should not state that there is no cap on the funding a one-stop partner may contribute.

Departments' Response: The caps on infrastructure funding, which are addressed in § 678.738, apply to what the Governor can require partner programs to contribute under the State funding mechanism, triggered when local partners cannot reach consensus on the local-funding mechanism. If a partner program chooses to contribute more than the cap for its program under the State funding mechanism, it can do so, as long as such contributions reflect its proportionate share, consistent with the Uniform Guidance. On the other hand, if the State funding mechanism is not triggered, neither WIOA sec. 121 nor § 678.720 of these final regulations impose a limitation on how much a core program may contribute for infrastructure costs. No change to the regulatory text was made in response to these comments.

Comments: A commenter said that infrastructure costs should use only a portion of the available administrative cost amount, otherwise there will be no funds available for other administrative costs associated with operating the program.

Departments' Response: A one-stop partner program's contributions to infrastructure costs under the local funding mechanism is limited in that contributions for administrative costs may not exceed the amount available for administrative costs under the authorizing statute of the partner program. In addition, the amounts contributed for infrastructure costs must be allowable and based on proportionate use of the one-stop centers and relative benefit received by the partner program, and must be consistent with 2 CFR part 200, including the Federal cost principles. No change to the regulatory text was made in response to this comment.

Comments: Another commenter requested additional clarification on the process and role of adult education programs in contributing to infrastructure costs.

Departments' Response: Upon further review, the Departments note that sec. 233(a)(2) of WIOA specifically provides that adult education program local administrative funds, rather than the State administration funds referenced in the NPRM, are to be used for one-stop partner responsibilities under WIOA sec. 121(b)(1)(A). These responsibilities include contributing toward one-stop infrastructure costs. Further, while AEFLA caps the amount that may be used for local administrative expenses at five percent under sec. 233(a)(2) of WIOA, the State adult education agency may increase the amount that can be spent on local administration in cases where the cost limits are too restrictive to allow for specified activities. This may include funding one-stop center infrastructure that would be part of the one-stop partner responsibilities to be carried out by the eligible provider in a local area.

The NPRM permitted the State eligible agency to use non-Federal funds that it contributes to meeting the program's matching or maintenance of effort requirements for infrastructure costs under both the local and State-level infrastructure funding mechanisms. Upon further review, the Departments have determined that providing States and local entities even greater flexibility to leverage non-Federal resources to pay infrastructure costs is appropriate.

The text of §§ 678.720 and 678.740 have been revised to provide that funds for infrastructure costs for the adult education programs under the local funding mechanism and State funding mechanisms, respectively, must include Federal funds available for local administration of the programs and non-Federal resources that are cash, non-cash, or in-kind or third-party contributions.

Comments: A few commenters said that in times of limited resources, requiring one-stop partners to pay for infrastructure costs out of administrative funds could have the effect of limiting their participation in the one-stop delivery system.

Departments' Response: Each one-stop partner will enter negotiations around the MOU and infrastructure funding agreement with the knowledge of their budgets and the requirements of their program statutes. The Departments hope that all partners find that developing a truly integrated one-stop center system results in efficiencies and enables partners to provide services in a cost effective manner that allows them to support the infrastructure costs of the one-stop center. No change to the regulatory text was made in response to these comments.

Comments: A commenter expressed support for the flexibility provided to partners to use State or local funding options as long as there is minimal administrative burden. A couple of commenters expressed support for State and Local WDBs to have flexibility to determine how to meet their cost sharing requirements.

Departments' Response: The Departments agree that these final regulations provide flexibility to one-stop partners in determining infrastructure funding contributions.

Comments: A commenter asked if there is a difference between administrative and overall funding for one-stop partners.

Departments' Response: As discussed above, the Federal statutes and regulations governing each of the partner programs define ''administrative costs'' differently; therefore, partners must comply with program-specific requirements governing the expenditure of funds for such purpose.

Comments: A commenter supported only administrative funds being used for one-stop infrastructure costs. Another commenter suggested that workforce development funds should not be co-mingled with career and technical education funds for purposes of funding and allocating one-stop infrastructure costs.

Departments' Response: WIOA does not require or authorize blending or co-mingling of partner funds. Rather, the local MOU and infrastructure funding agreement will identify the infrastructure and operating costs of the one-stop center and develop a cost allocation methodology to determine each partner's proportionate share for both types of costs, consistent with the Uniform Guidance set forth in 2 CFR part 200. This process is similar to what has been done by one-stop partners for several years and it has been working well among one-stop centers in many local areas. Partners can contribute cash, noncash, or third-party in-kind contributions to the Local WDB to satisfy their share. However, infrastructure costs, unlike other shared operating costs, do not include personnel costs and therefore may not be paid for with in-kind personnel time. No change to the regulatory text was made in response to these comments.

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

The Departments have concluded that WIOA sec. 121(h)(1)(A)(i) requires that consensus agreement on the methods of sufficiently funding the costs of infrastructure be reached in negotiations, beginning July 1, 2016. The Departments informed the public and all relevant parties that this section of the WIOA regulations will not be implemented for PY 2016. The workforce development system was informed of this decision through the issuance of a Frequently Asked Question (FAQ) that was posted on agency Web sites on January 28, 2016 (see *https://www.doleta.gov/wioa/FAQs.cfm*). The regulatory text of this section has been revised to further clarify these provisions and to provide that the provisions outlined in this section on the State funding mechanism will be applicable to program years beginning with PY 2017. Before that time, State agencies of the Governor will have issued the mechanism to follow if a local area fails to reach a local infrastructure funding agreement through the process of negotiating MOUs with the required programs.

Section 678.725 states that failure to sign the MOU containing the final infrastructure funding agreement or interim agreement by the beginning of each program year would trigger the State funding mechanism. This section states that Local WDBs must notify the Governor by the deadline established by the Governor's infrastructure guidance developed under § 678.705(b)(3) if the local partners cannot reach consensus. The State will monitor the local areas to address violations of the Governor's guidance. The Governor's guidance might establish an earlier date for notification of a lack of consensus to the State, or of milestones or decision points in the negotiation process, to ensure the uninterrupted services of the one-stop services in the local area. A detailed discussion of the Departments' responses to public comments received on this section follows immediately below.

Comments: A commenter suggested that the regulations should state that if the Governor has to intervene to establish local contributions, that the contribution will be supported with similar funding sources for all contributors.

Departments' Response: The State funding mechanism will be made public prior to application in any local area, and the framework used to determine contributions is the same for all contributors (see § 678.730). There is no statutory requirement in WIOA sec. 121(h) that partners contribute funds for one-stop infrastructure costs under the State funding mechanism from similar sources, as the commenter recommends. The State funding mechanism is developed at the State—not the Federal—level; it would not be appropriate to accept the commenter's suggestion. The Departments decline to do so.

The framework used to determine contributions, however, would be the same for all contributors statewide (see § 678.730). It also should be noted that, while under the local funding mechanism partner programs may contribute through any funds allowed by their authorizing statutes, under the State funding mechanism, infrastructure funds must come from administrative funds for the majority of partner programs.

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

This section—as well as §§ 678.735 and 678.740—has undergone significant changes from the NPRM in both content and structure, although the core principles of the State funding mechanism remain the same. Several sections have been added to both break the previous section into more concise parts and to provide further clarity and structure to the State funding mechanism regulations, including § 678.731, which outlines the steps to implement the State mechanism. The Departments recognize that the State

funding mechanism is still complex, and further guidance regarding its design and implementation will be released.

As outlined in § 678.730(b)(1) through (3) of this section, the framework for the State funding mechanism consists of three essential steps to be performed by the Governor once the State mechanism has been triggered by the submission of a notice by the Local WDB that no consensus could be reached in the MOU negotiations:

(1) A budget must be determined for the infrastructure costs for one-stop centers in the local area (§ 678.735).

(2) Each partner's proportionate share must be determined (§§ 678.736 and 678.737).

(3) The calculation of the required funding caps must be made, along with any associated reconsiderations and adjustments to the budget or partner's proportionate share (§ 678.738).

These steps are detailed in §§ 678.731 and 678.735 through 678.738 of the regulatory text and the associated discussion sections below, which include an example scenario. A detailed discussion of the Departments' responses to public comments received on this section follows immediately below. Minor changes were made to NPRM § 678.735(b), which covered instances in which the Governor does not determine the infrastructure funding contribution for certain partners, and this section was moved to § 678.730(c) of the Final Rule.

Comments: One commenter remarked that the requirements in this section are complex, onerous, and will be costly to administer. Specifically, the commenter expressed concern with (1) the annual identification of each partner's required share based on proportionate use, in the absence of a data collection system to accurately track program participants for each partner; (2) collecting and accounting for the funds; (3) ongoing administration, including tracking each partner's contributions; and (4) periodically reviewing costs charged to each partner to ensure they are still in line with proportionate use and benefit.

Departments' Response: As mentioned above, the Departments recognize the complexities of the State funding mechanism and have taken steps to address this. While there will be a cost associated with implementing the State funding mechanism, this cost will be mitigated by the provision of all negotiation materials and documents from the local area to the Governor, as is required by § 678.735(a).

As to the collecting and accounting for funds, the Governor never actually takes possession of any funds, but instead determines a local budget in accordance with § 678.735, as well as partner contributions, and directs partners to pay for their share of infrastructure costs from the individual partner program's funds, as is specified by §§ 678.736 and 678.737. Furthermore, the Governor will not be managing the local plans; the Local WDB and one-stop operator will carry on their duties as under any locally reached agreement. The only difference in the State funding mechanism is that the Governor determines what the infrastructure funding agreement portion of the MOU looks like.

Comments: One commenter expressed confusion over how the State funding mechanism will operate. The commenter stated that in some provisions, it seems that the Governor would assemble a single statewide fund consisting of local contributions, and then distribute them to local areas using the formula established by the State WDB. In other provisions, according to the commenter, it appears that the Governor would decide on an area-by-area basis what the contributions from each partner should be, and collect and allocate those funds to that local area only. Another commenter requested additional clarity on how this mechanism would work, particularly when there is potential for conflict between the partners. A Local WDB requested examples of creating and implementing the one-stop funding provisions.

Departments' Response: The Governor and the State WDB are required to develop and issue guidance to be used by the local areas in negotiating agreements for the funding of the one-stop delivery system, particularly guidance about the roles of one-stop partners and approaches to facilitate equitable and efficient cost allocation for infrastructure costs. The guidance, as required by § 678.705, also would include the development of a State funding mechanism that will be used only in the event that a local area fails to reach an agreement. As to the collecting and accounting for funds, the Governor never actually takes possession of any funds, but they instead determine a local budget in accordance with § 678.735, as well as partner contributions, and direct partners to pay for their share of infrastructure costs from the individual partner program's funds, as is stated by §§ 678.736 and 678.737.

Section 678.731 What are the steps to determine the amount to be paid under the State one-stop infrastructure funding mechanism?

This section was not in the NPRM; and therefore, the Departments did not receive any comments on it directly, but it was created in response to comments that said the State funding mechanism was confusing and overly complex. This section lists the individual steps that must be taken by the Local WDB and the Governor in order to implement the State funding mechanism in order to clarify this process.

Section 678.735 How are infrastructure cost budgets for the one-stop centers in a local area determined in the State one-stop infrastructure funding mechanism?

In response to comments pointing out the complexity of the State funding mechanism regulations, the original § 678.735 (''How are partner contributions determined in the State one-stop funding mechanism?'') was broken up into four separate sections and considerably expanded to provide more assistance in explaining how this process will work. Section 678.735 now covers the Governor's determination of the one-stop infrastructure budget under the State funding mechanism. This includes a requirement for the Local WDB to provide the Governor with all pertinent materials from the failed local negotiations (§ 678.735(a)), and provisions for a Governor adopting a budget that was agreed upon at the local level (§ 678.735(b)(1) and (2)), as well as for situations when the adoption of such a budget would not be appropriate or is impossible because one was never locally agreed upon (§ 678.735(b)(3)). In the case of the later situation, the Governor must use the formula created by the State WDB for determining the budget, as is described in § 678.745. A detailed discussion of the Departments' responses to public comments received on proposed § 678.735 follows immediately below.

In this section of the NPRM preamble, the Departments stated that Native American programs must contribute to infrastructure funding as required one-stop partners and must negotiate with the Local WDB on that contribution amount. Upon further review, the Departments have determined that Native American programs are not required to contribute to infrastructure funding, but as required one-stop partners they are encouraged to contribute. Any agreement regarding the contribution or non-contribution to infrastructure funding by Native

American programs must be recorded in the signed MOU (see WIOA sec. 121(h)(2)(D)(iv)). The Departments have determined that the regulatory text proposed in the NPRM is supported by WIOA and the revised statement above properly reflects both the regulatory text and WIOA. As such, no change to the regulatory text was necessary to address this issue.

Comments: Many commenters requested clarification on whether the 1.5 percent cap on funding one-stop infrastructure funds for title II is calculated from the State administration funds, or from the total adult education grant. The commenters stated that if it is 1.5 percent of the total grant, and the funds must be taken from the State administration funds within the grant, that would require 30 percent of the State administration funds to be used for one-stop infrastructure. The commenters asked the Departments to clarify that the cap is 1.5 percent of State administration funds, not the total grant.

Departments' Response: The calculation of the percentage of funds to be used for infrastructure is from the total State grant award. The 1.5 percent cap on contributions of funds from the adult education program is a statewide cap, as implemented in § 678.738. In accordance with § 678.738(b)(1), the Governor must ensure that the funds required to be contributed by each partner program in the local areas in the State under the State funding mechanism, in aggregate, do not exceed the statewide cap for each program. Thus, the amount of funds contributed by each AEFLA partner program in the local areas in the State, in aggregate, cannot exceed the 1.5 percent statewide cap for the AEFLA program, as calculated under § 678.738(a). The funds that the local AEFLA partners contribute toward infrastructure costs must be paid from funds that are available for local administration or from State or other non-Federal resources that are cash, in-kind, or third-party contributions.

Comments: Many of these commenters also stated that it is not fiscally practical for programs such as adult education and NFJP that cover multiple Local WDB regions to give 1.5 percent to each Local WDB. These commenters asked the Departments to clarify that a local program only needs to provide a maximum of 1.5 percent of its administration funds to infrastructure costs.

Departments' Response: For the State funding mechanism, infrastructure costs for the adult education program authorized by title II of WIOA must be paid from funds that are available for local administration or from State or other non-Federal resources that are cash, in-kind, or third-party contributions. No matter the program, be it NFJP, adult education, or other, the percentage cap mentioned in the comment does not apply at the local level or to areas under the local funding mechanism, but to the aggregate amount of funds for local partners of a particular program across the entire State which are in local areas operating under the State funding mechanism.

Comments: A commenter said that because only postsecondary Perkins is a mandatory partner, the 1.5 percent cap is the amount used for administration of postsecondary programs and activities. Another commenter agreed but also said that at the State level there is no distinction between funds available for postsecondary programs and those available for secondary programs. Another commenter asked whether the predetermined amounts are in addition to the ''fair share'' allocation formulas in § 678.730.

Departments' Response: To clarify, because only local postsecondary Perkins programs are mandatory one-stop partners, the 1.5 percent cap is calculated based upon the amount made available by the State for postsecondary level programs and activities under sec. 132 of the Perkins Act (distribution of Perkins funds for postsecondary education programs) and the amount of funds used by the State under Perkins Act sec. 112(a)(3) during the prior year to administer postsecondary level programs and activities, as applicable. The Departments have clarified the regulatory text to reflect this. As a reminder, the Final Rule designates that the Perkins one-stop partner is the eligible recipient at the postsecondary level, or a consortium of eligible recipients at the postsecondary level in the local area. To meet their obligations to pay infrastructure costs, Perkins postsecondary recipients may use funds available for local administrative costs under the Perkins Act, or draw from other funds made available by the State.

Comments: Some commenters expressed support for the cap for the VR contribution.

A few commenters stated that the Wagner-Peyser Act and VR program do not distinguish between administrative and programmatic funds, resulting in Wagner-Peyser Act programs in particular providing a disproportionate share of infrastructure costs. The commenters recommended the Departments study the allocation percentages no later than WIOA reauthorization in 2020.

Departments' Response: The commenters are correct that the Wagner-Peyser Act program does not make a distinction between the program funds that must be used for the provision of services and those funds that must be used for administrative costs.

WIOA requires partner contributions determined through the State funding mechanism to come from administrative sources. The ED's Rehabilitation Services Administration (RSA) has revised 34 CFR 361.5(c)(2)(viii) to clarify that the definition of ''administrative costs'' includes those costs associated with the infrastructure of the one-stop delivery system, regardless of whether the VR partner contribution is determined through the local or State funding mechanism (see ED Office of Special Education and Rehabilitative Services Final Rule, RIN 1820–AB70, Docket No. ED–2015–OSERS–0001). Historically, infrastructure costs were considered administrative based upon the statutory and regulatory provisions of the VR program. This clarification will ensure one-stop costs are treated in accordance with long-standing practices in the VR program and will ensure that similar costs are not treated differently based upon which funding mechanism is utilized to determine the VR partner infrastructure contribution.

The Departments want to make clear, however, that each program may contribute only an amount that does not exceed its proportionate share in accordance with the Uniform Guidance set forth in 2 CFR part 200 and an agreed-upon cost allocation methodology developed by the one-stop partners. In so doing, neither partner should be paying a disproportionate share because it would not be an allowable cost under the Uniform Guidance and could not be allocable to the program. The question of studying the allocation percentages in advance of the WIOA reauthorization is not pertinent to these regulations.

Comments: A few commenters said that there is an inherent inequity among the caps for various programs such that some programs' contributions to infrastructure costs, when spread across multiple local areas and one-stop centers, would be negligible.

Departments' Response: The Departments want to clarify that the statutory caps on administrative funds apply only when the State funding mechanism is triggered due to the inability of one or more Local WDBs in a State to reach consensus regarding the funding of local one-stop centers. The Departments encourage Local WDBs to develop MOUs among each of the one-

stop partners that sufficiently fund the one-stop delivery system so that the State funding mechanism, and hence the funding caps, are not needed. Because the administrative caps apply only when the State funding mechanism is triggered, partner programs may contribute more than the cap amount under the local funding mechanism. The partners' shares may be contributed in cash, non-cash, and, in certain aforementioned circumstances, in-kind contributions. However, the partners may not contribute more than their proportionate share.

Comments: A commenter remarked that the Departments should provide a more clear definition of ''proportionate benefit,'' as some partners may claim no benefit from the one-stop delivery system and therefore not contribute to infrastructure costs.

Departments' Response: The allocation of infrastructure costs by partner program must be based on methodologies that are driven by proportionate use of the one-stop centers and relative benefit received, as determined by the Uniform Guidance principles at 2 CFR part 200. The benefit is not subjective, as the commenter suggests, but rather the benefit is based on a cost allocation methodology that determines the proportion of the costs that are allocable to the use of the partner program at the one-stop center.

Comments: Another commenter urged the Departments to recognize that the Perkins Act funds systems and programs instead of individuals, so the proportionality determination will be difficult to implement because there are no data to determine relative benefit on a per-student basis.

Departments' Response: The allocation of infrastructure costs by partner program must be based on methodologies that are driven by proportionate use of the one-stop centers and relative benefit received, as determined by the Uniform Guidance principles at 2 CFR part 200. When making this determination, the calculation is per-program, rather than per-individual. The Departments do not conclude that the fact that Perkins funds systems and programs, rather than individuals, will present an issue for Governors when making this determination. In addition, the Governor has discretion to determine a reasonable cost allocation methodology provided that the calculation of proportionate share is consistent with the Uniform Guidance in 2 CFR part 200, particularly that all costs charged to partners, including Perkins partners, are in proportion to use of the one-stop center, and constitute allowable, reasonable, necessary and allocable costs. No change to the regulatory text was made in response to this comment.

Comments: One commenter hoped the funding obligations for a particular program are determined in the context of program resources and any in-kind support the one-stop receives from program participants.

Departments' Response: Infrastructure funding contributions are either determined using the local or State mechanism. Under each, the proportionate share principle is key; the partners should be contributing an amount proportionate to their use of the one-stop center. Determining this under the local mechanism is completely left up to the local partners and Local WDB to work out in the MOU, as long as it follows the Federal cost principles of the Uniform Guidance. Under the State mechanism, specific language in § 678.737(b)(2) requires the Governor to take into consideration program resources in determining proportionate share. Under both mechanisms, third-party in-kind contributions are acceptable contributions to infrastructure funding, as is detailed in § 678.720. No change to the regulatory text was made in response to this comment.

Comments: One commenter asserted that there would be many administrative difficulties for Wagner-Peyser Act contributions if they are required to be calculated on a fiscal year basis, because Wagner-Peyser Act funds are provided on a program year basis.

Departments' Response: The Departments want to make clear that there is no requirement in WIOA or these final regulations that the one-stop delivery system be funded on a fiscal year, as the commenter seems to suggest. Many of the required partners are funded on different fiscal periods (*e.g.,* some are funded on a program year basis while others are funded on a Federal fiscal year basis); so, accounting methodologies will have to be employed to resolve such differences.

Comments: A commenter encouraged the Departments to clarify their guidelines for infrastructure cost sharing, including in-kind contributions, and the use of administrative vs. program funds.

Departments' Response: The Departments acknowledge that guidance will assist stakeholders in the public workforce system with understanding how to negotiate infrastructure cost sharing agreements and understand other aspects of funding the one-stop delivery system, such as in-kind contributions and the allocation of costs. Some of this guidance is currently available in the form of TEGLs on a variety of subjects, such as, the ''*Operational Guidance to Support the Orderly Transition of Workforce Investment Act Participants, Funds, and Subrecipient Contracts to the Workforce Innovation and Opportunity Act''* (TEGL No. 38–14), ''*Workforce Innovation and Opportunity Act Transition Authority for Immediate Implementation of Governance Provisions''* (TEGL No. 27–14), ''*Vision for the One-Stop Delivery System under the Workforce Innovation and Opportunity Act (WIOA)''* (TEGL No. 4–15), ''*Guidance on Services Provided through the Adult and Dislocated Worker Program under the Workforce Innovation and Opportunity Act (WIOA or Opportunity Act) and Wagner Peyser, as Amended by WIOA, and Guidance for the Transition to WIOA Services''* (TEGL No. 3–15), ''*Workforce Innovation and Opportunity Act (WIOA) Youth Program Transition''* (TEGL Nos. 23–14 and 8–15), among others. All DOL WIOA operating guidance can be located at *www.doleta.gov/wioa*, and all associated ED documents may be found at *www2.ed.gov/about/offices/list/osers/rsa/wioa-reauthorization.html* and *www2.ed.gov/policy/adulted/guid/memoranda.html*.

In addition, cost principle guidance is provided in the Uniform Guidance at 2 CFR part 200 on the use of Federal funds, and in the existing financial Technical Assistance Guide (TAG) handbooks previously issued by DOL, which are still applicable to WIOA (*see http://wdr.doleta.gov/directives/All_WIOA_Related_Advisories.cfm*). Nevertheless, the Departments' intention is to continue to provide system guidance and technical assistance on all aspects of WIOA throughout the life of this authorizing legislation.

Comments: A commenter said that for the TANF program, the cap of 1.5 percent of the Federal funds provided to ''carry out that education program or employment and training program'' should instead state ''education program or employment and training activities.'' The commenter also urged the Departments to clarify that ''education program'' only refers to the TANF funds used to serve adults or teen heads of households in needy families, not dependent children in low-income households.

Departments' Response: The addition of § 678.738(c)(5) provides that for purposes of TANF, the cap on contributions is determined based on total Federal TANF funds expended by the State for ''work, education, and training activities'' during the prior

Federal fiscal year as reported by States to HHS on the Quarterly TANF Financial Report form (and associated administrative expenditures).

Section 678.736 How does the Governor establish a cost allocation methodology used to determine the one-stop partner programs' proportionate shares of infrastructure costs under the State one-stop infrastructure funding mechanism?

This new section was created from portions of proposed § 678.735 in the NPRM in response to comments regarding the complexity of the State funding mechanism. The new § 678.736 details how the Governor is to establish a cost allocation methodology for determining partner programs' proportionate shares of one-stop infrastructure costs. The idea that partner programs should make contributions to infrastructure costs that are proportionate to the benefit they receive from one-stop centers is central to the funding of the one-stop delivery system under WIOA. There are a variety of methods that may be used—*e.g.,* square footage occupied, number of staff present, number of people served—to make the determination of partner programs' proportionate share. It is important that the Governor choose a methodology that is consistent with the requirements of the Uniform Guidance found at 2 CFR part 200.

Section 678.737 How are one-stop partner programs' proportionate shares of infrastructure costs determined under the State one-stop infrastructure funding mechanism?

This new section is another created from the NPRM's proposed § 678.735 in response to comments regarding the complexity of the State funding mechanism, and details the steps that should be taken by the Governor to determine partner programs' proportionate share of the one-stop infrastructure costs. In addition to the methodology determined in § 678.736, § 678.737(b)(2) states that the Governor must take into account a number of factors, including the costs of administration of the one-stop delivery system for purposes not related to one-stop centers for each partner, costs associated with maintaining the Local WDB or information technology systems, as well as the statutory requirements for each partner program, all other applicable legal requirements, and the partner program's ability to fulfill such requirements. The Governor may also take into account the extent to which proportionate shares were agreed upon in the failed local negotiations, as well as any other elements of the negotiation process provided to the Governor per § 678.735(a).

Section 678.738 How are statewide caps on the contributions for one-stop infrastructure funding determined in the State one-stop infrastructure funding mechanism?

This is the final new section created from proposed § 678.735 in response to comments regarding the complexity of the State funding mechanism, covering the caps that apply to program funding that can be designated by the Governor as one-stop infrastructure funding. Paragraph (a) of § 678.738 is a step-by-step instruction on how the Governor is to calculate the cap for each program. First, the Governor determines the maximum potential cap amount in the State by determining the amount of Federal funds provided to the State to carry out a one-stop partner program for the applicable fiscal year multiplied by the cap percentage applicable to that program under paragraph (c) of § 678.738. Second, the Governor selects a factor or factors that reasonably indicates the use of one-stop centers in the State (such as the total population). The Governor then determines the percentage of that factor applicable to the local areas that reached consensus under the local funding mechanism (for example, 70 percent of the State population resides in those areas). This percentage is applied to the amount of the maximum potential cap. The resulting amount (70 percent of the maximum potential amount) is then deducted from the maximum potential cap amount to produce the applicable cap amount for the local areas subject to the State funding mechanism. This approach recognizes that the statewide caps only apply to those local areas that do not reach consensus, and are not applicable to the local areas that reach agreement. Therefore, the actual amounts of infrastructure agreed to in those local areas that reach agreement should not affect the cap amounts available to those local areas that do not reach agreement. Instead, the applicable cap is determined by selection and application of a factor or factors that would reflect the relative expected use of one-stop centers in the local areas subject to the cap.

Paragraph (b) details the requirement that, in aggregate, a program statewide does not exceed the caps, including only those local partner programs in areas under the State funding mechanism (§ 678.738(b)(1)), as well as the steps to be taken in the event that the proportionate share of a partner causes a program's aggregate infrastructure funding to exceed the cap (§ 678.738(b)(1) through (4)).

Paragraph (c) of § 678.738 sets out the specific limitations put on infrastructure funding from each program, and § 678.738(d) gives instructions on calculating the caps for programs for which it is not feasible to determine the amount of Federal funding used by the program until the end of the fiscal or programmatic year. While the methodologies of these programs somewhat differ in application, the methodologies for the CSBG and TANF programs are similar to that used for the Perkins program because in each case the State is asked to make a determination regarding the amount of administrative costs that are related to relevant education, employment, and training activities carried out within the respective program.

The following is an example scenario to determine one partner program's cap: Partner Program A (a WIOA formula program) receives [*x*]—in this example, $30 million—to carry out its program in the State in the applicable year. There are seven local areas in the State, two of which have not been able to reach consensus through the local funding mechanism. Because Partner Program A is a WIOA formula program, the limitation percentage [*p*] given in § 678.738(c)(1) is applied to the Federal dollars received in total by the program statewide. The example below uses three percent for [*p*], resulting in a maximum potential cap of $900,000 [*y*]. The maximum potential cap [*y*] is calculated by multiplying the program dollars [*x*] by the percentage [*p*], in this example yielding $900,000.

$$px = y$$

$$.03 \times 30{,}000{,}000 = 900{,}000$$

The Governor then selects a factor [*f*] that reasonably indicates the use of one-stop centers in the State—such as total population. The Governor then determines the percentage of the total population that resides in the local areas that have reached agreement. In this example, local areas that have reached agreement represent 70 percent of the State's total population. Next the Governor applies this percentage to the maximum potential cap [*y*], $900,000, giving the amount of these dollars represented by the local areas in agreement [*z*]: $630,000.

$$fy = z$$

$$0.7 \times 900{,}000 = 630{,}000$$

Finally, the Governor subtracts this amount [*z*], $630,000, from maximum potential cap [*y*], $900,000, giving the amount of the cap to be used for those two areas under the State funding mechanism [*c*], $270,000.

$y - z = c$

900,000 − 630,000 = 270,000

This means that the aggregate of the infrastructure contributions made by the two local partner programs in local areas operating under the State funding mechanism must not exceed $270,000. This calculation must then be done for all the other partner programs in those local areas.

For the VR program, WIOA sec. 121(h)(2)(D)(ii)(III) and § 678.738(c)(3) establishes the limitations for the amount the VR program can be required to contribute toward the funding of the one-stop delivery system's infrastructure costs. In the first year that the State funding mechanism could be applicable—*e.g.,* PY 2017 beginning July 1, 2017 (see explanation above)—the VR program may contribute no more than 0.75 percent of the State's FY 2016 VR allotment (see sec. 121(h)(2)(D)(ii)(III)(aa)). If a local area fails to reach an agreement for purposes of PY 2018, the VR program cannot be required to pay more than one percent of its FY 2017 VR allotment (see sec. 121(h)(2)(D)(ii)(III)(bb) of WIOA). If a local area fails to reach agreement for purposes of PY 2019, the VR program cannot be required to contribute more than 1.25 percent of its FY 2018 VR allotment (WIOA sec. 121(2)(D)(ii)(III)(cc)). Finally, if a local area fails to reach an agreement for PY 2020 and all subsequent years, the VR program cannot be required to contribute more than 1.5 percent of its FY 2019 or, as appropriate, any subsequent year's VR allotment (WIOA sec. 121(h)(2)(D)(ii)(III)(dd)). In States where there are two VR agencies (a general agency and a blind agency), the combined contribution from these programs cannot be required to exceed the cap, which is based on the total VR allotment to the State. In addition to this specific funding limitation, each program, including the VR program, must comply with the requirements of the program's authorizing statute, all other applicable legal requirements, and the requirements in this subpart when contributing funds to cover one-stop center infrastructure costs.

In determining the maximum amount that a VR program could contribute toward the one-stop infrastructure costs under the State funding mechanism, the Governor would first have to determine the amount of the VR allotment to the State for the applicable year as described above. Because the allotment amount to any given State could change throughout a Federal fiscal year due to reductions made for maintenance of effort deficits, funds returned for reallotment to other States, and additional funds received by a State in reallotment, a Governor should base the limitations for infrastructure costs on the final VR allotment amount for the State for the applicable Federal fiscal year (WIOA sec. 110 and 111 of the Rehabilitation Act, as amended by title IV of WIOA). The final VR allotment for any Federal fiscal year may not be determined until September 30 of that fiscal year. Prior to that time and for planning purposes, the Governor can use historical data to estimate or project its contributions. However, these fluctuations of the VR allotment in any particular Federal fiscal year should not affect the VR program's percentage that can be attributed to the infrastructure costs under the State funding mechanism because the final VR allotment for any year would be known well before the implementation of the State funding mechanism for any applicable program year.

It is important to note that WIOA sec. 121(h)(2)(D)(ii)(III) refers to a program year (July 1 through June 30), not a Federal fiscal year (October 1 through September 30). However, because the VR program funds are provided to a State on a Federal fiscal year basis, the Departments have interpreted ''program year'' in this context, for purposes of determining the VR program's funding limitations, as meaning the funds provided to the State to operate the VR program in a Federal fiscal year.

As this section did not exist in the NPRM, the Departments did not receive any comments that directly refer to it, but did receive comments referring to some of the contributing material, which are discussed under § 678.635 of the Final Rule part 678 discussion.

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

This section describes the funding sources that are used under the State funding mechanism by WIOA title I programs, adult education programs, the Carl D. Perkins program, and other WIOA authorized programs. Changes were made in response to comments to § 678.740(d), which addresses Carl D. Perkins program infrastructure funding sources. Because the State is no longer the default Perkins program partner, the Departments' modified this section to state that Perkins postsecondary recipient one-stop partners may use funds available for administrative expenses to pay infrastructure costs and that these funds may be supplemented by any additional funds the State chooses to make available. A detailed discussion of the Departments' responses to public comments received on this section follows immediately below.

Comments: A commenter expressed concern that § 678.740(d) implies an incentive for local areas to fail to develop a local MOU, as defaulting to the State funding mechanism could result in local areas gaining access to State administrative funds. The commenter suggested that the Departments should revise this paragraph to clarify that this is not the case, particularly with regard to Perkins funds, and also revise other paragraphs in the State funding mechanism sections to emphasize local contributions.

Departments' Response: As stated above, § 678.740(d) has been reworded, which has taken the emphasis away from State funds and put more on local entities funding infrastructure costs. No further change to the regulatory text is being made in response to this comment.

Comments: Another commenter made the opposite argument, saying that because this section is about a State funding mechanism, State funds should be used. The commenter also said that in cases where the local Perkins partner is entering into an MOU in the local funding mechanism option, the regulations should clarify that no local recipient is required to contribute more than the cap percentage (*e.g.,* 1.5 percent) in local administrative funds if other partners in that local area are unable to negotiate an MOU and the State process is used for those partners.

Departments' Response: As the State is no longer the default Perkins partner, the suggested course of action no longer applies to the situation. No change to the regulatory text was made in response to this comment.

Comments: A commenter said that Combined State Plan partner programs such as TANF would be limited to the administrative funds at their disposal. Another commenter said that as long as the costs of Senior Community Service Employment Program (SCSEP) funds spent on participants and enrollees assigned to the one-stop is counted toward the cost allocation, the regulations will minimize the impact on this program.

Departments' Response: The TANF program is not a Combined State Plan partner program in the one-stop delivery system, but rather it is a required partner pursuant to WIOA sec. 121(b) unless exempted per sec. 121(b)(1)(C). The SCSEP program is a required partner and must contribute to the infrastructure costs of the local one-stop delivery system. The allocation

methodology agreed upon by the partner programs or the Governor may include participant counts served by the one-stop center. No change to the regulatory text was made in response to this comment.

Section 678.745 What factors does the State Workforce Development Board use to develop the formula described in Workforce Innovation and Opportunity Act sec. 121(h)(3)(B), which is used by the Governor to determine the appropriate one-stop infrastructure budget for each local area operating under the State infrastructure funding mechanism, if no reasonably implementable locally negotiated budget exists?

This section also underwent significant changes in response to public comments received that stated that the State WDB formula provisions were confusing, overly complicated, and could violate authorizing statutes. In order to reduce the confusion centered around the formula, step-by-step instructions are provided on how to apply the formula when a locally negotiated budget does not exist. The new provisions only require the use of the formula in specific situations regarding the determination of the one-stop budget by the Governor (*i.e.,* when the Governor cannot, or has chosen not to, accept a locally agreed upon one-stop budget). The formula is to identify factors and the associated weights of these factors that the Governor must consider when determining the one-stop budget under these situations. Included in these factors are those statutorily required by WIOA and any other factors related to the operation of the one-stop delivery system that the State WDB sees as appropriate. A detailed discussion of the Departments' responses to public comments received on this section follows immediately below.

Comments: A commenter asked how ''a redirection of Federal funds from one program to another will not negatively impact the calculation of the Perkins Act's 'maintenance of effort' provisions or Federal 'supplement not supplant' provisions.'' The commenter said that these provisions would likely be violated if any Perkins State administrative funds are redirected to one-stop infrastructure.

Departments' Response: Because of changes to this provision, the commenter's concerns regarding Perkins State administrative funds are no longer applicable. Additionally, partner contributions must not exceed the partner's proportionate share.

Comments: Likewise, the commenter stated that the Departments need to ensure that the reallocation formula in this part ensures that local Perkins funds return to the local area from which they were derived in order to adhere to the within-State allocation formula of the Perkins Act, sec. 132(a)(2).

Departments' Response: Again, because of the changes to the formula provision, that is that the Governor will never actually collect and re-allocate funds, this commenter's concerns are no longer applicable.

Comments: A commenter said that § 678.745 should include a descriptor of the type of one-stop center (*e.g.,* comprehensive, affiliate, satellite) in the funding formula policy.

Departments' Response: The formula applies to all one-stop center and affiliated sites under the State mechanism where the Governor has not accepted a locally agreed upon budget. Therefore, it is not necessary to specify the type of one-stop center.

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

Comments: A couple of commenters urged the Departments to encourage shared staffing for similar partner positions (*e.g.,* business development). These commenters said that encouraging partnerships beyond infrastructure could avoid duplication of efforts, particularly with respond to employer services.

Departments' Response: The Departments encourage the partners to consider all available means of integration at the one-stop centers, thereby improving the effectiveness and efficiency of the partner programs in the one-stop delivery system. There is nothing in WIOA or these final regulations that prohibit partner programs in sharing certain key staff positions. However, the Departments caution that such sharing of staff would necessitate the retention of adequate records supporting the allocation of personnel costs between the programs, which also must be consistent with the Uniform Guidance. Furthermore, the Departments reiterate that the sharing of staff will not be considered an infrastructure cost, but it may be paid with other funds in accordance with WIOA sec. 121(i).

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

The Departments added paragraph (c) to explain that contributions to the additional costs related to operation of the one-stop delivery system may be cash, non-cash, or third-party in-kind contributions. This addition is consistent with the changes made in § 678.720(c). As a result the remaining paragraphs were renumbered.

Comments: Multiple commenters expressed confusion about whether the 1.5 percent spending cap for infrastructure costs for the title II program includes the joint contribution to funding the costs of career services. One commenter recommended that it include the cost of career services so that more funds are available to provide AEFLA services.

Departments' Response: Contribution to shared cost including career services are separate from contributions for infrastructure cost and thus the 1.5 percent cap on contributions does not apply to shared cost.

Comments: Two commenters requested a definition of ''additional costs relating to the operation of the one-stop delivery system.'' Another commenter asked whether this phrase includes the cost for the one-stop operator.

Departments' Response: The Departments will not define additional costs. By allowing States to define additional costs, they will be in a better position of assisting their local areas in meeting the demand and challenges of operating a one-stop delivery system. No change to the regulatory text was made in response to these comments.

7. One-Stop Certification (20 CFR Part 678, Subpart F [678.800]; 34 CFR 361.800; 34 CFR 463.800)

Subpart F of part 678 implements the requirements in WIOA sec. 121(g) that the Local WDB 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 one major change to this section from what was published in the NPRM was made in response to comments regarding the use of the provision of services beyond regular business hours as a certification factor for one-stop centers. While the Departments have retained this as a certification criterion, the language has been changed at § 678.800(b) to make the consideration of this factor conditional on the Local

WDB determining that there is a need in the local area for such an extension of service hours. The Departments also would like to assure readers that it is highly unlikely that a one-stop center's certification would hinge on such a factor, as there are many criteria that must be taken into account in the certification process.

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

General Comments About One-Stop Certification

Comments: Several commenters addressed the proposed timelines for one-stop certification and updates to the evaluation criteria. A commenter stated that the proposed timelines could conflict or overlap. A few commenters suggested that all reviews should be on a 4-year cycle. A few State and Local WDBs recommended that the certification criteria be updated every 3 years to match the certification process. A few commenters asserted that it is impractical for all Local WDBs to update the local additional certification criteria every 2 years as part of the local plan update process. Another commenter suggested that both timelines should be event-dependent.

Departments' Response: The Departments have made no substantive changes to this section other than the changes to § 678.800(a)(1) and (b) discussed below. The timelines related to one-stop certification are statutory: Certification every 3 years from WIOA sec. 121(g)(1) and updated criteria every 2 years from WIOA sec. 121(g)(5). However, the regulations require certification ''at least'' every 3 years, and Local WDBs may certify more often if it helps align timelines with other efforts. No change to the regulatory text was made in response to this comment.

Comments: One commenter asserted that giving Local WDBs the authority to certify one-stop centers creates a conflict of interest. Another commenter stated that Local WDBs that are one-stop operators are currently permitted to certify themselves.

Departments' Response: The Departments agree that Local WDBs should not certify themselves but have not made changes to this section as § 678.800(a)(3) already stated that State WDBs must certify one-stop centers when the Local WDB is the one-stop operator.

Comments: A commenter suggested that the Departments should provide guidance to State WDBs on developing objective criteria and training or assistance the State WDBs can share with Local WDBs on implementing certification procedures.

Departments' Response: On August 13, 2015, the Departments issued a joint vision for the implementation of American Job Centers as TEGL No. 04–15, and have released other technical assistance materials since then as well. All of these guidance documents and other pieces of guidance relating to WIOA may be found at *http://wdr.doleta.gov/directives/All_WIOA_Related_Advisories.cfm, www2.ed.gov/about/offices/list/osers/rsa/wioa-reauthorization.html*, and *www2.ed.gov/policy/adulted/guid/memoranda.html*. The Departments' staffs continue to remain available for technical assistance.

Comments: A commenter stated that the State Plan should define the certification process for the one-stop delivery system.

Departments' Response: The State Plan may include the one-stop certification process if a State wishes to include it, but the Departments do not consider it appropriate or necessary to require such an inclusion in the State Plan. No change to the regulatory text was made in response to this comment.

Comments: Another commenter recommended that certification criteria focus on system performance instead of program performance; effective communication and data sharing across systems while safeguarding information; and availability of diverse and necessary resources at one-stops.

Departments' Response: States that wish to focus on certain aspects of one-stop center quality can establish criteria for those aspects, but the statutorily required criteria at WIOA sec. 121(g)(2) must be included. The State WDB-established criteria create a baseline of consistency across the State, and States can establish policies about processes and methods. No change to the regulatory text was made in response to this comment.

Comments: A few commenters suggested that the State WDB should consult with Local WDBs when updating certification criteria.

Departments' Response: The Departments agree and have revised § 678.800(a)(1) to clarify that the State WDB must consult with chief elected officials and Local WDBs when it reviews and updates criteria, not only when it establishes criteria.

Comments: A few commenters requested flexibility for States to determine the certification method, while other commenters stated that all Local WDBs should use the same process to certify one-stops.

Departments' Response: While all Local WDBs within a State must use the State required certification criteria, WIOA sec. 121(g)(3) allows Local WDBs to establish additional criteria to be used in that local area as well. The Departments have concluded that Local WDBs should be able to choose the process for certifying one-stop centers that works best for each local area. No change to the regulatory text was made in response to these comments.

Comments: A commenter asked whether the State WDB has discretion to determine the method of certification, and whether the State WDB can delegate the certification process.

Departments' Response: The State WDB does not certify, but it must set the certification criteria. The Departments have determined that this responsibility is an important strategy to establish quality one-stop centers and have not incorporated the suggestion to allow the State WDB to delegate it. The State WDB must approve the final certification criteria.

Comments: Another commenter asked whether the intent is to certify each one-stop center or the local area one-stop delivery system.

Departments' Response: WIOA sec. 121(g)(4) and this section of the regulation state that the Local WDB must certify one-stop centers, not the one-stop delivery system. Although the same criteria used to make this certification are to be used in evaluating a local area's one-stop delivery system, there is no certification process for the one-stop delivery systems themselves, only the one-stop centers that together make up the one-stop delivery system.

Comments: A few commenters asked what would happen if the one-stop center does not meet the evaluation criteria or get certified.

Departments' Response: Paragraph (d) of § 678.800 and WIOA sec. 121(g)(4) state that local areas that do not certify their one-stop centers are not eligible to use infrastructure funding under the State infrastructure option until such certification is complete. Local WDBs can consider ramifications for failing one-stop certifications in their one-stop operator contracts.

Comments: One commenter asked whether technical assistance will be provided to one-stop centers that fail certification.

Departments' Response: States may provide technical assistance to one-stop centers that fail certification or to any other one-stop center that may require or ask for it.

Evaluations of Effectiveness

Comments: Several commenters expressed concern regarding the requirement to include the provision of service outside of regular business hours as a factor to be considered when evaluating one-stop center effectiveness, stating that many one-stop centers may not be able to provide such services and that an inability to do so should not count against them.

Departments' Response: The Departments considered these concerns, and have determined that this should still remain one of the many factors to be considered in evaluating one-stop center effectiveness. Paragraph (b) of § 678.800, however, was revised to include that the consideration of this factor is conditional on whether the applicable Local WDB has determined there is a workforce need for the provision of service outside of regular business hours. The Departments stress that this is one of many factors to be taken into account when evaluating effectiveness, and that it is very unlikely that a one-stop center will fail to qualify for certification solely for not providing services outside of regular business hours.

Comments: Several commenters remarked that the NPRM's inclusion of customer satisfaction in the evaluation of a one-stop center's effectiveness goes beyond what is included in WIOA. The commenters stated that, while this is an important measure, it is not necessarily a measure of effectiveness, and it is also subjective.

Departments' Response: This provision is supported by the statutory requirement to consider how well a one-stop center meets the workforce development needs of local employers and participants in WIOA sec. 121(g)(2)(B)(iii). The Departments have determined that reviewing customer satisfaction is an important part of knowing whether services to employers and participants are effective and meet their needs, and will aid one-stop operators, Local WDBs, and State WDBs in the continued improvement of the one-stop delivery system required by WIOA. For this reason, the Departments have not removed this requirement from the regulations. No change to the regulatory text was made in response to these comments.

Comments: Another commenter stated that Local WDBs could assess customer satisfaction through surveys centered on the one-stop center's responsiveness to the needs of employers and customers, the availability and quality of workshops, and the repeat usage over a period of time.

Departments' Response: The regulations are not specific on how customer satisfaction must be measured and the Departments have concluded that State WDBs and Local WDBs can determine how best to include it as a component of a one-stop certification criteria.

Comments: Two commenters said that the proposed performance accountability metrics already address customer satisfaction.

Departments' Response: To clarify, the proposed accountability metrics concerning customer satisfaction and the requirements in § 678.800 related to customer satisfaction are referring to the same mechanism. This section gives the requirement to review and apply the customer satisfaction data to measure the effectiveness of one-stop centers; the actual measure, its technical aspects, and the timing of the data collection are outlined in § 677.160 (see Joint WIOA Final Rule).

Comments: A few commenters asserted that the most efficient and effective systems are where the Local WDB is the one-stop operator.

Departments' Response: The Departments have determined that regular measurements of effectiveness and efficiency will assist States in determining the most effective one-stop operator, including whether it is effective and efficient for a Local WDB to be the operator.

Evaluations of Accessibility

Comments: Several commenters expressed support for the Departments' dedication to ensuring accessibility to individuals with disabilities. A few commenters also stated that the requirement for one-stop centers to be programmatically and physically accessible should be reiterated in this part.

Departments' Response: The Departments agree and have updated § 678.800(e) to clarify that all one-stop centers must be programmatically, as well as physically, accessible.

Comments: A few commenters also suggested that the language on programs being in integrated settings should be stronger and use the phrase ''in an integrated setting'' rather than ''in the most integrated setting appropriate.'' The commenters also stated that programs should be in community-based settings.

Departments' Response: The Departments have retained the phrase ''in the most integrated setting appropriate'' to describe our expectations for integrated and community-based settings in order to remain consistent with WIOA sec. 188 and the Americans with Disabilities Act.

Comments: One commenter stated that the Departments should provide full accessibility and be in full compliance with civil rights laws, the Americans with Disabilities Act, and secs. 504 and 508 of the Rehabilitation Act. The commenter further stated that one-stop operators should have additional training on the importance of full accessibility to individuals with disabilities for all services.

Departments' Response: The Departments are fully committed to accessibility and adhering to civil rights laws. The regulation reiterates the requirement for full accessibility in §§ 678.800(e), 678.305, and 678.310. The Departments have provided, and will continue to provide, technical assistance on accessibility. No change to the regulatory text was made in response to this comment.

Comments: Another commenter stated that there should be transparency in reporting States' performance in physical and programmatic access.

Departments' Response: The DOL currently is conducting a study of accessibility in one-stop centers, which will be published and made available to the public when completed in the summer of 2016. Potential violations of civil rights laws, including the inadequate provision of programmatic and physical accessibility, are investigated by DOL's Civil Rights Center, which may share major findings with the public. States also can improve transparency by making certification results public.

Comments: One commenter expressed concern that accessibility evaluation criteria and guidelines will be determined by the State and Local WDBs. The commenter recommended the Departments establish general guidelines for minimum standards, targets, and metrics.

Departments' Response: The regulations keep the determination of accessibility criteria as a responsibility of the State and Local WDBs, as required by statute, but such criteria must meet, at a minimum, the legal standards established by the regulations implementing WIOA sec. 188, set forth at 29 CFR part 38. DOL has issued best practices in how recipients can comply with accessibility laws in a guide shared in Training and Employment Notice No. 01–15, ''Promising Practices in Achieving Universal Access and Equal Opportunity: A Section 188 Disability Reference Guide.''

Evaluations of Continuous Improvement

Comments: A commenter expressed concern about the use of performance outcome data in evaluations of continuous improvement because it may not be timely enough to identify and resolve issues.

Departments' Response: States have the flexibility to add additional data to the criteria that are more timely if they wish, but the Departments have determined that no additional data other than that which is already included in the regulations should be required.

8. Common Identifier (20 CFR part 678, subpart G [678.900]; 34 CFR 361.900; 34 CFR 463.900)

The regulations in 20 CFR part 678, subpart G and 34 CFR 361.900 and 463.900 promote increased public identification of the one-stop delivery system through use of a common identifier across the nation, consistent with WIOA sec. 121(e)(4). Section 678.900 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 WDBs and Local WDBs, and other stakeholders in the one-stop delivery system through various means. This was a process started under WIA, and many one-stop centers are already incorporating use of either the ''American Job Center'' title or the associated tag line ''proud partner of the American Job Center network'' into their branding.

The major changes in this section in response to comments relate to the date by which rebranding of the one-stop centers is to be complete. The date by which one-stop centers are required to rebrand all of their primary electronic resources, such as Web sites has been changed to [90 days from the publication of this Final Rule] instead of July 1, 2016, which will provide a reasonable time to effectuate this provision. Additionally, any new products and materials printed, purchased or created after [90 days from the publication of this Final Rule] must comply with the new branding requirements. However the Departments have determined that extending the deadline to July 1, 2017 for other branding, including activities, physical products and signage, would allow an appropriate amount of time for the rebranding to be completed. Additionally, the Departments will not object if the one-stop centers continue to use materials not using the ''American Job Center'' branding which are created before [90 days from the publication of this Final Rule] until those supplies are exhausted.

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

Comments: Many commenters expressed opposition to the use of American Job Center as a common identifier. Several commenters said that they already have a common brand used in their State, and it would be confusing to the public to discontinue the use of an existing brand and begin utilizing new logos and branding. A few Local WDBs asked that States have flexibility in branding, such as by utilizing ''American Job Centers of [State name].'' Another commenter suggested that centers should be permitted to utilize their program name, followed by ''a partner in America's Workforce System.'' One commenter requested a waiver for States that already have a widely known brand. Another Local WDB commented that the Departments should allow States with approved names under WIA be able to continue to use those names.

Departments' Response: The Departments are not requiring that any State or local area discontinue use of their existing name or brand. The Departments recognize that many States and local areas use their own brand, some of which are well known. The requirement in § 678.900(c) to use either the ''American Job Center'' identifier or ''a proud partner of the American Job Center network'' as a tag line already allows the usage of other identifiers or brands or logos. One-stop centers that want to use their existing name followed by a tagline may use their name along with ''a proud partner of the American Job Center network;'' the use of ''a partner in America's Workforce System'' alone would not meet the requirement. The Departments have concluded that this section adequately states that the use of additional identifiers is permitted, and what the tagline requirement is, and so have not made changes in response to these comments. States that wish to use ''American Job Center of [State name]'' would be including the American Job Center identifier, and thus in compliance with this regulation. While the Departments did not make a change to list different permutations that would be allowed, the Departments will issue guidance on the usage of the identifier.

Comments: Some commenters suggested that the identifier use ''career'' instead of ''jobs.'' Some commenters also stated that American Job Center implies that only citizens can be served. One commenter asked what ''American'' means in this context. Another commenter stated that American Job Center implies that only one service—job placement assistance—is available, and does not address the other services available at one-stop centers.

Departments' Response: The Departments considered the concerns about ''Job'' and ''American'' shared by commenters but have maintained the name American Job Center. The Departments see value in both ''Job'' for its simplicity, directness, and description of the end goal of virtually all services; the Departments also see value in ''Career'' for its emphasis on growth. In deciding between the two, the Departments have chosen to continue to use ''job'' because many States and local areas have already adopted ''American Job Center'' or have incorporated the ''proud partner of the American Job Center network'' tag line into their established branding. Additionally, ''American'' is not meant to imply that only citizens can be served, but used to communicate that the centers are part of a nation-wide system.

Comments: A few commenters asked the Departments what the logo is for the common identifier. Some commenters asked that the new logo or icon be something simple that can be added to existing signage without changing the names of existing centers. Some commenters stated that they needed clearer expectations to implement the common identifier.

One commenter expressed support for the proposed common identifier. A few commenters expressed support for the flexibility provided by the use of ''a proud partner of the American Job Center network'' alongside existing brands. Another commenter supported the use of a common identifier, but cautioned that improper use of the logo, brand, or tagline could dilute the brand or mislead the public. This commenter stated that American Job Center should be utilized only for comprehensive one-stop centers, with ''A proud partner of the American Job Center Network'' permitted to be used at other sites. The commenter also recommended that the Departments trademark the common identifier.

Departments' Response: The logo for American Job Center is available at *www.dol.gov/ajc* and its use, implementation expectations, and suggestions for adoption at various price points will be released in upcoming guidance and technical assistance. In order to allow job seekers and employers to find all the locations that

could assist them, the Departments are continuing to allow all one-stop centers, comprehensive and affiliate, to use ''American Job Center'' or the tagline ''a proud partner of the American Job Center network.'' The DOL has trademarked the identifier American Job Center, as a commenter suggested.

Comments: A few commenters asserted that this will be an expensive unfunded mandate for most States, and requested that the Departments provide funding to States to help pay for the cost to print new materials and change signage, or else make this requirement optional. One commenter also asked that the Departments phase in the change more slowly. Other commenters urged the Departments to allow one-stop centers to phase in the change as they print new materials.

A few commenters requested clarification regarding the deadline for implementation. They stated that the NPRM regulatory text indicated one-stop centers must utilize the new identifier by July 1, 2016, but the NPRM preamble stated that the identifier be in place during PY 2016, or by June 30, 2017. The commenter requested the later date, reasoning that changing signage and materials by July 1, 2016 would be cost prohibitive.

Departments' Response: The Departments recognize that there is a cost associated with adopting the common identifier, and has extended the timeframe in which one-stop centers must include the identifier, to require that one-stop centers use it on Web sites and online materials by [90 days from the publication of this Final Rule], on new products and materials purchased or created after July 1, 2016 and on all other activities, materials, buildings, and signs by July 1, 2017. These changes are reflected in § 678.900(b) and (c). Implementing the identifier is an allowable use of WIOA title I funds. The Departments will release suggestions for adopting the identifier at various price points in upcoming guidance and technical assistance.

While one-stop centers will be expected to provide the ''American Job Center'' or ''proud partner of the American Job Center network'' branding on any newly printed, purchased or created materials after [90 days from the publication of this Final Rule], this does not require one-stop centers to discard previously obtained materials. The Departments will not object to use of any materials lacking the branding that were printed, purchased, or created before this initial deadline until supplies are exhausted, regardless of the final implementation date of July 1, 2017. Paragraphs (b) and (c) of § 678.900 have been modified to reflect the revision of the date when this policy goes into effect.

In addition to the regulatory text changes discussed above, various non-substantive changes have been made for purposes of correcting typographical errors and improving clarity that have not been necessary to note elsewhere.

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 current and future costs and benefits; directs that regulations be developed 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 should 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. The OMB determines whether a regulatory action is significant and, therefore, is 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 could:

(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.

The Final Rule is a significant regulatory action under sec. 3(f) of E.O. 12866. The economic effects of the costs that will result from the changes in this Final Rule are economically significant.

Outline of the Analysis

Section V.A.1 describes the need for the Joint WIOA Final Rule and section V.A.2 describes the alternatives that were considered in this rule's NPRM. Section V.A.3 summarizes the public comments received related to the NPRM, and comments received related to the VR program-specific requirements set forth in the NPRM on ''State Vocational Rehabilitation Services Program; State Supported Employment Services Program; Limitations on Use of Subminimum Wage.'' Section V.A.3 also provides the Departments' responses to the comments. Section V.A.4 describes the process used to estimate the costs of this Final Rule and the general inputs used, such as wages and number of affected entities. Section V.A.5 explains updates made to the assumptions and inputs used in the analysis of this Final Rule relative to the assumptions and inputs used in the analysis of the NPRM. Section V.A.5 also describes how these changes affected the costs of this Final Rule. Section V.A.6 describes how the provisions of this Final Rule will result in quantifiable costs and presents the calculations the Departments used to estimate them. Finally, section V.A.7 summarizes the estimated first-year and 10-year total costs and describes the benefits and transfers that may result from this Final Rule.

Summary of the Analysis

The DOL and ED, hereafter collectively referred to as ''the Departments,'' provide the following summary of the Regulatory Impact Analysis (RIA):

(1) This Final Rule is a ''significant regulatory action'' under sec. 3(f)(4) of E.O. 12866 and, accordingly, OMB has reviewed the Final Rule.

(2) This Final Rule is not expected to have a significant cost impact on a substantial number of small entities.

The Departments estimate that this Final Rule will generate benefits (including some that take the form of cost reductions). Because of the nature of these benefits, the Departments are not able to quantify them, but rather describe them qualitatively in the ''Regulatory Benefits'' section. As shown in Exhibit 1, over the 10-year period, this Final Rule is estimated to have an undiscounted total cost of $626.8 million. This is equivalent to an estimated annual cost of $62.7 million. With 7-percent discounting over the 10-year period, the Final Rule will result in an estimated total cost of $495.2 million. This is equivalent to an

estimated annualized cost of $70.5 million (with 7-percent discounting).

EXHIBIT 1—ESTIMATED MONETIZED COSTS OF THE DEPARTMENTS OF LABOR AND EDUCATION FINAL RULE (2015 DOLLARS) ($ MIL)

Undiscounted 10-Year Total	$626.8
10-Year Total with 3% Discounting	558.9
10-Year Total with 7% Discounting	495.2
10-Year Average	62.7
Annualized with 3% Discounting	65.5
Annualized with 7% Discounting	70.5

The largest contributor to the total cost of the rule is the implementation of performance accountability requirements contained in sec. 116 of WIOA. The largest of these costs include the development and updating of State performance accountability systems, followed by performance reporting requirements, and adjusting levels of performance. See section V.A.6 (Subject-by-Subject Cost-Benefit Analysis) for a detailed explanation.

The Departments were unable to quantify several important benefits to society due to data limitations and lack of existing data or evaluation findings. We qualitatively describe the benefits related to increased alignment of training with local labor markets using economic, education, and workforce data. In addition, based on a review of empirical studies (primarily studies published in peer-reviewed academic publications and studies we sponsored), we identified the following 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, combined 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. We identified several channels through which these benefits might be achieved, including: (1) Better information about training providers enables workers to make more 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.

In addition, the Departments qualitatively describe an ancillary benefit to the DOL-administered core programs that is expected to result from the integration of DOL program participant records. While the integration of these participant records is not required by WIOA or these implementing regulations, it is highly encouraged. For a detailed description of the regulatory and ancillary benefits of the Final Rule, see section V.A.7 (Summary of Analysis).

1. Need for Regulation

Section 503(f)(1) of WIOA requires publication of implementing regulations. These regulations will ensure that States implement requirements under WIOA efficiently and effectively. In addition, such regulations will provide Congress and others with uniform information necessary to evaluate the outcomes of WIOA.

2. Alternatives to the Required Publication of 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. Although WIOA provides little regulatory discretion, the Departments assessed, to the extent feasible, alternatives to the regulations.

As described in the NPRM, the Departments considered alternatives to accomplish the objectives of WIOA, which also would minimize any significant economic impact on small entities. This analysis considered the extent to which WIOA's prescriptive language presented regulatory options that also would allow for achieving WIOA's programmatic goals. In many instances, we have reiterated WIOA's language in the regulatory text, and have expanded some language to provide clarification and guidance. The additional regulatory guidance should result in more efficient program administration by reducing ambiguities caused by unclear statutory language.

In addition, the Departments considered the issuance of sub-regulatory guidance in lieu of additional regulations. This policy option has two primary benefits to the regulated community. First, sub-regulatory guidance will be issued following publication of the Final Rule, thereby allowing States and local areas additional time to adhere to additional guidance. Second, sub-regulatory guidance is more flexible, allowing for faster modifications and any subsequent issuances, as necessary.

The Departments considered three possible alternatives in the NPRM:

(1) Implement the legislative changes prescribed in WIOA, as noted in this Final Rule, thereby satisfying the legislative mandate;

(2) Take no action, that is, attempt to implement WIOA using existing regulations promulgated under WIA; or

(3) Publish no regulation and rescind existing WIA regulations, which would result in non-compliance with the WIOA requirement to publish implementing regulations.

The Departments considered these three options in accordance with the provisions of E.O. 12866 and concluded that publishing the WIOA Final Rule—that is, the first alternative—was the only appropriate option. We considered the second alternative—retaining existing WIA regulations as the guide for WIOA implementation—but WIOA has changed WIA's requirements substantially enough that new implementing regulations are necessary for the public workforce system to achieve compliance. We considered, but rejected, the third alternative—not to publish implementing regulations and rescind existing WIA regulations—because this option, inherently, does not provide sufficient detailed guidance to implement the statutory requirements effectively.

In addition to the regulatory alternatives noted above, the Departments also considered phasing in certain elements of WIOA over time (different compliance dates), thereby allowing States and localities more time for planning and successful implementation. As a policy option, this alternative appears appealing in a broad theoretical sense and, where feasible, we have recognized and made allowances for different implementation schedules. However, with the exception of these allowances, we are not implementing an alternative that delays certain requirements for the following two reasons: (1) Implementation delays are not operationally feasible because many critical WIOA elements depend on the implementation of other provisions, and (2) the costs associated with additional implementation delays beyond those noted in this Final Rule could outweigh the benefits of alternative starting dates.

3. General Comments Received on the Economic Analysis in the NPRM

The Departments received several public comments regarding the economic analysis, presented RIA in the NPRM for this rule, and a few other comments regarding the economic analysis related to the VR program specifically as set forth in the NPRM on ''State Vocational Rehabilitation Services Program; State Supported Employment Services Program; Limitations on Use of Subminimum

Wage'' (80 FR 21059 (April 16, 2015)).[1] We considered all comments received. The significant comments and summaries of the Departments' analyses of those comments are discussed in the following two sections, depending on whether the comments relate to jointly administered requirements set forth in the NPRM for this Final Rule or the comments relate to VR program-specific requirements as set forth in the NPRM on ''State Vocational Rehabilitation Services Program; State Supported Employment Services Program; Limitations on Use of Subminimum Wage.'' Comments that pertain only to the VR program, and not jointly administered requirements, will be summarized here, but ED will address them directly in the Final Rule for ''State Vocational Rehabilitation Services Program; State Supported Employment Services Program; Limitations on Use of Subminimum Wage,'' which is published in this edition of the **Federal Register**.

a. Discussion of Public Comments Related to This Rule's NPRM

i. Contextualizing the Costs of WIOA

To provide context for the costs of the NPRM in the RIA, the Departments expressed the annual cost of the NPRM relative to the average annual amount made available to the six core programs in Fiscal Years (FYs) 2012, 2013, and 2014 under WIA.[2] Based on an average annual total Federal appropriation of $6.4 billion for the 3 fiscal years for these programs, the proportional annual cost of the NPRM was between 2.6 percent and 2.7 percent (using 3-percent and 7-percent discounting, respectively).

Comments: A commenter asserted that the incremental cost burden should not be compared to the total funds made available for these six programs under WIA, but instead should be compared to the administrative funds available to the States because this will be the funding source for a majority of the new requirements.

Departments' Response: In section V.A.7 (Summary of Analysis) of this Final Rule, the Departments present the incremental burden of WIOA both as a proportion of the average annual appropriation for carrying out these programs under WIA and as a proportion of the administrative and transition funds that might be used for WIOA implementation.

ii. The Value of Common Exit

In the NPRM, the Departments sought public comments on the value of a cross-program definition of exit (*i.e.,* a ''common exit'') that is based on the last date of service (other than self-service or information only activities) from all core programs, rather than a program-specific exit as proposed in the NPRM. Under a common exit, an individual would have to complete services from all core programs from which he or she received services to exit from the system.

Comments: Several commenters stated that a common exit approach would be costly. Specifically, some of these commenters asserted that a requirement to report a common exit would be prohibitive to States because a single Management Information System (MIS) does not exist for all core programs. Another commenter indicated that, in addition to the very large costs that would result from the interfaces that would need to be built across programs, additional labor hours would be required to track the exit dates of other programs. Other commenters indicated that some of their clients who cannot complete instructional services might continue to use their services for years if other options are not developed. These commenters further stated that data systems would need to have the capacity to hold clients' data for years, which could result in significant costs.

On the other hand, one commenter remarked that the lack of a common exit would result in the need for more information technology (IT) resources, such as increased storage space.

Departments' Response: The Departments have revised these final regulations to permit—but not require—WIOA title I and Wagner-Peyser Act Employment Service DOL programs to collect and report common exit data. Common exit data collection and reporting will not be permitted or required for core programs under titles II and IV of WIOA.

Although the Departments have concluded an integrated system that would track common exits for an individual is a vision for the workforce development system, an integrated system is not a requirement under WIOA or these final regulations. Furthermore, because the common exit approach is optional, we have not concluded that it would cause providers to extend the duration of program services artificially. In addition, we have no way to anticipate how many, if any, States will implement the common exit approach. For these reasons, no costs are included in this analysis related to the implementation of the optional common exit approach, including the cost of developing integrated systems or artificially extending the duration of services.

iii. Primary Indicators of Performance

Several commenters addressed the costs of implementing proposed requirements related to some of the primary indicators of performance.

Comments: A few commenters indicated concerns about tracking program participants to determine if they had attained a postsecondary credential or a secondary school diploma within 1 year after exiting the program. These commenters stated that no system is in place to collect and track such information and asserted that doing so would be very staff intensive and costly. Commenters also expressed concern that major changes would be needed to their MISs to track data on individuals who had exited the program.

Departments' Response: Although the Departments understand the concerns expressed by commenters, we want to make clear that the performance indicators proposed in the NPRM and contained in these final regulations are consistent with the statutory requirements set forth in sec. 116(b)(2)(A) of WIOA. Moreover, we have concluded that these requirements will not lead to a burden increase for most core programs because similar—although not identical—information was tracked by these programs for performance purposes under WIA. We acknowledge that for some programs, such as the VR program, post-exit data, including credential attainment, is not collected under the current data system. Consequently, States will have to collect such data with the informed written consent of the participant through follow-up with the exited participant or

[1] The NPRM for ''State Vocational Rehabilitation Services Program; State Supported Employment Services Program; Limitations on Use of Subminimum Wage'' was published at 80 FR 21059 on April 16, 2015. It can be accessed at *http://regulations.gov*.

[2] U.S. Department of Labor, Employment and Training Administration. (2015). Archive of State Statutory Formula Funding. Retrieved from: *https://www.doleta.gov/budget/py01_py09_arra_archive.cfm.* The Departments used data from the following files to estimate the average annual WIA budget: WIA Adult Activities Program (Program Years [PYs] 2011, 2012, 2013, and 2014); WIA Dislocated Worker Activities Program (PYs 2011, 2012, 2013, and 2014); and WIA Youth Activities (PYs 2012, 2013, and 2014). Note that for the adult and dislocated worker activities programs, each fiscal year's funding is calculated as the sum of the program year's July funding and the previous program year's October funding. The youth activities funding is obligated to States in April and corresponds to the fiscal year in which it is obligated.

U.S. Department of Education. (2016). Department of Education Budget Tables. Retrieved from: *http://www2.ed.gov/about/overview/budget/tables.html?src=ct.* The Departments used data from the following files to estimate the average annual WIA budget: Congressional Action (FYs 2012, 2013, and 2014).

the educational institution or entity where the individual was receiving training. We have concluded this process will not be overly burdensome to the VR program, as suggested by the commenters, however, because the VR program provides postsecondary education and training only as a necessary service to support an employment goal on the individualized plan for employment. As a result, in the vast majority of cases, a credential will be obtained prior to employment and prior to exit from the VR program. Very few individuals will obtain postsecondary credentials after exiting the VR program. Hence, only a small percentage of cases will need to be tracked manually.

Comments: In response to the Departments seeking comments on clarifications that might be needed to implement the credential attainment rate performance indicator, one commenter indicated that implementing and tracking the time frames would be an immense reporting burden on States.

Departments' Response: The Departments did not establish a time frame for obtaining a credential for purposes of the performance indicator required by sec. 116(b)(2)(A)(i)(IV) of WIOA, except for that required by WIOA—specifically that the credential be attained during the participant's participation in the program or within 1 year after exit from the program. Given that WIOA requires this particular time frame, there is no statutory authority to eliminate it from these final regulations or eliminate any burden estimate related to its implementation. Therefore, the estimated burden related to implementing the statutorily required time frame is maintained. During the development of the NPRM, the Departments considered the extent of the work required for data collection and reporting on this indicator and incorporated the level of effort for those follow-up activities in the burden estimates that were published in the NPRM. These costs will not be substantial because the time frame for participants to obtain a credential was lengthened from only 3 quarters from exit under WIA to 4 quarters under WIOA.

Comments: The NPRM proposed that States would be required to report information on the career and training services provided by title I core programs, as well as the percentage of those participants who obtain training-related employment. One commenter said that the States' administrative data do not indicate whether employment is related to training. The commenter asserted that such data would be costly to collect directly from each participant on a case-by-case basis.

Departments' Response: Although the Departments understand the commenter's concern, we want to make clear that the requirement to collect and report this information is required by sec. 116(d)(2)(G) of WIOA. We do not agree that collecting and reporting the required data will be as costly or burdensome as the commenter suggests. Currently, State (UI) agencies provide wage data that, at a minimum, include a North American Industry Classification System (NAICS) code that generally provides an indication of whether employment outcomes were training related. In addition, costs for follow-ups to determine if training was related to employment were already accounted for in the baseline because they were collected under WIA. The other core programs are not required to collect and report such data.

Comments: One commenter suggested that some of the performance measures proposed for INA supplemental youth service programs are burdensome—particularly given the disparity in funding between the INA youth grants and State grants. The commenter remarked that it would cost $1 million to update its Bear Tracks performance reporting system, which is currently used by INA grantees to collect data for performance measures. The performance reporting system would have to be upgraded because: (1) It is not a Web-based application; (2) it does not provide an adequate level of data security; and (3) it soon could be incompatible with the Departments' new technology. In addition, training would be required for the INA grantees across the United States. Furthermore, the commenter warned that its program only might be able to handle the additional reporting burden by keeping participants as ''active participants'' by not exiting them from the program until they graduate from high school. The commenter stated that this would create a significant burden because grantees would have to provide qualified follow-up service every 90 days to keep the participants active.

Departments' Response: The Departments acknowledge that some grantees, including grantees awarded funding under WIOA, title I, subtitle D—National Programs, could experience higher burdens than other entities. We want to make clear that the cost estimates presented in the NPRM and these final regulations represent the cost for a single representative State, not potential cost burden that could be realized by individual grantees because such effects are based on a variety of factors specific to each program. Furthermore, we point out that data for a credential attainment measure are currently being collected by the INA program (under WIA) that is similar to the education and credential indicators under WIOA and, therefore, the burden associated with such requirements is not new but rather is burden already accounted for in the baseline presented in the RIA for the NPRM and these final regulations.

iv. Additional State Performance Indicators

Comments: A commenter questioned why the NPRM's RIA projected burdens for only five States with regard to establishing additional performance accountability indicators and asked for clarification on which five States were expected to submit these data. The commenter asserted that if all States were expected to submit data, by accounting only for five, the Departments were significantly underestimating the cost of this requirement in the NPRM.

Departments' Response: Under WIA, States were permitted to establish performance indicators in addition to the required indicators. No State, however, established additional performance indicators under WIA. Based on this past practice, the Departments estimate that very few States, if any, will establish additional performance indicators and report related data under WIOA. In an effort to estimate all potential costs where quantifiable, however, we provided burden estimates based on as many as five States choosing to establish additional performance indicators. To be clear, the five States referenced in the NPRM's RIA were intended as an upper-level estimate of the number of States expected to establish additional State performance indicators, and were not intended to mean that we knew which States, if any, would choose to do so. Burden estimates associated with collection and reporting of data for the primary indicators of performance include all States and are accounted for elsewhere in provision (c) Performance Accountability System of the RIA for these final regulations. For the foregoing reasons, we have concluded the burden estimates proposed in the NPRM, and revised for these final regulations, reflect an accurate representation of the expected cost burden of WIOA in the event that as many as five States decide to implement and report on additional performance indicators.

Comments: In the NPRM, the Departments estimated that seven VR agencies each would experience $5,000

in one-time software and IT systems costs and annual labor costs for 60 technical staff members at 9 hours each to obtain additional information for new data fields for those States, if any, choosing to establish additional performance indicators under WIOA. A commenter noted that the $35,000 first-year software and IT systems costs associated with programming designated State unit systems (*i.e.,* VR agencies) accounted for only 7 VR agencies not 80. In addition, the commenter indicated that the Departments underestimated the level of effort per entity to modify the State-developed case management system (CMS) so that designated State agencies and VR agencies could report on the required performance measures.

Departments' Response: The Departments want to make clear that the estimates referenced by the commenter reflect the increased burden to the VR program should a few States adopt additional performance indicators. As stated in the response to another commenter, no State established additional performance indicators under WIA, even though each was permitted to do so. To avoid underestimating costs, however, the NPRM estimated the burden to the State if up to five States—two of which have a separate agency for the individuals who are blind (*i.e.,* seven VR agencies)—choose to adopt additional performance indicators. After further Departmental review of the proposed burden estimate, we have reduced the estimated number of affected entities from seven to five VR agencies and reduced the estimated labor cost per entity, as indicated in Exhibit 33.

In response to public comments and based on additional information received, the Departments have also eliminated the estimated burden for the revision of existing CMSs to accommodate the collection of data to support additional State indicators. We have concluded that such indicators likely would not require the collection of additional new data. In addition, any changes needed to State CMSs for such measures already would be subsumed by the one-time costs of revising their existing systems to collect required data to support the primary indicators of performance, reported under the Development and Updating of State Performance Accountability Systems subsection of provision (c) ''Performance Accountability System'' displayed in Exhibit 18.

iv. State Performance Reports

Comments: In the NPRM, the Departments proposed that States would be required to submit a State performance report, which would describe, among other things, the amount of funds spent on career and training services, respectively, for the current program year and the 3 preceding program years. Several commenters asserted that breaking out the funds spent by service would be too costly.

One commenter expressed opposition to tracking and reporting the amount of funds spent on each type of career and training service. The commenter stated that the NPRM did not take into account the expense of doing so. Citing their own experiences, multiple commenters noted that costs incurred for programming in addition to the ongoing administrative costs related to IT systems would be prohibitive.

Another commenter stated that the existing CMSs do not track funds spent on each type of career and training service. The commenter indicated that this would require the costly and time-intensive integration of the State's CMS with the financial systems in place in each of the local areas.

A commenter expressed that, in addition to tracking specific payments to training providers, it would have to track indirect costs such as benefits paid to staff, building space, and the cost of devices used in delivering services (*e.g.,* computers). The commenter concluded that the effort to determine these specific cost breakouts greatly would exceed the value gained from this information.

Departments' Response: The Departments want to make clear that the statutory requirement and these final regulations are less burdensome than the commenters appear to believe. Section 116(d)(2)(D) of WIOA requires the State to report on the amount of funds spent on ''each type of service,'' which we have interpreted to mean career services, as one type, and training services, as the other type—not each *individual* type of career or training services, provided to participants. Therefore, the NPRM's RIA did not account for burden associated with tracking each individual type of career service and training service provided because such tracking is not required by WIOA or these final regulations. Moreover, the cost estimates in the NPRM and these final regulations do not account for IT system integration because the Departments concluded that States are unlikely to update their IT systems to allow for the integration of fiscal, case management, and performance data.

The Departments agree with the commenters that such micro-level reporting would be burdensome to the States. Before publishing the NPRM, we consulted with States and concluded that this type of tracking would be extremely burdensome. Therefore, we have concluded that affected entities are likely to use a model that divides the total cost spent on career services or training services by the total number of participants who received career services or training services to determine the cost per participant.

v. Underestimated Burden for Development of Strategies for Aligning Technology and Data Systems Across One-Stop Partner Programs To Enhance Service Delivery and Improved Efficiencies

In the NPRM, the Departments estimated that State WDBs would incur a one-time cost of $1.2 million and that State- and local-level AEFLA programs and VR agencies would incur annual costs of $35.5 million related to the development of strategies for aligning technology and data systems across one-stop partner programs. This includes costs for design implementation of common intake, data collection, case management information, performance accountability measurement, reporting processes, and incorporation of local input into design and implementation to improve coordination of services across one-stop partner programs.

Comments: A few commenters asserted that the cost of aligning data and data systems to collect data on performance measures across programs was understated in the NPRM. One of these commenters stated that the Departments underestimated the burden for coordinating service delivery across all of the relevant programs given the large array of data systems, software platforms, and partners involved. Another commenter suggested that aligning technology and data systems might prove expensive for State agencies due to changing or integrated data system and collection methods. The commenter concluded that full integration of technology and data systems would be a costly and time-consuming process.

Departments' Response: First, the Departments want to make clear that WIOA has no statutory requirement that data systems be integrated across all core programs, as some of the commenters appear to believe. State WDBs are required to assist Governors in developing strategies to align technology and data systems across one-stop partner programs to enhance service delivery. Therefore, the NPRM and these final regulations reflect the estimated burden for the DOL-

administered and VR programs associated with the future implementation of integrated IT systems across core programs and the burden for State agencies to enhance their AEFLA program participation in the Statewide Longitudinal Data Systems (SLDS) Grant Program. Because States are at varying stages in the data alignment process, the cost estimates for DOL-administered and VR programs presented in the NPRM represent the national average costs for ''low-'' and ''high-effort'' States, while the cost estimates for the AEFLA program do not adopt such a classification of States and, instead, use a standard cost estimate for all States. The Departments understand that some States could experience higher actual costs, while actual costs could be lower for others.

vi. Integrating Record Collection and Performance Reporting

Comments: One commenter stated that the Departments underestimated the cost of integrating record collection across ED and between DOL and ED in terms of time and resources. In particular, the commenter indicated that the costs would be greater for the VR program because the VR program has the most disparate system (*i.e.,* WISPR is a DOL-specific platform), according to the commenter. Furthermore, the commenter suggested that the burden for integrating data for performance reporting across core programs belongs at the Federal level because DOL and ED receive records from each State for their respective programs. To have Federal agencies work out the integration of data elements and then push this integration to the States that are integrating their systems based on Federal recommendations would be more efficient. In addition, the commenter stated that costs are associated with the guidance and technical assistance that would be needed to bridge the gap between workforce partners' current systems and the Final Rule requirements before the data could be integrated.

Departments' Response: The Departments acknowledge that some affected entities would experience higher burdens than other entities. Following additional consultation with program experts in the affected DOL and ED program areas, and based on the best available evidence, we calculated the compliance costs of each component of this Final Rule based on a range of burden estimates by States, a standard burden estimate per State, or an estimate for a single representative State that was used as a proxy for the average cost per State in the analysis. Please note, however, that this Final Rule does not require the integration of data collection and reporting systems across DOL and ED programs. Under WIOA, State VR programs will continue to submit RSA–911 data to RSA, except that data will be submitted quarterly on open and closed service records instead of annually on closed service records as had been done historically. RSA will use these four quarterly reports to generate the annual WIOA performance report, which will be sent to the State agencies, reducing the burden on State VR agencies.

Concerning the comment about burden for integrated reporting belonging at the Federal level, as part of the implementation of this rule, DOL and ED jointly are proposing an Information Collection for the WIOA Performance Management, Information, and Reporting System (OMB Control Number 1205–0526). This ICR (WIOA Joint Performance ICR) and associated documents, including the WIOA Participant Individual Record Layout (PIRL), provides a standardized set of data elements, definitions, and reporting instructions that will be used to describe the characteristics, activities, and outcomes of WIOA participants.

vii. Reductions in State VR Agency Resources and the Impact of WIOA Implementation

Comments: One commenter stated that the cost estimates for the VR program in the NPRM did not appear to account for the current reductions in agency staff and State funding.

Departments' Response: Although the Departments understand the concern expressed by the commenter, we want to make clear that the burden estimates are based on the estimation of what implementing new requirements under WIOA, including both jointly administered requirements and program-specific requirements, will cost States. The burden estimates do not account for circumstances individual States face at the State level, such as reductions in staff or reductions in State funds for match purposes.

viii. Benefits Due To Reduced Youth Unemployment

Comments: One commenter said that WIOA includes improvements that would ensure low-income workers have the skills and support needed for full participation in the workforce. Specifically, the commenter expressed that provisions that increase the focus on comprehensive programming for out-of-school youth should reduce the effect youth unemployment has on Federal and State governments. The commenter cited a 2014 report, which found that the average unemployed 18- to 24-year-old costs taxpayers over $4,000 annually and the average unemployed 25- to 34-year-old costs taxpayers approximately $9,000 annually.

Departments' Response: WIOA provides additional opportunities to coordinate education and employment services for youth across the core programs. The Departments will continue to encourage these partnerships and the benefits that result from their implementation. The study cited by the commenter evaluates impacts resulting from reduced welfare and unemployment benefits being paid out, as well as increased tax revenue. The Departments considered these outcomes in evaluating the impact of WIOA, and described these and other impacts resulting from training and employment services, such as re-engagement of dislocated workers, in the Regulatory Benefits discussion and the Transfers discussion in section V.A.7 (Summary of Analysis) of this RIA.

ix. Inability to Quantify Benefits

In the NPRM, the Departments stated that they were unable to quantify the benefits associated with the NPRM because of data limitations and a lack of operational WIOA data or evaluation findings on the provisions of the NPRM. The Departments invited comments regarding how the benefits described qualitatively in the NPRM could be estimated.

Comments: Several commenters stated that State workforce and business agencies have developed a set of performance measures designed to capture the financial impact of services delivered at the local community, workforce area, regional, and State levels. The measures also allow for the calculation of return on investment. The commenters remarked that the measures would allow the economic value of services delivered to local communities to be expressed, attainable goals that align with staff activities to be set, and staff to understand the value of their work. These tools are in the initial stages of development and implementation.

Departments' Response: The Departments acknowledge that the tools described by the commenters are currently being developed and tested. We understand, however, that these tools were developed for use at the State, local, and regional levels and have not been applied for similar purposes at the national level. Therefore, modifying these tools to

obtain information in the limited time frame for this analysis was not feasible.

b. Discussion of Public Comments Related to the Proposed Program-Specific Rules for the VR Program

i. Underestimated Costs to the VR Program

Comments: The Departments received a few comments related to one of ED's three WIOA-related NPRMs, which, among other things, covered VR program-specific requirements.

Departments' Response: The public comments pertaining to estimates provided in the NPRM specific to the VR program will be responded to directly by ED in the Final Rule governing, among other things, the VR program published elsewhere in this issue of the **Federal Register**.

4. Analysis Considerations

The Departments estimated the additional costs, benefits, and transfers associated with implementing this WIOA-required Final Rule from the existing baseline, that is, the practices complying with, at a minimum, the 2000 WIA Final Rule (65 FR 49294, Aug. 11, 2000).

The Departments explain how the required actions of States, Local WDBs, employers and training entities, government agencies, and other related entities were linked to the estimated costs and expected benefits. We also consider, when appropriate, the unintended consequences of the regulations introduced by this Final Rule. We have made every effort to quantify and monetize the costs and benefits of the Final Rule. We were unable to quantify benefits associated with the Final Rule because of data limitations and a lack of operational data or evaluation findings on the provisions of the Final Rule or WIOA in general. Therefore, we describe some benefits qualitatively.

The Departments have made every effort to quantify all incremental costs associated with the implementation of WIOA's requirements as distinct from those that already exist under WIA, WIOA's predecessor statute. Despite our best efforts, however, we might be double counting some activities that occurred under WIA. Thus, the costs itemized below represent an upper bound for the potential cost of implementing WIOA.

In addition to this Final Rule, the Departments are publishing separate final rules to implement program-specific requirements of WIOA that fall under each Department's purview; see section I of this Joint WIOA Final Rule (Executive Summary). We acknowledge that these final rules and their associated impacts might not be fully independent from one another, but we are unaware of a reliable method to quantify the effects of this interdependence. Therefore, this analysis does not capture the correlated impacts of the costs and benefits of this Final Rule and those associated with the other Final Rules. We have made an effort to ensure no duplication of benefits and costs between this and the other Final Rules.

In accordance with the regulatory analysis guidance articulated in Circular A–4, and consistent with the Departments' practices in previous rulemakings, this regulatory analysis focuses on the likely consequences (*i.e.,* costs and benefits that accrue to citizens and residents of the United States) of this WIOA-required Final Rule. The analysis covers 10 years (2016 through 2025) to ensure it captures major additional costs and benefits that accrue over time. The Departments express all quantifiable impacts in 2015 dollars and use 3-percent and 7-percent discounting following Circular A–4.

Exhibit 2 presents the estimated number of entities expected to experience a change in level of effort (workload) due to the regulations included in this Final Rule. The Departments provide these estimates and use them extensively throughout this analysis to estimate the cost of each provision, where feasible.

EXHIBIT 2—NUMBER OF AFFECTED ENTITIES BY TYPE

Entity type	Number of entities
DOL Program:	
States [3]	[4] 57
States establishing additional performance indicators	[5] 5
Local WDBs	[6] 580
AEFLA Program:	
States	[7] 57
States establishing additional performance indicators	[8] 5
Local AEFLA providers	[9] 2,396
Local AEFLA providers establishing additional performance indicators	[10] 200
RSA Program:	
VR agencies	[11] 80
VR agencies establishing additional performance indicators	[12] 5

[3] For simplicity, the Departments' use of the term ''States'' in this Final Rule RIA refers to the 50 States; the District of Columbia; the U.S. territories of American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the Virgin Islands; and the Republic of Palau, a country in free association with the United States. In the NPRM, the number of States for the DOL program was 56 and 57 for the AEFLA and RSA programs because DOL did not include the Republic of Palau.

[4] Based on internal DOL data.

[5] DOL estimate.

[6] DOL estimate.

[7] Based on internal ED data.

[8] ED estimate.

[9] Local AEFLA providers include local education agencies; community-based organizations; faith-based organizations; libraries; community, junior, and technical colleges; 4-year colleges and universities; correctional institutions; and other agencies and institutions.

[10] Based on internal ED data.

[11] 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 Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the Virgin Islands. Twenty-four States have two DSAs for the VR program; therefore, the total number of VR agencies is 80. The Departments note particularly that we have sought to avoid duplication of costs, given the fact that some States have two VR agencies.

[12] Based on internal ED data.

Estimated Number of Workers and Level of Effort

The Departments present the estimated average number of workers and the estimated average level of effort required per worker for each activity in the subject-by-subject analysis. Where possible, Federal program experts consulted with State programs to estimate the average levels of effort and the average number of workers needed for each activity to meet the requirements relative to the baseline (*i.e.,* the current practice under WIA) to derive these estimates. These estimates are the national averages for all States; thus, some States could experience higher actual costs, while actual costs could be lower for other States.

Compensation Rates

In the subject-by-subject analysis, the Departments present the additional labor and other costs associated with the implementation of the provisions in this Final Rule. Exhibit 3 presents the compensation rates for the occupational categories expected to experience an increase in level of effort (workload) due to the Final Rule. We use the Bureau of Labor Statistics' (BLS) mean hourly wage rate for State and local employees.[13] [14] We also use wage rates from the Office of Personnel Management's Salary Table for the 2015 General Schedule for Federal employees.[15] We adjust the wage rates using a loaded wage factor to reflect total compensation, which includes non-wage factors such as health and retirement benefits. For the State and local sectors, we use a loaded wage factor of 1.57, which represents the ratio of average total compensation [16] to average wages for State and local government workers in 2015.[17] [18] For Federal employees, we use a loaded wage factor of 1.63, which was estimated using a two-step process. First, we calculated a loaded wage rate of 1.44 for private industry workers, which is the ratio of average total compensation [19] to average wages [20] for private industry workers in 2015. We then multiplied the 2015 loaded wage rate for private workers (1.44) by the ratio of the loaded wage factors for Federal workers to private workers (1.13) using data from a Congressional Budget Office report [21] to estimate the 2015 loaded wage rate for Federal workers of 1.63.[22] We then multiply the loaded wage factor by each occupational category's wage rate to calculate an hourly compensation rate.

The Departments use the hourly compensation rates presented in Exhibit 3 throughout this analysis to estimate the labor costs for each provision.

[13] Bureau of Labor Statistics. (2015). *May 2015 national industry-specific occupational employment and wage estimates: NAICS 999200—State government, excluding schools and hospitals (OES designation).* Retrieved from: *http://www.bls.gov/oes/current/naics4_999200.htm.*

[14] Bureau of Labor Statistics. (2015). *May 2015 national industry-specific occupational employment and wage estimates: NAICS 999300—Local government, excluding schools and hospitals (OES designation).* Retrieved from: *http://www.bls.gov/oes/current/naics4_999300.htm.*

[15] The wage rate for Federal employees is based on Step 5 of the General Schedule (source: OPM, 2015, ''Salary Table for the 2015 General Schedule''). Retrieved from: *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2015/GS_h.pdf.*

[16] Bureau of Labor Statistics. (2016). *2015 Employer Costs for Employee Compensation.* Retrieved from: *http://www.bls.gov/schedule/archives/ecec_nr.htm.* The Departments calculated this value using data from Table 3. ''Employer Costs per Hour Worked for Employee Compensation and Costs as a Percent of Total Compensation: State and Local Government Workers, by Major Occupational and Industry Group.'' Total compensation for all workers. To calculate the average total compensation in 2015 of $44.53, we averaged the total compensation for all workers provided in March, June, September, and December releases.

[17] Bureau of Labor Statistics. (2016). *2015 Employer Costs for Employee Compensation.* Retrieved from: *http://www.bls.gov/schedule/archives/ecec_nr.htm.* The Departments calculated this value using data from Table 3. ''Employer Costs per Hour Worked for Employee Compensation and Costs as a Percent of Total Compensation: State and Local Government Workers, by Major Occupational and Industry Group.'' Wages and salaries for all workers. To calculate the average wage and salary in 2015 of $28.41, we averaged the wage and salaries for all workers provided in March, June, September, and December releases.

[18] 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 (1.57) instead of the private-sector wage factor (1.44) for all non-Federal employees to avoid underestimating the costs.

[19] Bureau of Labor Statistics. (2016). *2015 Employer Costs for Employee Compensation.* Retrieved from: *http://www.bls.gov/schedule/archives/ecec_nr.htm.* The Departments calculated this value using data from Table 5. ''Employer Costs per Hour Worked for Employee Compensation and Costs as a Percent of Total Compensation: Private Industry Workers, by Major Occupational Group and Bargaining Unit Status.'' Total compensation for all workers. To calculate the average total compensation in 2015 of $31.57, we averaged the total compensation for all workers provided in March, June, September, and December releases.

[20] Bureau of Labor Statistics. (2016). *2015 Employer Costs for Employee Compensation.* Retrieved from: *http://www.bls.gov/schedule/archives/ecec_nr.htm.* The Departments calculated this value using data from Table 5. ''Employer Costs per Hour Worked for Employee Compensation and Costs as a Percent of Total Compensation: Private Industry Workers, by Major Occupational Group and Bargaining Unit Status.'' Wages and salaries for all workers. To calculate the average wage and salary in 2015 of $21.97, we averaged the wage and salaries for all workers provided in March, June, September, and December releases.

[21] Congressional Budget Office. (2012). *Comparing the compensation of federal and private-sector employees.* Tables 2 and 4. Retrieved from: *https://www.cbo.gov/sites/default/files/112th-congress-2011-2012/reports/01-30-FedPay_0.pdf.* The Departments calculated the loaded wage rate for Federal workers of all education levels of 1.63 by dividing total compensation by wages (1.63 = $52.50/$32.30). We then calculated the loaded wage rate for private sector workers of all education levels of 1.44 by dividing total compensation by wages (1.44 = $ 45.40/$31.60). Finally, we calculated the ratio of the loaded wage factors for Federal to private sector workers of 1.13 (1.13 = 1.63/1.44).

[22] The Departments conclude that the overhead costs associated with this Final Rule are small because the additional activities required by the Final Rule will be performed by existing employees whose overhead costs are already covered. However, acknowledging that there might be additional overhead costs, as a sensitivity analysis of results, we calculate the impact of more significant overhead costs by including an overhead rate of 17 percent. This rate has been used by the Environmental Protection Agency (EPA) in its final rules (*see* for example, EPA Electronic Reporting under the Toxic Substances Control Act Final Rule, Supporting & Related Material), and is based on a Chemical Manufacturers Association study. An overhead rate from chemical manufacturing may not be appropriate for all industries, so there may be substantial uncertainty concerning the estimates based on this illustrative example. (By contrast, DOL's Employee Benefits Security Administration (EBSA) includes overhead costs that are substantially higher and more variable across employee types than EPA's—between 39 and 138 percent of base wages for compensation and benefits managers, lawyers, paralegals and other legal assistants, and computer systems analysts—as presented in detail at *www.dol.gov/ebsa/pdf/labor-cost-inputs-used-in-ebsa-opr-ria-and-pra-burden-calculations-march-2016.pdf.*) Using an overhead rate of 17 percent would increase the total cost of the Final Rule by 4.7 percent, from $135.2 million in Year 1 to $141.5 million. Over the 10-year period, using an overhead rate of 17 percent would increase the total undiscounted cost of the Final Rule from $620.4 million to $650.2 million, or 4.8 percent.

EXHIBIT 3—COMPENSATION RATES

[2015 dollars]

Position	Grade level	Average hourly wage rate	Loaded wage factor	Hourly compensation rate
		a	b	c = a × b
Local Employees				
Computer systems analysts	N/A	$38.70	1.57	$60.76
Database administrators		37.96		59.60
Management analysts		38.60		60.60
Management occupations staff		40.53		63.63
Office and administrative support occupations		18.70		29.36
Social and community service managers		38.86		61.01
State Employees				
Computer systems analysts	N/A	35.78	1.57	56.17
Database administrators		36.32		57.02
Lawyers		41.71		65.48
Management analysts		29.22		45.88
Management occupations staff		41.65		65.39
Office and administrative support occupations		19.47		30.57
Rehabilitation counselors		23.35		36.66
Social and community service managers		34.53		54.21
Social workers		22.43		35.22
Staff trainers [23]		34.53		54.21
State Rehabilitation Council Board members [24]		29.22		45.88
Federal Employees				
Federal positions	GS–12, Step 5	33.39	1.63	54.43
	GS–13, Step 5	39.70		64.71
	GS–14, Step 5	46.92		76.48

The subject-by-subject analysis presents the total incremental costs of the Final Rule relative to the baseline—that is, requirements applicable to core programs prior to the enactment of WIOA. This analysis estimates these incremental costs, which affected entities will incur in complying with the Final Rule. The equation below shows the method the Departments use to calculate the incremental total cost for each provision over the 10-year analysis period.

$$\text{Total Cost} = \sum_{T=1}^{10} \left(A_l \sum_{i=1}^{n} (\mathrm{N_i} \times \mathrm{H_i} \times \mathrm{W}_i \times \mathrm{L}_i) + \sum_{j=1}^{m} \mathrm{A_j} \times \mathrm{C_j} \right)$$

Where,

A_l Number of affected entities that will incur labor costs,
N_i Number of staff of occupational category *i,*
H_i Hours required per staff of occupational category *i,*
W_i Mean hourly wage rate of staff of occupational category *i,*
L_i Loaded wage factor of staff of occupational category *i,*
A_j Number of affected entities incurring non-labor costs of type *j,*
C_j Non-labor cost of type *j,*
i Occupational category,
n Number of occupational categories,
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 50 for a summary of the average annual cost of the Final Rule by provision). The total labor cost is the sum of the labor costs for each occupational category *i* (*e.g.,* computer systems analysts, database administrators, and lawyers) multiplied by the number of affected entities that will incur labor costs, A_l. The labor cost for each occupational category *i* is calculated by multiplying the number of staff members required to perform the activity, N_i; the hours required per staff member to perform the activity, H_i; the mean hourly wage rate of staff of occupational category *i,* W_i; and the loaded wage factor of staff of occupational category *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.

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 the new

[23] Based on the BLS mean hourly wage for social and community service managers.

[24] Based on the BLS mean hourly wage rate for management analysts.

requirements of WIOA. In accordance with Circular A–4, we 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 from that used for the distribution of funds under WIA.[25]

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

5. Updates to the Cost-Benefit Analysis for the Final Rule

In total, the Departments estimate that this Final Rule will result in a 10-year undiscounted cost of $626.8 million (in 2015 dollars). We estimated that the NPRM would result in $1.5 billion in undiscounted costs (in 2013 dollars). As discussed below, after reviewing public comments and with further consultation with program experts in the DOL and ED program areas, we updated the cost analysis and made changes to specific provisions in the NPRM that affected costs.

General Updates

In the Final Rule economic analysis, the Departments update all costs to 2015 dollars from 2013 dollars in the NPRM. This update increases the estimated cost of the Final Rule relative to the cost presented in the NPRM.

In addition, the Departments have made several updates to the labor cost estimates. First, we use more appropriate occupational categories than those used in the NPRM (*i.e.,* administrative staff, Board members, counsel staff, local stakeholders, managers, and technical staff). In this Final Rule, the occupational categories include: computer systems analysts, database administrators, lawyers, management analysts, management occupations staff (hereafter referred to as ''managers''), office and administrative support occupations staff (hereafter referred to as ''office and administrative support staff''), rehabilitation counselors, social and community service managers, social workers, staff trainers, and State Rehabilitation Council (SRC) Board members. Due to the numerous changes made to each provision in the analysis, which are described in detail below, these occupational categories add more specificity to the labor costs, but it is unclear whether they had a positive or negative effect on costs as a whole.

Second, the Departments have updated labor costs, including wage rates and loaded wage factors, to reflect 2015 BLS data. Furthermore, instead of using State government employee wage rates for workers at both the State and local level as in the NPRM, we applied wage rates for State government employees and local government employees to workers at the State and local levels, respectively. Depending on the occupational category, the State-level wage rate could be higher or lower than the corresponding local-level wage rate; thus, it is unclear whether this had a positive or negative effect on costs as a whole.

Third, based on further discussion with DOL program experts, the Departments have increased the overall number of States affected by DOL program requirements from 56 to 57 in the Final Rule because we concluded that the WIOA requirements also will affect the Republic of Palau.

In the Final Rule, the Departments have made several changes to the provisions presented in the NPRM. Exhibit 4 presents a summary of the updates made to the NPRM provisions in the Final Rule. To simplify the analysis and combine related requirements, we merge the following provisions:

- Provision (b) ''New Elements to State and Local Plans'' and provision (f) ''Unified or Combined State Plans'' are combined to form provision (b) ''Unified or Combined State Plan: Expanded Content, Biennial Development and Modification Process, and Submission Coordination Requirements.''
- Provision (c) ''Development and Updating of State Performance Accountability Measures,'' provision (e) ''Development of Strategies for Aligning Technology and Data Systems across One-Stop Partner Programs,'' provision (h) ''State Performance Accountability Measures,'' provision (i) ''Performance Reports,'' and provision (j) ''Evaluation of State Programs'' are combined to form provision (c) ''Performance Accountability System.''

In addition, the Departments have decided that the following two provisions are more appropriate in the DOL WIOA Final Rule RIA: Provision (d) ''Identification and Dissemination of Best Practices'' and provision (g) ''Local Plan Revisions.'' Although the updates made to each provision (*i.e.,* changes from the NPRM estimates) are discussed under the relevant headings below, a detailed description of each cost provision remains in section V.A.6 (Subject-by-Subject Cost-Benefit Analysis).

EXHIBIT 4—UPDATES TO COST PROVISIONS IN THE NPRM

NPRM	Final rule	Required activities in NPRM[26]
(a) Time to Review the New Rule	(a) Time to Review the New Rule	• Learn about new regulations and plan for compliance.
(b) New Elements to State and Local Plans	(b) Unified or Combined State Plans: Expanded Content, Biennial Development and Modification Process, and Submission Coordination Requirements.	• Develop new 4-year Unified or Combined State Plans; and • Review and modify 4-year Unified or Combined State Plans.

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

[26] This column maps the requirements from the RIA of the NPRM to the RIA of the Final Rule, and is not a comprehensive list of all Final Rule requirements.

EXHIBIT 4—UPDATES TO COST PROVISIONS IN THE NPRM—Continued

NPRM	Final rule	Required activities in NPRM [26]
(c) Development and Updating of State Performance Accountability Measures.	(c) Performance Accountability System	• Develop and update the State performance accountability systems; • Implement measures for data collection and reporting on the effectiveness in serving employers; • Negotiate levels of performance; • Run statistical adjustment model to adjust levels of performance based on actual economic conditions and characteristics of participants; • Provide technical assistance to States; • Obtain UI wage data; and • Purchase data analytic software and perform training.
(d) Identification and Dissemination of Best Practices.	Moved to the DOL WIOA Final Rule (*see* provision (c) ''Identification and Dissemination of Best Practices'').	N/A.
(e) Development of Strategies for Aligning Technology and Data Systems across One-Stop Partner Programs.	(c) Performance Accountability System	• Align technology and data systems across one-stop partner programs.
(f) Unified or Combined State Plan	(b) Unified or Combined State Plans: Expanded Content, Biennial Development and Modification Process, and Submission Coordination Requirements.	• Review and develop new 4-year Unified or Combined State Plans to ensure they satisfy the new content requirements; and • Coordinate actions for developing a new 4-year Unified or Combined State Plan among the core programs administered by the Departments.
(g) Local Plan Revisions	Moved to the DOL WIOA Final Rule: (See provision (m) ''Local and Regional Plan Modification'').	N/A.
(h) State Performance Accountability Measures	(c) Performance Accountability System	• Collect data to report on additional State performance accountability measures.
(i) Performance Reports	(c) Performance Accountability System	• Develop a performance report template that reports outcomes via the new WIOA performance accountability metrics; • Develop, update, and submit eligible training provider (ETP) reports; • Collect, analyze, and report performance data; and • Provide training on data collection.
(j) Evaluation of State Programs	(d) State Evaluation Responsibilities	• Coordinate any evaluation activities to cooperate in the provision of various forms of data for evaluation activities; and • Coordinate in designing and developing evaluations carried out under sec. 116(e) of WIOA.

Time To Review the New Rule

This section describes the updates to the NPRM's provision (a) ''Time to Review the New Rule.'' In this Final Rule's subject-by-subject analysis, costs related to this provision are found in provision (a) ''Time to Review the New Rule.'' The cost of this provision reflects the cost for individuals in the regulated community to learn about the new regulations and plan for compliance. Each core program has different staffing and WIOA affects them differently, which would result in different labor categories and level of effort for them to read and understand the Joint WIOA Final Rule. The total undiscounted 10-year cost of this provision decreased from $17.7 million for the NPRM to $3.3 million for this Final Rule.[27]

At the State level for the DOL programs, the Departments made the following changes, which are presented in Exhibit 5. Following additional discussions with program experts, we decreased the number of DOL management staff from two to one. We added four lawyers who will review the new requirements in the Final Rule. Finally, we replaced the technical staff in our previous estimate with the more appropriate occupational category of social and community service manager. Although the number of personnel in this last category was reduced from four to two, the level of effort was increased from 20 to 40 hours; hence, the overall level of effort (80 hours) remained the same.

[27] This variance in cost is mainly a result of the decrease in the estimated number of staff and level of effort required for this activity for the State- and local-level AEFLA program.

EXHIBIT 5—UPDATES TO COSTS OF STATE-LEVEL DOL PROGRAMS—TIME TO REVIEW THE NEW RULE

NPRM					Final rule				
(a) Time to review the new rule					(a) Time to review the new rule				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	2	20	One time	56 States	Management occupations staff.	1	20	One time	57 States.
Technical staff.	4	20			Lawyer	4	20		
					Social & community service manager.	2	40		

Exhibit 6 presents the updates to the State-level AEFLA program. The Departments consulted with experts at the State-level AEFLA program and decided to reduce the number of managers from five to four after concluding that the number needed to reflect an average staffing level across all States and outlying areas was less than expected. Three of the four managers are categorized as social and community service managers and will have a level of effort of 20 hours rather than 40 hours because we concluded that associate staff will not spend as much time on this activity as the State director.[28] We reduced the level of effort required from the lawyer from 40 to 20 hours because we concluded that the lawyer, whose role is largely advisory, will not spend as much time on this activity as the State director, who will be responsible for implementation. We also excluded the two technical and five administrative staff included in our previous estimate because those occupational categories generally are not involved in reviewing regulations.

EXHIBIT 6—UPDATES TO COSTS OF STATE-LEVEL AEFLA PROGRAMS—TIME TO REVIEW THE NEW RULE

NPRM					Final rule				
(a) Time to review the new rule					(a) Time to review the new rule				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	5	40	One time	57 States	Management occupations staff.	1	40	One time	57 States.
Counsel staff.	1	40			Lawyer	1	20		
Technical staff.	2	40			Social & community service manager.	3	20		
Admin. staff	5	40							

The Departments made the following updates to the State VR program, which are shown in Exhibit 7. We consulted with VR program experts and decided to increase the number of managers from three to four. Three of these four managers are categorized as social and community service managers. In addition, we increased the level of effort per manager from 20 to 40 hours to reflect the greater complexity of the new rule. We replaced the counsel and technical staff members with three rehabilitation counselors to review the new requirements of the Final Rule. This change was made to better reflect the VR agency staff who will be performing this task.

EXHIBIT 7—UPDATES TO COSTS OF STATE-LEVEL VR PROGRAMS—TIME TO REVIEW THE NEW RULE

NPRM					Final rule				
(a) Time to review the new rule					(a) Time to review the new rule				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	3	20	One time	80 VR agencies.	Management occupations staff.	1	40	One time	80 VR agencies.

[28] The Departments used the occupations category of ''management occupations staff'' to estimate the compensation rate for the State Director.

EXHIBIT 7—UPDATES TO COSTS OF STATE-LEVEL VR PROGRAMS—TIME TO REVIEW THE NEW RULE—Continued

NPRM					Final rule				
(a) Time to review the new rule					(a) Time to review the new rule				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Counsel staff.	1	20			Social & community service manager.	3	40		
Technical staff.	1	20			Rehabilitation counselor	3	40		

At the local level for the AEFLA program, the Departments made the following changes, which are presented in Exhibit 8. We concluded that local involvement in reviewing the new rule generally will require participation in a statewide meeting convened by the State office to present the new rule and address questions raised by local staff. We added one social and community service manager who will review the new requirements of the Final Rule. Based on conversations with additional program experts, we excluded the technical and administrative staff included in our previous estimate, because those occupational categories generally are not involved in reviewing regulations. Note that, instead of presenting the costs at the State level as in the NPRM, we are presenting costs at the program, or local, level.

EXHIBIT 8—UPDATES TO COSTS OF LOCAL-LEVEL AEFLA PROGRAMS—TIME TO REVIEW THE NEW RULE

NPRM					Final rule				
(a) Time to review the new rule					(a) Time to review the new rule				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	40	40	One time	57 States	Management occupations staff.	1	4	One time	2,396 local programs.
Technical staff.	40	40			Social & community service manager.	1	4		
Admin. staff	40	40							

New Elements to State and Local Plans

This section describes the updates to the NPRM's provision (b) ''New Elements to State and Local Plans.'' In this Final Rule's subject-by-subject analysis, this cost provision is included in provision (b) ''Unified or Combined State Plans: Expanded Content, Biennial Development and Modification Process, and Submission Coordination Requirements'' and it captures the cost of developing new 4-year Unified or Combined State Plans, performing a review of each State Plan, and modifying it 2 years after it is submitted. For this activity, the total 10-year cost (undiscounted) decreased from $53.9 million in the NPRM to $1.9 million in the Final Rule.[29] These revised cost estimates can be found under the subsections ''Four-Year Plan Modification—Third Year,'' ''Development of New 4-Year Plan—Fifth Year,'' ''Four-Year Plan Modification—Seventh Year,'' and ''Development of New 4-Year Plan—Ninth Year,'' in provision (b) of this Final Rule.

At the State level for the DOL programs, the Departments made the following changes, which are presented in Exhibit 9. In the Final Rule, required compliance activities are measured biennially and instead of assuming a constant level of effort for each biennial activity, we assumed that the level of effort will be slightly higher for managers and management analysts to modify the first 4-year State Plan and develop the second State Plan than it will be to produce new State Plans and modifications in subsequent years. The Departments expect that more effort initially will be expended to build relationships between new partners and to acquire experience drafting State Plans in a format that might be new to some partners. In addition, we added managers and lawyers and we replaced the technical staff in our previous estimate with the more appropriate occupational category of management analyst.

[29] The variance in cost is due to changes to the assumptions used to estimate costs (*e.g.,* number of staff, occupational categories, level of effort, and frequency.) More specifically, this variance in cost is mainly due to AEFLA omitting biennial State-level consulting costs and biennial local-level labor costs and the Departments' assumption that the level of effort to undertake the biennial development and modification process will decrease over time rather than remain constant. The Final Rule does not implement any policy changes over the NPRM that impact this cost.

EXHIBIT 9—UPDATES TO COSTS OF STATE-LEVEL DOL PROGRAMS—NEW ELEMENTS TO STATE AND LOCAL PLANS

NPRM					Final rule				
(b) New elements to state and local plans					(b) Unified or combined state plans: expanded content, biennial development and modification process, and submission coordination Requirements				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Technical staff.	2	16	Annual	56 States	*Four-Year Plan Modification—Third Year*				
Admin. staff	1	16			Management occupations staff.	1	12	3rd year	57 States.
					Lawyer	1	4		
					Management analyst	2	12		
					Office & admin. support staff.	1	4		
					Development of New 4-Year Plans—Fifth Year				
					Management occupations staff.	1	12	5th year	57 States.
					Lawyer	1	4		
					Management analyst	2	12		
					Office & admin. support staff.	1	4		
					Four-Year Plan Modification—Seventh Year				
					Management occupations staff.	1	8	7th year	57 States.
					Lawyer	1	4		
					Management analyst	2	8		
					Office & admin. support staff.	1	4		
					Development of New 4-Year Plans—Ninth Year				
					Management occupations staff.	1	10	9th year	57 States.
					Lawyer	1	4		
					Management analyst	2	10		
					Office & admin. support staff.	1	4		

Exhibit 10 presents the changes made by the Departments at the State level for the AEFLA program. The Departments considered the State office's historical level of effort for State Plan development. The Departments expect that it will take more effort initially to build relationships between new partners and to acquire experience drafting State Plans in a format that may be new to some partners. We concluded that the AEFLA State office could leverage economies of scale for the biennial State Plan development and modification process required under WIOA. That is, established procedures and experienced staff already will be in place from previous State Plan efforts to gather, refine, and incorporate input for modification of the new elements. In addition, we anticipate that the extent of necessary plan modifications will decrease over time as the elements are improved with each revision cycle. Burdens will be higher in the fifth and ninth years to account for the additional burden involved with developing new State Plans. Furthermore, we reduced the number of managers from five to four (three of which are categorized as social and community service managers). We removed technical and administrative staff because we concluded that those occupational categories are not typically involved in State Plan development. In addition, we removed the consultant cost because we concluded that consultants are not commonly engaged in State Plan development.

EXHIBIT 10—UPDATES TO COSTS OF STATE-LEVEL AEFLA PROGRAMS—NEW ELEMENTS TO STATE AND LOCAL PLANS

NPRM					Final rule				
(b) New elements to state and local plans					(b) Unified or combined state plans: Expanded content, biennial development and modification process, and submission coordination requirements				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	5	40	Biennial	57 States	*Four-Year Plan Modification—Third Year*				
Counsel staff ...	1	20			Management occupations staff.	1	10	3rd year	57 States.
Technical staff	2	40			Lawyer	1	10		
Admin. staff	5	20			Social & community service manager.	3	10		
Consultant cost	$25,000				*Development of New 4-Year Plans—Fifth Year*				
					Management occupations staff.	1	15	5th year	57 States.
					Lawyer	1	15		
					Social & community service manager.	3	15		
					Four-Year Plan Modification—Seventh Year				
					Management occupations staff.	1	5	7th year	57 States.
					Lawyer	1	5		
					Social & community service manager.	3	5		
					Development of New 4-Year Plan—Ninth Year				
					Management occupations staff.	1	10	9th year	57 States.
					Lawyer	1	10		
					Social & community service manager.	3	10		

The Departments made the following updates to the State VR program, which are shown in Exhibit 11. Instead of assuming a constant level of effort for each biennial activity, we assumed the level of effort will be highest for modifying the first new 4-year State Plan in the third year, will decrease slightly for developing the second 4-year State Plan in the fifth year, and will remain at a slightly lower level for the subsequent development and modification process. Again, this decrease over time reflects the initial effort to build relationships between new partners and to acquire experience drafting State Plans in a format that might be new to some partners. In addition, we replaced the technical staff in our previous estimate with the more appropriate occupational category of social and community service manager.

EXHIBIT 11—UPDATES TO COSTS OF STATE-LEVEL VR PROGRAMS—NEW ELEMENTS TO STATE AND LOCAL PLANS

NPRM					Final rule				
(b) New elements to state and local plans					(b) Unified or combined state plans: Expanded content, biennial development and modification process, and submission coordination requirements				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	1	5	Biennial	80 VR agencies.	*Four-Year Plan Modification—Third Year*				
Technical staff	1	5			Management occupations staff.	2	14	3rd year	80 VR agencies.
					Social & community service manager.	2	14		
					Development of New 4-Year Plan—Fifth Year				

EXHIBIT 11—UPDATES TO COSTS OF STATE-LEVEL VR PROGRAMS—NEW ELEMENTS TO STATE AND LOCAL PLANS—Continued

NPRM					Final rule				
(b) New elements to state and local plans					(b) Unified or combined state plans: Expanded content, biennial development and modification process, and submission coordination requirements				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
					Management occupations staff.	2	10	5th year	80 VR agencies.
					Social & community service manager.	2	10		
					Four-Year Plan Modification—Seventh Year				
					Management occupations staff.	2	7	7th year	80 VR agencies.
					Social & community service manager.	2	7		
					Development of New 4-Year Plan—Ninth Year				
					Management occupations staff.	2	7	9th year	80 VR agencies.
					Social & community service manager.	2	7		

For the AEFLA program at the local level, the Departments made the following changes, which are presented in Exhibit 12. We have concluded that local AEFLA staff will not bear the burden for reviewing State and Local Plans because we have concluded that reviewing State and Local Plans is not the role of local AEFLA staff. Therefore, we removed all cost inputs at the local level related to this provision.

EXHIBIT 12—UPDATES TO COSTS OF LOCAL-LEVEL AEFLA PROGRAMS—NEW ELEMENTS TO STATE AND LOCAL PLANS

NPRM					Final rule				
(b) New elements to state and local plans					NA				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	40	40	Biennial	57 States	N/A				
Admin. staff	40	20							

Development and Updating of State Performance Accountability Measures

This section describes the updates to the NPRM's provision (c) ''Development and Updating of State Performance Accountability Measures.'' In this Final Rule, this cost provision has been included in provision (c) ''Performance Accountability System,'' and it captures the cost of: (1) Developing and updating the State performance accountability system; (2) implementing measures for data collection and reporting on the effectiveness in serving employers; (3) negotiating levels of performance; (4) running the statistical adjustment model to adjust levels of performance based on actual economic conditions and characteristics of participants; (5) providing technical assistance to States; (6) obtaining UI wage data; and (7) purchasing data analytic software and performing training. For these activities, the total 10-year cost (undiscounted) increased from $128.9 million in the NPRM to $320.0 million in this Final Rule.[30] [31] These revised cost estimates can be found under the subsections ''Development and Updating of State Performance Accountability Systems,'' ''Negotiation of Levels of Performance,'' ''Running Statistical Adjustment Model to Adjust Levels of Performance Based on Actual Economic Conditions and Characteristics of Participants,'' ''Technical Assistance to States,'' ''Obtain UI Wage Data,'' and ''Data Analytic Software and Training,'' in provision (c) of this Final Rule.

At the Federal level for the DOL programs, the Departments made the following changes, which are presented in Exhibit 13. We added a one-time Federal software and IT systems cost of $750,000 to upgrade the system to meet the requirements of WIOA. Following discussions with additional program experts, we accounted for the effort related to negotiating levels of performance and adjusting levels of performance based on economic

[30] A portion of the $320.0 million in costs accounts for software and IT systems costs from provision (e) ''Development of Strategies for Aligning Technology and Data Systems across One-Stop Partner Programs,'' provision (i) ''Performance Reports,'' and provision (j) ''Evaluation of State Programs.'' Thus, this value overstates how much costs have increased in this Final Rule relative to the NPRM.

[31] This variance in cost is mainly due to new burdens for negotiating levels of performance and running statistical adjustment models to adjust levels of performance and to new Federal-level burdens for the VR program to develop and update the State performance accountability systems.

conditions and the characteristics of participants. For negotiations, we added one manager and two management analysts. The biennial level of effort is estimated at 8 hours for both occupational categories. This additional level of effort is required for existing staff to compile new inputs that were not required under WIA. For adjusting levels of performance, we also added one manager and two computer systems analysts to account for running the regression model twice per year as required under WIOA rather than only once per year as required under WIA. The annual level of effort is estimated at 250 hours for managers and 1,000 hours for computer systems analysts. Furthermore, licensing fees of $10,000 will be incurred to purchase the statistical software used to perform the regression analysis and modeling.

EXHIBIT 13—UPDATES TO COSTS OF FEDERAL-LEVEL DOL PROGRAMS—DEVELOPMENT AND UPDATING OF STATE PERFORMANCE ACCOUNTABILITY MEASURES

NPRM					Final rule				
(c) Development and updating of state performance accountability measures					(c) Performance accountability system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
N/A					*Development and Updating of State Performance Accountability Systems*				
					Software/IT systems cost.	$750,000		One time	1
					Negotiation of Levels of Performance				
					Management occupations staff (GS–14, Step 5).	1	8	1st year, then every 2 years.	1
					Management analyst (GS–12, Step 5).	2	8		
					Running Statistical Adjustment Model to Adjust Levels of Performance Based on Actual Economic Conditions and Characteristics of Participants				
					Management occupations staff (GS–14, Step 5).	1	250	Annual	1
					Computer systems analysts (GS–13, Step 5).	2	1,000		
					Licensing fee	$10,000			

The Departments made the following updates to the Federal-level AEFLA program, which are presented in Exhibit 14. We accounted for the additional burden for Federal staff to negotiate levels of performance for the new performance indicators under WIOA. We added four managers and four social community service managers to perform these activities. The biennial level of effort for each occupational category is estimated at 24 hours for each staff member.

The Departments also revised the estimates from the NPRM to include an important source of Federal burden for running the new statistical adjustment model. In the NPRM, we originally estimated no hours for this activity. After further review and consideration, however, we concluded that Federal staff hours will be required annually to account for running the statistical adjustment model twice per year as required under WIOA. We added two managers at 40 hours each and two management analysts at 80 hours each to perform these tasks annually.

In addition, the Departments added a one-time Federal consultant cost of $1 million in the second year to provide technical assistance to States in the collection of data to comply with the new requirements relating to the WIOA performance accountability indicators.

EXHIBIT 14—UPDATES TO COSTS OF FEDERAL-LEVEL AEFLA PROGRAMS—DEVELOPMENT AND UPDATING OF STATE PERFORMANCE ACCOUNTABILITY MEASURES

NPRM					Final rule				
(c) Development and updating of state performance accountability measures					(c) Performance accountability system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
N/A					*Negotiation of Levels of Performance*				
					Management occupations staff (GS–14, Step 5).	4	24	1st year, then every 2 years.	1

EXHIBIT 14—UPDATES TO COSTS OF FEDERAL-LEVEL AEFLA PROGRAMS—DEVELOPMENT AND UPDATING OF STATE PERFORMANCE ACCOUNTABILITY MEASURES—Continued

NPRM					Final rule				
(c) Development and updating of state performance accountability measures					(c) Performance accountability system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
					Social & community service manager (GS–13, Step 5).	4	24		
					Running Statistical Adjustment Model to Adjust Levels of Performance Based on Actual Economic Conditions and Characteristics of Participants				
					Management occupations staff (GS–14, Step 5).	2	40	Annual	1
					Management analysts (GS–12, Step 5).	2	80		
					Technical Assistance to States				
					Consultant cost	$1,000,000		2nd year	1

Exhibit 15 presents the following changes made by the Departments to the Federal level for the VR program. After consulting with additional program experts, we accounted for and revised the level of effort needed to develop and update State performance accountability systems, negotiate levels of performance, and run the statistical adjustment model to adjust levels of performance based on actual economic conditions and characteristics of participants.

For developing and updating State performance accountability systems, the Departments added two data management specialists positions, one of which will be General Schedule (GS)-level 14 and the other GS-level 13. Both specialists will devote 768.63 hours in the first year of the rule to program the database and perform related software development tasks. For negotiations, we added four managers to reflect the analysis and review of State and Federal data during the negotiation process. The level of effort for the managers is estimated at 12 hours each biennially. For adjusting levels of performance, we added two managers and two database administrators to review the State and Federal data relative to the adjustments made to the levels of performance by the final run of the model. The level of effort for managers is estimated at 52 hours each annually, while the level of effort for database administrators is estimated at 156 hours each annually.

EXHIBIT 15—UPDATES TO COSTS OF FEDERAL-LEVEL VR PROGRAMS—DEVELOPMENT AND UPDATING OF STATE PERFORMANCE ACCOUNTABILITY MEASURES

NPRM					Final rule				
(c) Development and updating of state performance accountability measures					(c) Performance accountability system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
N/A					*Development and Updating of State Performance Accountability Systems*				
					Data Management Specialist (GS–14, Step 5).	1	768.63	One time	1.
					Data Management Specialist (GS–13, Step 5).	1	768.63	One time	1.
					Negotiation of Levels of Performance				
					Management occupations staff (GS–14, Step 5).	4	12	1st year, then every 2 years.	1.
					Running Statistical Adjustment Model to Adjust Levels of Performance Based on Actual Economic Conditions and Characteristics of Participants				
					Management occupations staff (GS–14, Step 5).	2	52	Annual	1.
					Database admin. (GS–13, Step 5).	2	156		

At the State level for the DOL programs, the Departments made the following updates, which are presented in Exhibit 16. We replaced the technical staff in our previous estimate with the more appropriate occupational category of computer systems analyst. Following discussions with program experts, we increased the level of effort for each administrative staff member from 32 to 72 hours, and we decided that costs related to the work performed by staff and the software and IT systems will be incurred only once rather than annually. In addition, we accounted for the effort related to negotiating levels of performance and adjusting levels of performance. For negotiations, we added one manager and two office and administrative support staff members. The estimated level of effort for each staff member in both occupational categories is 8 hours biennially. For adjusting levels of performance, we added one manager, two computer systems analysts, and two office and administrative support staff members. These staff members will gather and input various data points to the tool, which then will create statewide levels of performance for each WIOA performance indicator. The estimated annual level of effort for each manager, computer systems analyst, and office and administrative support staff member is 10 hours, 40 hours, and 20 hours, respectively.

EXHIBIT 16—UPDATES TO COSTS OF STATE-LEVEL DOL PROGRAMS—DEVELOPMENT AND UPDATING OF STATE PERFORMANCE ACCOUNTABILITY MEASURES

NPRM					Final rule				
(c) Development and updating of state performance accountability measures					(c) Performance accountability system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	1	32	Annual	56 States	*Development and Updating of State Performance Accountability Systems*				
Technical Staff.	3	80			Management occupations staff.	1	32	One time	57 SWAs.
Admin. staff ...	1	32			Computer systems analyst.	3	80		
Software/IT systems cost.	$100,000				Office & admin. support staff.	1	72		
Licensing fee	$50,000				Software/IT systems cost.	$100,000			
Consultant cost.	$75,000		One time		Licensing fee	$50,000		Annual.	
					Consultant cost	$75,000		One time.	
					Negotiation of Levels of Performance				
					Management occupations staff.	1	8	1st year, then every 2 years.	57 States.
					Office & admin. support staff.	2	8		
					Running Statistical Adjustment Model to Adjust Levels of Performance Based on Actual Economic Conditions and Characteristics of Participants				
					Management occupations staff.	1	10	Annual	57 States.
					Computer systems analysts.	2	40		
					Office & admin. support staff.	2	20		

The Departments made the following updates to the State-level AEFLA program, which are presented in Exhibit 17. For the costs related to developing and updating State performance accountability systems, we reduced the number of managers from five to four after determining that this number will reflect more accurately the staffing level needed across all States and outlying areas. Three of these staff members are categorized as social and community service managers, and we decreased the level of effort per staff member from 80 hours to 60 hours. We replaced the two technical staff in our previous estimate with the more appropriate occupational categories of database administrator and computer systems analyst. After consideration, we revised the calculation to exclude the five administrative staff members included in our previous estimate, because those occupational categories are generally not involved in these tasks. We eliminated a one-time consultant cost because we have concluded that consultants are typically not engaged in this task. We added an annual $350,000 software and IT systems cost for the State AEFLA data system. This annual $350,000 software and IT systems cost replaces one-time and annual State

software and IT systems costs that were previously attributed in the NPRM to provisions (i) ''Performance Reports'' and (j) ''Evaluation of State Programs.'' We have concluded that using annual State software and IT systems costs, rather than one-time software and IT systems costs, more accurately reflects the typical IT funding pattern of the State-level AEFLA program.

These changes also are based on the review of public comments, which resulted in a decision by the Departments that each exit by a participant during a program year will count as a separate response to be used for data collection and outcome reporting for the performance indicators. Prior to WIOA, the AEFLA program reported only unduplicated counts of participant outcomes. Making the change to an accountability structure that is based on reporting outcomes for each exit by a participant during a program year represents a significant operational change for the AEFLA program and will require a commensurate increase in the level of effort needed for implementation.

In addition, after discussions with program experts, the Departments accounted for additional burden for State staff to negotiate levels of performance for the new indicators under WIOA. We added one manager and one social community service manager to perform these activities. The biennial level of effort per staff member is estimated at 12 hours.

The Departments eliminated the State burden for running the statistical adjustment model, after consulting with statistical experts and determining that the model will only be run in the Federal office using aggregate State data.

EXHIBIT 17—UPDATES TO COSTS OF STATE-LEVEL AEFLA PROGRAMS—DEVELOPMENT AND UPDATING OF STATE PERFORMANCE ACCOUNTABILITY MEASURES

NPRM					Final rule				
(c) Development and updating of state performance accountability measures					(c) Performance accountability system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	5	80	One time	57 States	*Development and Updating of State Performance Accountability Systems*				
Technical staff.	2	80			Management occupations staff.	1	60	One time	57 States.
Admin. staff	5	80			Computer systems analyst.	1	80		
Consultant cost.	$25,000				Social & community service manager.	3	60		
					Database administrator	1	80		
					Software/IT systems cost.	$350,000		Annual.	
					Negotiation of Levels of Performance				
					Management occupations staff.	1	12	1st year, then every 2 years.	57 States.
					Social & community service manager.	1	12		

Note: Under the ''Development and Updating of State Performance Accountability Systems,'' the software and IT systems costs are a combination of inputs that were previously accounted for under provisions (i) ''Performance Reports'' and (j) ''Evaluation of State Programs.''

Exhibit 18 presents the updates to the State VR program. Based on public comment and further deliberation, the Departments significantly revised the estimated State-level burden associated with the development and updating of State VR agency performance accountability systems. First, to more appropriately account for the burden associated with the establishment of State performance goals and the State's evaluation and analysis of progress toward such goals, the Departments reduced the number of managers from six to four, three of which are categorized as social and community service managers, and replaced the four technical staff with two database administrators. However, this decrease in the number of staff is offset by the increase in the level of effort from 10 to 80 hours for managers and 10 to 100 hours for database administrators. We also included SRC members because they will need to play an advisory role in developing and updating levels of performance for the State VR agency. These costs will occur biennially.

Although the Departments estimate that each VR agency will require computer systems analysts for this one-time task, the related burden for changing a State's CMS has been broken down to reflect the variation among the 80 State VR agencies with respect to their size and whether they contract for outside assistance for developing and maintaining their CMS. For example, the level of effort for the 30 VR agencies that have a maintenance contract with a CMS vendor to make system updates will be less than the 50 agencies that are without vendor support. The burden hours shown in Exhibit 18 for tasks to be carried out by computer systems analysts has been adjusted to reflect only those hours we attribute to new requirements under sec. 116 in title I of WIOA. The remaining hours related to this new burden are accounted for in the RIA accompanying the final regulations for ''State Vocational Rehabilitation Services Program; State Supported Employment Services Program; Limitations on Use of Subminimum Wage,'' which is published in this edition of the **Federal Register**. We also

added the proportional cost of annual licensing fees of $6,930 for 48 VR agencies for vendor-supplied CMS software.

In addition, following discussions with program experts, the Departments accounted for and revised the level of effort needed to negotiate and adjust levels of performance and we are adding one manager, two social and community service managers, and two management analysts to accommodate the increased level of effort. Similarly, we used input from public comment and program experts to revise the level of effort needed to apply the statistical adjustment model and we are adding one manager, one computer systems analyst, one database administrator, and one management analyst to account for the effort needed to integrate the statistical adjustment model into the process of establishing expected levels of performance and negotiated levels of performance.

In response to public comment and discussions with program experts, the Departments have included the estimated burden for obtaining UI Wage Data by VR Agencies. The estimates reflect that VR agencies will incur new costs for obtaining UI wage data on participants that exit the program after receiving services and will incur different levels of annual data query costs related to obtaining UI wage data, depending on the size of the agency. State VR agencies operating under the increased data and performance requirements of WIOA will also need the capability to analyze their program performance data more effectively. In response to public comment, we added a new software and IT systems cost for data analytic software and related training. The amount of the software and IT systems costs varies, depending on the size of the agency.

EXHIBIT 18—UPDATES TO COSTS OF STATE-LEVEL VR PROGRAMS—DEVELOPMENT AND UPDATING OF STATE PERFORMANCE ACCOUNTABILITY MEASURES

NPRM					Final rule				
(c) Development and updating of state performance accountability measures					(c) Performance accountability system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	6	10	One time	80 VR agencies.	*Development and Updating of State Performance Accountability Systems*				
Technical staff.	4	10			Management occupations staff.	1	80	1st year, then every 2 years.	80 VR agencies.
					Social & community service manager.	3	80		
					Database administrator	2	100		
					SRC Board members ...	12	3		
					Computer systems analyst.	5	360	One time	5 (large) VR agencies w/o vendor support.
						2	360		45 (small & med.) VR agencies w/o vendor support.
						2	54		30 VR agencies w/CMS vendor contracts.
					Licensing fee	$6,930		Annual	48 VR agencies.
					Negotiation of Levels of Performance				
					Management occupations staff.	1	12	1st year, then every 2 years.	80 VR agencies.
					Social & community service manager.	2	12		
					Management analyst	2	12		

EXHIBIT 18—UPDATES TO COSTS OF STATE-LEVEL VR PROGRAMS—DEVELOPMENT AND UPDATING OF STATE PERFORMANCE ACCOUNTABILITY MEASURES—Continued

NPRM					Final rule				
(c) Development and updating of state performance accountability measures					(c) Performance accountability system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
					Running Statistical Adjustment Model to Adjust Levels of Performance Based on Actual Economic Conditions and Characteristics of Participants				
					Management occupations staff.	1	4	Annual	80 VR agencies.
					Computer systems analyst.	1	4		
					Database administrator	1	20		
					Management analyst	1	4		
					Obtain UI Wage Data				
					Data query cost	$20,000		Annual	10 (large) VR agencies.
						$8,000			42 (med.) VR agencies.
						$4,000			28 (small) VR agencies.
					Data Analytic Software and Training				
					Software/IT systems cost.	$25,000		One time	10 (large) VR agencies.
						$15,000			42 (med.) VR agencies.
						$10,000			28 (small) VR agencies.

At the local level for the DOL programs, the Departments made the following updates, which are presented in Exhibit 19. Based on discussions with program experts, we added one manager and two office and administrative support staff members to account for the effort needed to negotiate levels of performance biennially. The biennial level of effort per staff member for both occupational categories is estimated at 8 hours. We also added one manager, two computer systems analysts, and two office and administrative support staff members to account for the effort needed to run the statistical adjustment model annually. The estimated annual level of effort per staff member for the manager, computer systems analysts, and administrative staff members is 10 hours, 40 hours, and 20 hours, respectively.

EXHIBIT 19—UPDATES TO COSTS OF LOCAL-LEVEL DOL PROGRAMS—DEVELOPMENT AND UPDATING OF STATE PERFORMANCE ACCOUNTABILITY MEASURES

NPRM					Final rule				
(c) Development and updating of state performance accountability measures					(c) Performance accountability system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
N/A					*Negotiation of Levels of Performance*				
					Management occupations staff.	1	8	1st year then every 2 years.	580 Local WDBs.
					Office & admin. occupations staff.	2	8		
					Running Statistical Adjustment Model to Adjust Levels of Performance Based on Actual Economic Conditions and Characteristics of Participants				
					Management occupations staff.	1	10	Annual	580 Local WDBs.
					Computer systems analysts.	2	40		
					Office & admin. support staff.	2	20		

Exhibit 20 presents the updates to the local-level AEFLA program. The Departments considered the typical experience of local involvement and concluded that local staff will participate in statewide stakeholder meetings, convened by the State AEFLA office, to develop and update State performance accountability measures. We found that the level of effort for local AEFLA programs will be significantly less than previously expected because their role would be limited to those stakeholder meetings. Note that instead of presenting the costs at the State level as in the NPRM, we are presenting costs at the program, or local, level using the total number of local AEFLA programs reflected in actual program data submitted by States for the most recent reporting year.

EXHIBIT 20—UPDATES TO COSTS OF LOCAL-LEVEL AEFLA PROGRAMS—DEVELOPMENT AND UPDATING OF STATE PERFORMANCE ACCOUNTABILITY MEASURES

NPRM					Final rule				
(c) Development and updating of state performance accountability measures					(c) Performance accountability system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	40	80	One-time	57 States	*Development and Updating of State Performance Accountability Systems*				
Technical staff.	40	80			Management occupations staff.	1	4	One-time	2,396 local programs.
					Database administrator	1	4		

Identification and Dissemination of Best Practices

After further consideration, the Departments decided that the costs associated with provision (d) ''Identification and Dissemination of Best Practices'' in the NPRM are more appropriate in the DOL WIOA Final Rule because the requirements affect only State WDBs. This provision now can be found as provision (c) in the DOL WIOA Final Rule. Therefore, this provision and its costs that result from the inputs presented in Exhibit 21 ($2.9 million) are no longer included in the economic analysis for this Final Rule.

EXHIBIT 21—UPDATES TO COSTS OF LOCAL-LEVEL DOL STATE WDBS—IDENTIFICATION AND DISSEMINATION OF BEST PRACTICES

NPRM					Final rule				
(d) Identification and dissemination of best practices					Moved to DOL WIOA final rule				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	1	20	One-time	40 States	N/A. See DOL WIOA Final Rule				
Technical staff.	2	40							
Admin. staff	1	20							

Development of Strategies for Aligning Technology and Data Systems Across One-Stop Partner Programs To Enhance Service Delivery and Improve Efficiencies

This section describes the updates to the NPRM's provision (e) ''Development of Strategies for Aligning Technology and Data Systems across One-Stop Partner Programs to Enhance Service Delivery and Improve Efficiencies.'' In the Final Rule's subject-by-subject analysis, this cost provision is combined into provision (c) ''Performance Accountability System,'' and it captures the cost of aligning technology and data systems across one-stop partner programs. For this activity, the total 10-year cost (undiscounted) decreased from $356.6 million in the NPRM to $166.5 million in the Final Rule.[32] These revised cost estimates can be found under the subsection ''Development and Updating of State Performance Accountability Systems'' in provision (c) of the Final Rule.

Exhibit 22 presents the changes made by the Departments for the State Workforce Agencies (SWAs) State-level program. After further consideration, we removed the manager and technical staff members and replaced them with consultant and software and IT systems costs. We estimated that the 23 SWAs that are farther in the process of aligning their technology and data systems will incur $100,000 in first-year consultant costs for designing the new systems, $200,000 in first-year software and IT systems costs for purchasing hardware and implementing the new systems, and $100,000 in software and IT systems costs in the following 2 years for system maintenance. We estimate that the 34 SWAs that use legacy systems will require more effort to align their technology and data systems. These SWAs will incur $200,000 in first-year consultant and software and IT system costs; $100,000 and $200,000 in second-year consultant and software and IT system costs, respectively; and $100,000 in software and IT systems costs for maintenance in the third through fifth years.

EXHIBIT 22—UPDATES TO COSTS OF SWA—DEVELOPMENT OF STRATEGIES FOR ALIGNING TECHNOLOGY AND DATA SYSTEMS ACROSS ONE-STOP PARTNER PROGRAMS

NPRM					Final rule				
(e) Development of strategies for aligning technology and data systems across one-stop partner programs					(c) Performance accountability system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	1	80	One time	56 States	*Aligning Technology and Data Systems across One-stop Partner Programs*				
Technical staff.	2	120			Consultant cost (''Low-Effort'' SWAs).	$100,000		One time	23 SWAs.
					Software and IT systems cost (''Low-Effort'' SWAs).	$200,000		One time.	
					Software and IT systems cost (''Low-Effort'' SWAs).	$100,000		2nd & 3rd years.	
					Consultant cost (''High-Effort'' SWAs).	$200,000		One time	34 SWAs.
					Consultant cost (''High-Effort'' SWAs).	$100,000		2nd year.	
					Software and IT systems cost (''High-Effort'' SWAs).	$200,000		1st & 2nd years.	

[32] The variance in cost is due to changes to the assumptions used to estimate costs (*e.g.,* number of staff, occupational categories, level of effort, and frequency.) More specifically, this variance in cost is due to the reduction in annual software and IT systems cost for the State-level AEFLA program and the removal of the local-level AEFLA program costs. The Final Rule does not implement any policy changes over the NPRM that impact this cost.

EXHIBIT 22—UPDATES TO COSTS OF SWA—DEVELOPMENT OF STRATEGIES FOR ALIGNING TECHNOLOGY AND DATA SYSTEMS ACROSS ONE-STOP PARTNER PROGRAMS—Continued

NPRM					Final rule				
(e) Development of strategies for aligning technology and data systems across one-stop partner programs					(c) Performance accountability system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
					Software and IT systems cost (''High-Effort'' SWAs).	$100,000		3rd–5th years.	

For the AEFLA State-level program, the Departments made the following updates, which are shown in Exhibit 23. We removed the labor costs because these occupational categories are not generally involved in aligning technology and data systems. The annual software and IT systems cost decreased from $150,000 to $100,000 because we were initially accounting for some costs that are now accounted for in the costs for performance reports under provision (c) of the Final Rule. As a result of the opportunities created for greater program coordination under WIOA, we estimate that AEFLA State agencies will enhance their participation in the SLDS Grant Program, which supports the design, development, implementation, and expansion of P–20W (early learning through the workforce) longitudinal data systems.[33] The annual IT systems cost of $100,000 estimated in Exhibit 23 accounts for this work.

EXHIBIT 23—UPDATES TO COSTS OF STATE-LEVEL AEFLA PROGRAMS—DEVELOPMENT OF STRATEGIES FOR ALIGNING TECHNOLOGY AND DATA SYSTEMS ACROSS ONE-STOP PARTNER PROGRAMS

NPRM					Final rule				
(e) Development of strategies for aligning technology and data systems across one-stop partner programs					(c) Performance accountability system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	5	40	Annual	57 States	*Aligning Technology and Data Systems across One-stop Partner Programs*				
Technical staff.	2	120			Software/IT systems cost.	$100,000		Annual	57 States.
Admin. staff	5	40							
Software/IT systems cost.	$150,000								

The Departments made the following changes to the VR program cost burden at the State level, which are presented in Exhibit 24. After further consideration, we removed the managers as well as the counsel and technical staff members and replaced them with consultant and software and IT systems costs. We estimated that the 32 VR agencies that are further in the process of aligning their technology and data systems will incur $100,000 in first-year consultant costs for designing the new systems, $200,000 in first-year software and IT systems costs for purchasing hardware and implementing the new systems, and $100,000 in software and IT systems costs in each of the following 2 years for system maintenance. We estimate that the 48 VR agencies that use legacy systems will require more effort to align their technology and data systems. These VR agencies will incur $200,000 in first-year consultant and software and IT system costs; $100,000 and $200,000 in second-year consultant and software and IT system costs, respectively; and $100,000 in software and IT systems costs for maintenance in each year from the third through fifth years.

[33] For more information on the SLDS Grant Program, *see* the U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics' Web site: *https://nces.ed.gov/programs/slds/about_SLDS.asp.*

EXHIBIT 24—UPDATES TO COSTS OF STATE-LEVEL VR PROGRAMS—DEVELOPMENT OF STRATEGIES FOR ALIGNING TECHNOLOGY AND DATA SYSTEMS ACROSS ONE-STOP PARTNER PROGRAMS

NPRM					Final rule				
(e) Development of strategies for aligning technology and data systems across one-stop partner programs					(c) Performance accountability system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	1	8	Annual	80 VR agencies.	*Aligning Technology and Data Systems across One-Stop Partner Programs*				
Counsel staff.	1	4			Consultant cost (''Low-Effort'' VR agencies).	$100,000	One time	32 VR agencies.	
Technical staff.	1	16			Software and IT systems cost (''Low-Effort'' VR agencies).	$200,000	One time.		
					Software and IT systems cost (''Low-Effort'' VR agencies).	$100,000	2nd & 3rd years.		
					Consultant cost (''High-Effort'' VR agencies).	$200,000	One time	48 VR agencies.	
					Consultant cost (''High-Effort'' VR agencies).	$100,000	2nd year.		
					Software and IT systems cost (''High-Effort'' VR agencies).	$200,000	1st & 2nd years.		
					Software and IT systems cost (''High-Effort'' VR agencies).	$100,000	3rd–5th years.		

For the AEFLA program at the local level, the Departments made the following changes, which are shown in Exhibit 25. We have concluded that local AEFLA staff will not bear the burden for aligning technology and data systems because AEFLA data are collected and maintained at the State level in each State and outlying area. Therefore, we removed all cost inputs at the local level related to this provision.

EXHIBIT 25—UPDATES TO COSTS OF LOCAL-LEVEL AEFLA PROGRAMS—DEVELOPMENT OF STRATEGIES FOR ALIGNING TECHNOLOGY AND DATA SYSTEMS ACROSS ONE-STOP PARTNER PROGRAMS

NPRM					Final rule				
(e) Development of strategies for aligning technology and data systems across one-stop partner programs					N/A				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	40	40	Annual	57 States	N/A				
Technical staff.	40	120							

Unified or Combined State Plan

This section describes the updates to the NPRM's provision (f) ''Unified or Combined State Plans.'' In this Final Rule's subject-by-subject analysis, this cost provision has been included in provision (b) ''Unified or Combined State Plans: Expanded Content, Biennial Development and Modification Process, and Submission Coordination Requirements,'' and it captures the cost of (1) reviewing and developing new 4-year Unified or Combined State Plans to ensure they satisfy the new content requirements and (2) coordinating actions for developing new 4-year Unified or Combined State Plans among the core programs administered by the Departments. For these activities, the total 10-year cost (undiscounted) decreased from $17.2 million in the NPRM to $9.6 million in this Final Rule.[34] These revised cost estimates can be found under the subsections ''Expanded Content'' and ''Coordinating Submission of State Plans'' in provision (b) of this Final Rule.

At the State level for the DOL programs, the Departments made the

[34] This variance in cost is mainly due to the reduction in the number and types of workers expected to incur incremental cost for the local-level AEFLA program and a reduction in their level of effort.

following updates, which are presented in Exhibit 26: (1) We added a one-time cost to review and revise existing plans to ensure they include the new elements; (2) we concluded the costs will be incurred biennially rather than only in the second and sixth years of the analysis period; (3) we reduced the number of managers from two to one along with their level of effort; (4) we removed the lawyers; (5) we replaced the four technical staff members in our previous estimate with the more appropriate management analyst occupational category; and (6) we reduced the level of effort per analyst from 20 to 8 hours.

EXHIBIT 26—UPDATES TO COSTS OF LOCAL-LEVEL DOL STATE WDBS—UNIFIED OR COMBINED STATE PLAN

NPRM					Final rule				
(f) Unified or Combined State Plan					(b) Unified or Combined State Plans: Expanded Content, Biennial Development and Modification Process, and Submission Coordination Requirements				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	2	20	2nd & 6th years	56 States	*Expanded Content*				
Counsel staff	1	8			Management occupations staff.	4	20	One time	57 states.
Technical staff.	4	20			Lawyer	1	8		
Admin. staff	1	8			Social & community service manager.	2	20		
					Office & admin. support staff.	1	8		
					Coordinating Submission of State Plans				
					Management occupations staff.	1	8	1st year, then every 2 years.	57 states.
					Management analyst	2	8		
					Office & admin. support staff.	1	8		

The Departments made the following updates to the State-level AEFLA program, which are presented in Exhibit 27. After consulting with additional program experts, we added a one-time cost to review and revise existing plans to ensure that they include the new elements. We concluded that the costs for coordinating submissions will be incurred biennially rather than only once. We reduced the number of managers from five to one, which is a more accurate reflection of typical staffing in a State adult education office, and reduced the level of effort because we have concluded that the process of coordinating the submission of the State Plan does not require the level of effort we initially estimated. We decreased the lawyer's level of effort from 8 to 4 hours because we have concluded that the process of coordinating the submission the State Plan does not require the level of effort we initially estimated. We clarified that the work done by the two technical staff will be done by three social and community service managers because we have concluded that technical staff members are typically not involved in the process of coordinating the submission of the State Plan. We also decreased the number of administrative staff from five to one, which is a more accurate reflection of typical staffing in a State adult education office, and halved the level of effort for the staff member because we have concluded that the process of coordinating the submission of the State Plan does not cumulatively require more than 1 full day of work for the administrative staff member. Finally, we removed the $25,000 consultant cost because we have concluded that a consultant is not required for the submission of the State Plan.

EXHIBIT 27—UPDATES TO COSTS OF STATE-LEVEL AEFLA PROGRAMS—UNIFIED OR COMBINED STATE PLAN

NPRM					Final rule				
(f) Unified or Combined State Plan					(b) Unified or Combined State Plans: Expanded Content, Biennial Development and Modification Process, and Submission Coordination Requirements				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	5	24	One time	57 states	*Expanded Content*				
Counsel staff	1	8			Management occupations staff.	1	20	One time	57 States.

EXHIBIT 27—UPDATES TO COSTS OF STATE-LEVEL AEFLA PROGRAMS—UNIFIED OR COMBINED STATE PLAN—Continued

NPRM					Final rule				
(f) Unified or Combined State Plan					(b) Unified or Combined State Plans: Expanded Content, Biennial Development and Modification Process, and Submission Coordination Requirements				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Technical staff.	2	24			Lawyer	1	20		
Admin. staff	5	16			Social & community service manager.	3	20		
Consultant cost.	$25,000				*Coordinating Submission of State Plans*				
					Management occupations staff.	1	8	1st year, then every 2 years.	57 States.
					Lawyer	1	4		
					Social & community service.	3	8		
					Office & admin. support staff.	1	8		

Exhibit 28 presents the changes made by the Departments to the State level for the VR program. After further consideration, we added a one-time cost to review and revise existing plans to ensure they include the new elements. We concluded that these costs for coordinating submissions will be incurred biennially rather than annually and we doubled the level of effort per manager and social and community service manager. We replaced the technical staff in our previous estimate with the more appropriate occupational category of social and community service manager.

EXHIBIT 28—UPDATES TO COSTS OF STATE-LEVEL VR PROGRAMS—UNIFIED OR COMBINED STATE PLAN

NPRM					Final rule				
(f) Unified or Combined State Plan					(b) Unified or Combined State Plans: Expanded Content, Biennial Development and Modification Process, and Submission Coordination Requirements				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	2	7	Annual	80 VR agencies.	*Expanded Content*				
Technical staff.	2	7			Management occupations staff.	2	21	One time	80 VR agencies.
					Social & community service manager.	2	21		
					Coordinating Submission of State Plans				
					Management occupations staff.	2	14	1st year, then every 2 years.	80 VR agencies.
					Social & community service manager.	2	14		

The Departments made the following changes to the local-level AEFLA program, which are presented in Exhibit 29. We considered the typical experience of local involvement and concluded that local staff will participate in statewide stakeholder meetings, convened by the State AEFLA office, to examine State Plan elements in need of modification and to gather input for those revisions. Therefore, we reduced the number of managers and removed the lawyers, technical and administrative staff, and local stakeholders and replaced them with social and community service managers. Note that instead of presenting the costs at the State level as in the NPRM, we are presenting costs at the program level.

EXHIBIT 29—UPDATES TO COSTS OF LOCAL-LEVEL AEFLA PROGRAMS—UNIFIED OR COMBINED STATE PLAN

NPRM					Final rule				
(f) Unified or combined state plan					(c) Unified or combined state plans: Expanded content, biennial development and modification process, and submission coordination requirements				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	40	24	One time	57 States	*Coordinating Submission of State Plans*				
Counsel staff.	3	8			Management occupations staff.	1	4	1st year, then every 2 years.	2,396 local programs.
Technical staff.	40	24			Social & community service manager.	1	4		
Admin. staff	40	16							
Local stakeholder.	100	8							

Local Plan Revisions

After further consideration, the Departments decided that the costs associated with provision (g) ''Local Plan Revisions'' in the NPRM are more appropriate in the DOL WIOA Final Rule. The costs associated with this provision now can be found under provision (m) ''Local and Regional Plan Modification'' in the DOL WIOA Final Rule. Therefore, this provision and its costs that result from the inputs presented in Exhibit 30 ($22.6 million) are no longer included in this Final Rule economic analysis.

EXHIBIT 30—UPDATES TO COSTS OF LOCAL-LEVEL PROGRAMS—LOCAL PLAN REVISIONS

NPRM					Final rule				
(g) Local plan revisions					Moved to the DOL WIOA final rule				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Workforce Development Board Costs									
Manager	2	20	2nd & 6th years.	580 Local WDBs.	N/A. See DOL WIOA Final Rule				
Counsel staff.	1	8							
Technical staff.	4	20							
Admin. staff	1	8							
AEFLA Program Costs									
Manager	40	24	One time	57 States	N/A. See DOL WIOA Final Rule				
Technical staff.	40	24							
Admin. staff	40	16							
Local stakeholders.	100	8							

State Performance Accountability Measures

This section describes the updates to the NPRM's provision (h) ''State Performance Accountability Measures,'' which in this Final Rule's subject-by-subject analysis is included in provision (c) ''Performance Accountability System.'' This provision captures the cost of collecting data to report on any additional State performance accountability indicators established by a State pursuant to WIOA sec. 116(b)(2)(B). For this activity, the total 10-year cost (undiscounted) decreased from $11.7 million in the NPRM to $170,000 in the Final Rule.[35] These revised cost estimates can be found under the subsections ''Additional State Performance Accountability Indicators (Beyond Required Performance Indicators)'' in provision (c) of the Final Rule.

At the State level for the DOL programs, the Departments made the

[35] The variance in cost is mainly due to changes for State-level DOL programs including: a reduction in the level of effort per worker; costs incurred once rather than annually; and the removal of annual software and IT systems costs and licensing fees and one-time consultant costs.

following updates, which are presented in Exhibit 31. After discussions with additional program experts, we made the following updates: (1) We concluded that costs will be incurred only once rather than annually; (2) we halved the level of effort for managers; (3) we replaced the technical staff in our previous estimate with the more appropriate occupational category of computer systems analyst and halved their level of effort; (4) we increased the level of effort from 32 to 36 hours; and (5) we removed the software and IT systems cost, licensing fees, and consultant cost.

EXHIBIT 31—UPDATES TO COSTS OF STATE-LEVEL DOL PROGRAMS—STATE PERFORMANCE ACCOUNTABILITY MEASURES

NPRM					Final rule				
(h) State performance accountability measures					(c) Performance accountability measures				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	1	32	Annual	5 States	*Additional State Performance Accountability Indicators (Beyond Required Performance Indicators)*				
Technical staff.	3	80			Management occupations staff.	1	16	One time	5 States
Admin. staff	1	32			Computer systems analyst.	3	40		
Software/IT systems cost.	$100,000				Office & admin. support staff.	1	36		
Licensing fee.	$50,000								
Consultant cost.	$75,000		One time						

The Departments made the following updates at the State level for the AEFLA program, which are presented in Exhibit 32. We increased the hours for all State staff and reduced the number of management staff members from five to four after determining the number needed to reflect a staffing level that is more representative of the States and outlying areas. Three of these managers are categorized as social and community service managers. We replaced the two technical staff members in our previous estimate with the more appropriate occupational categories of database administrators and computer systems analysts. We revised the calculation to exclude the five administrative staff members included in our previous estimate, because those occupational categories generally would not be involved in the development of additional State performance accountability measures.

EXHIBIT 32—UPDATES TO COSTS OF STATE-LEVEL AEFLA PROGRAMS—STATE PERFORMANCE ACCOUNTABILITY MEASURES

NPRM					Final rule				
(h) State performance accountability measures					(c) Performance accountability measures				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	5	7	One time	5 States	*Additional State Performance Accountability Indicators (Beyond Required Performance Indicators)*				
Technical staff.	2	7			Management occupations staff.	1	8	One time	5 States.
Admin. staff	5	7			Computer systems analyst.	1	8		
					Social & community service manager.	3	8		
					Database administrator	1	8		

Exhibit 33 presents the changes made by Departments for the State-level VR program. After additional discussion with our program experts, we became aware that the estimated burden for obtaining UI wage data in the NPRM was not related to the additional State performance indicators. In this Final Rule, the burden will be for 80 State VR agencies to obtain UI wage data for the reporting on the primary indicators of performance, which is included in Exhibit 18. In addition, due to public comment and additional consultation with program experts, we reduced the number of VR agencies that will incur costs related to the additional State performance accountability indicators

from seven to five and decreased the level of effort from 9 to 8 hours for each occupational category. We removed the software and IT systems costs from the subsection on ''Additional State Performance Accountability Indicators (Beyond Required Performance Indicators)'' because upon further consideration, we concluded that this software cost applies only to data collection for the primary indicators of performance.

EXHIBIT 33—UPDATES TO COSTS OF STATE-LEVEL VR PROGRAMS—STATE PERFORMANCE ACCOUNTABILITY MEASURES

NPRM					Final rule				
(h) State performance accountability measures					(c) Performance accountability measures				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Obtain Quarterly State UI Wage Data					*Additional State Performance Accountability Indicators (Beyond Required Performance Indicators)*				
Manager	2	20	One time	7 VR agencies	Management occupations staff.	1	8	One time	5 VR agencies.
Counsel staff.	1	20			Computer systems analyst.	1	8		
Technical staff.	2	20			Social & community service manager.	3	8		
Obtain Additional Information for New Data Fields					Database administrator	1	8		
Technical staff.	60	9	Annual	7 VR agencies.					
Software/IT systems cost.	$5,000		One time.						

At the local level for the AEFLA program, the Departments made the following changes, which are presented in Exhibit 34. We considered the typical experience of local involvement and concluded that local staff will participate in statewide stakeholder meetings, convened by the State AEFLA office, to develop and update the additional State performance accountability measures. Therefore, we reduced the level of effort from 7 to 4 hours. Note that instead of presenting the costs at the State level as in the NPRM, we are presenting costs at the program, or local, level.

EXHIBIT 34—UPDATES TO COSTS OF LOCAL-LEVEL AEFLA PROGRAMS—STATE PERFORMANCE ACCOUNTABILITY MEASURES

NPRM					Final rule				
(h) State performance accountability measures					(c) Performance accountability system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	40	7	One time	5 States	*Additional State Performance Accountability Indicators (Beyond Required Performance Indicators)*				
Technical staff.	40	7			Management occupations staff.	1	4	One time	200 local programs.
					Database administrator	1	4		

Performance Reports

This section describes the updates to the NPRM's provision (i) ''Performance Reports.'' In the Final Rule, this cost provision has been included in provision (c) ''Performance Accountability System'' and it captures the costs of developing a performance template that reports outcomes via the new WIOA performance accountability metrics; developing, updating, and submitting ETP reports; and collecting, analyzing, and reporting performance data. For this activity, the total 10-year cost (undiscounted) increased from $121.9 million in the NPRM to $295.4 million in the Final Rule.[36] [37] These revised cost estimates can be found under the subsections ''Development and Updating State Performance Accountability Systems'' and ''Performance Reports'' in provision (c) of this Final Rule.

[36] A portion of the $295.4 million in costs accounts for software and IT systems costs from provision (e) ''Development of Strategies for Aligning Technology and One-Stop Partner Programs'' and provision (j) ''Evaluation of State Programs.'' Thus, this value overstates how much costs have increased in this Final Rule relative to the NPRM.

[37] This variance in cost is due to new annual and one-time software and IT systems costs for Federal AEFLA programs, new annual labor costs for the State-level DOL program, and new one-time and annual labor costs for the State-level VR program.

At the Federal level for the DOL programs, the Departments made the following updates, which are shown in Exhibit 35. After consultation with additional program experts, we added annual burden hours for one manager, one computer systems analyst, and one management analyst to implement and review the new ETP performance reporting template. We also added an estimated annual software and IT systems cost of $250,000 for ETP reporting.

EXHIBIT 35—UPDATES TO COSTS OF FEDERAL-LEVEL DOL PROGRAMS—PERFORMANCE REPORTS

NPRM					Final rule				
(i) Performance reports					(c) Performance accountability system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
N/A					*Performance Report*				
					Management occupations staff (GS–14, Step 5).	1	8	Annual	1
					Computer systems analysts (GS–13, Step 5).	1	5		
					Management analyst (GS–12, Step 5).	1	16		
					Software/IT systems cost.	$250,000			

The Departments made the following updates for the Federal-level AEFLA program, which are presented in Exhibit 36. We concluded that updating and maintaining the Federal data system for compliance with the new requirements of WIOA will be performed annually rather than once because Federal data system costs have been historically incurred annually. We reduced the number of Federal staff members and clarified that the work will be performed by one manager, one social and community service manager, and one database administrator. We reduced the level of effort per manager from 60 to 8 hours, because most of this work will be performed by the database administrator. The managers will direct and oversee the modernization process and the database administrator will manage the new system. Finally, we revised our estimate to add a one-time Federal cost of $5 million for IT systems development, modernization, and enhancement to build the data infrastructure and increase the capacity of the adult education data collection system at the Federal, State, and local levels to comply with the new performance reporting requirements under WIOA. An annual software and IT cost of $250,000 also has been included to maintain the data infrastructure in steady state.

EXHIBIT 36—UPDATES TO COSTS OF FEDERAL-LEVEL AEFLA PROGRAMS—PERFORMANCE REPORTS

NPRM					Final rule				
(i) Performance reports					(c) Performance accountability system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager (GS–13, Step 5).	1	60	One time	1	*Performance Report*				
Federal staff (GS–13, Step 5).	10	15			Management occupations staff (GS–14, Step 5).	1	8	Annual	1
					Social & community service manager (GS–13, Step 5).	1	16		
					Database administrator (GS–13, Step 5).	1	40		
					Software/IT systems cost.	$250,000			
					Software/IT systems cost.	$5,000,000		One time	1

The Departments made the following updates for the Federal-level VR program, which are presented in Exhibit 37. We added a one-time software and IT cost of $68,925 to support the VR program's ability to compile quarterly

data reported by VR agencies into the annual reports required under WIOA. The ED will be developing and submitting the annual reports based on quarterly data submitted by the VR agencies. This cost was not included in the NPRM because at the time the NPRM was published, the PIRL and RSA–911 had not been finalized. Since that time, ED has completed a more comprehensive analysis of the data structure required to meet the WIOA requirements and found that additional software is necessary to support the development of the annual reports for VR agencies by ED.

EXHIBIT 37—UPDATES TO COSTS OF FEDERAL-LEVEL VR PROGRAMS—PERFORMANCE REPORTS

NPRM					Final rule				
(i) Performance reports					(c) Performance accountability system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
N/A					*Performance Reports*				
					Software/IT systems cost.	$68,925		One-time	1

Exhibit 38 presents updates to the State-level DOL program. The Departments added one manager, one computer systems analyst, one management analyst, and one office and administrative support staff member to account for the annual effort related to ETP reporting.

EXHIBIT 38—UPDATES TO COSTS OF STATE-LEVEL DOL PROGRAMS—PERFORMANCE REPORTS

NPRM					Final rule				
(i) Performance reports					(c) Performance accountability system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
N/A					*Performance Reports*				
					Management occupations staff.	1	8	Annual	57 States.
					Computer systems analyst.	1	40		
					Management analyst	1	60		
					Office & admin. support staff.	4	20		

The Departments made the following changes for the AEFLA program at the State level, which are presented in Exhibit 39. We concluded that the effort from all relevant staff members will occur on an annual basis rather than once. We reduced the number of managers from five to four after determining that this number will reflect more accurately the staffing level needed across all States and outlying areas. Three of these staff members are categorized as social and community service managers. We replaced the two technical staff members in our previous estimate with the more appropriate occupational categories of database administrator and computer systems analyst. We also revised the calculation to exclude the five administrative staff members included in our previous estimate because those occupational categories are generally not involved with performance reports. In addition, we moved the State data system costs to the subsection under provision (c) on ''Development and Updating of State Performance Accountability Systems'' where more realistic costs will be captured that States will incur in establishing the capabilities to collect the data necessary to calculate the newly required performance measures (see Exhibit 17). We have concluded that the one-time cost estimate for the State-level software and IT systems cost needed to be aligned with actual funding patterns across all States and outlying areas and will occur annually. In addition, we eliminated the recurring licensing fee, since we accounted for such fees in the annual cost estimate for the State data system under the subsection ''Development and Updating of State Performance Accountability Systems.''

EXHIBIT 39—UPDATES TO COSTS OF STATE-LEVEL AEFLA PROGRAMS—PERFORMANCE REPORTS

NPRM					Final rule				
(i) Performance reports					(c) Performance accountability system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	5	40	One time	56 States	*Development and Updating of State Performance Accountability Systems*				
Technical staff.	2	40			Software/IT systems cost.	$350,000		Annual	57 States.
Admin. staff	5	40			*Performance Reports*				
					Management occupations staff.	1	40	Annual	57 States.
Software/IT cost.	$1,750,000			57 States	Computer systems analyst.	1	40		
Licensing fee.	$25,000		Annual		Social & community service manager.	3	40		
					Database administrator	1	40		

At the State level for the VR program, the Departments made the following changes, which are presented in Exhibit 40. We added one manager, one computer systems analyst, two social and community service managers, and one database administrator to address the State-level effort involved in reviewing and verifying the annual performance report that RSA will assemble from the quarterly RSA–911 data the States have previously reported.

In response to comments, the Departments have included the burden associated with the training of VR staff on the collection of new data and related data collection requirements. Based on information from the RSA–2 Cost Report, we use an average of 62 rehabilitation counselors per VR agency in calculating this burden and have added labor burden of 6 hours for one staff trainer and 3 hours for each of the 62 rehabilitation counselors to participate in the training.

Finally, Exhibit 40 includes the annual labor for 62 rehabilitation counselors per VR agency to collect the new data. The data collection related labor burden included in this analysis is limited to the hours the Departments have attributed to the requirements under sec. 116 of title I of WIOA implemented in these joint regulations. We estimate that approximately 36 percent of all new data elements required by WIOA are related to requirements under sec. 116 of title I of WIOA and have prorated the total additional data collection burden accordingly. For the first year of data collection, VR agencies will incur a greater data collection burden than in subsequent years. All VR participants who are still receiving services (*i.e.*, have not exited) by the start of PY 2016 (July 1, 2016) become WIOA participants and will be counted and tracked in accordance with the WIOA performance requirements set forth in sec. 116 of WIOA. Based on State-reported RSA data for FY 2015, we estimate that each VR agency will incur an additional 3,600 hours in labor burden to collect sec. 116 performance data for current and new participants in the first year of data collection, or 58 additional hours per VR counselor. However, for the second and subsequent years of data collection under these final regulations, we estimate that each VR agency will incur an additional 945 hours per year in labor burden to collect joint performance data, or 15 hours per year per counselor. The data collection burden associated with the implementation of amendments to the VR program under title IV of WIOA is included in the RIA section of the final regulations for the ''State Vocational Rehabilitation Services Program; State Supported Employment Services Program; Limitations on Use of Subminimum Wage'' also published in this edition of the **Federal Register**.

EXHIBIT 40—UPDATES TO THE FINAL RULE ANALYSIS COSTS OF STATE-LEVEL VR PROGRAMS—PERFORMANCE REPORTS

NPRM					Final rule				
(i) Performance reports					(c) Performance accountability system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
N/A					*Performance Reports—Review and Verify Annual Performance Reports*				
					Management occupations staff.	1	5	Annual	80 VR agencies.
					Computer systems analyst.	1	5		
					Social & community service manager.	2	10		

EXHIBIT 40—UPDATES TO THE FINAL RULE ANALYSIS COSTS OF STATE-LEVEL VR PROGRAMS—PERFORMANCE REPORTS—Continued

NPRM					Final rule				
(i) Performance reports					(c) Performance accountability system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
					Database administrator	1	25		
					Performance Reports—Training on New Data Collection				
					Staff trainer	1	6	One time	80 VR agencies.
					Rehabilitation counselor	62	3		
					Performance Reports –Data Collection				
					Rehabilitation counselor	62	58	First year	80 VR agencies.
					Rehabilitation counselor	62	15	Second and subsequent years.	80 VR agencies.

At the local level for the AEFLA program, the Departments made the following updates, which are presented in Exhibit 41. We considered the extent of actual local involvement in performance reporting and additional burden under WIOA. Instead of presenting the costs at the State level as in the NPRM, we are presenting annual costs at the program, or local, level. As a result, we reduced the number of managers and the hours per local manager and increased the number of entities to reflect local programs for this provision. In addition, we added one database administrator for data collection, analysis, and entry.

EXHIBIT 41—UPDATES TO COSTS OF LOCAL-LEVEL AEFLA PROGRAMS—PERFORMANCE REPORTS

NPRM					Final rule				
(i) Performance reports					(c) Performance accountability system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	40	40	One time	57 States	*Performance Reports*				
					Management occupations staff.	1	8	Annual	2,396 local programs.
					Social & community service manager.	1	8		
					Database administrator	1	8		

Evaluation of State Programs

This section describes the updates to the NPRM's provision (j) ''Evaluation of State Programs.'' In the Final Rule's subject-by-subject analysis, costs related to this provision can be found primarily in provision (d) ''State Evaluation Responsibilities.'' [38] The cost of this provision of the Final Rule reflects the cost for affected entities to conduct evaluations of title I activities over multiple years to provide various forms of data for Federal evaluations, and for SWAs and other State agencies to coordinate in designing and developing evaluations carried out under sec. 116(e) of WIOA. For this provision, the total 10-year cost (undiscounted) decreased from $737.9 million in the NPRM to $222.5 million in this Final Rule.[39] [40]

At the Federal level for the DOL programs, the Departments made the following updates, which are presented in Exhibit 42. We added two managers, one computer system analyst, and two management analysts to account for Federal effort related to SWA evaluation activities under sec. 116(e) of WIOA. We added these Federal staff costs to support all aspects of State evaluation

[38] A small portion of State-level software and IT systems costs for the AEFLA program was moved to provision (c) ''Performance Accountability System.''

[39] A portion of the $222.5 million in costs accounts for software and IT systems costs from provision (e) ''Development of Strategies for Aligning Technology and One-Stop Partner Programs'' and provision (i) ''Performance Reports.'' Thus, this value understates how much costs have decreased in this Final Rule relative to the NPRM.

[40] This variance in cost is due to the reduction in software and IT systems costs for State-level DOL programs and the removal of costs for local-level AEFLA programs.

activities, including technical assistance, monitoring, and dissemination.

EXHIBIT 42—UPDATES TO COSTS OF FEDERAL-LEVEL DOL PROGRAMS—EVALUATION OF STATE PROGRAMS

NPRM					Final rule				
(j) Evaluation of state programs					(d) State evaluation responsibilities				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
N/A					Management occupations staff (GS–14, Step 5).	2	25	Annual	1.
					Computer systems analysts (GS–13, Step 5).	1	3		
					Management analyst (GS–12, Step 5).	2	30		

Exhibit 43 presents the changes made by the Departments to reflect the cost of Federal AEFLA program staff in providing technical assistance and promoting State adult education agency participation in the coordination process, and possibly in the design and development of State evaluation activities under WIOA sec. 116(e). These Federal staff costs were added to support all aspects of State evaluation activities, including technical assistance, monitoring, and dissemination.

EXHIBIT 43—UPDATES TO COSTS OF FEDERAL-LEVEL AEFLA PROGRAMS—EVALUATION OF STATE PROGRAMS

NPRM					Final rule				
(j) Evaluation of state programs					(d) State evaluation responsibilities				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
N/A					Management occupations staff (GS–14, Step 5).	4	10	Annual	1.
					Computer systems analysts (GS–13, Step 5).	1	5		
					Management analyst (GS–12, Step 5).	2	30		

Exhibit 44 presents the changes made by the Departments to reflect the cost of Federal staff responsible for the VR program in providing technical assistance and promoting State VR agency participation and coordination in carrying out State evaluations under sec. 116(e) of WIOA, including possible involvement in the design and development of such evaluations. We added these Federal staff costs to support all aspects of State evaluation activities such as technical assistance, monitoring, and dissemination.

EXHIBIT 44—UPDATES TO COSTS OF FEDERAL-LEVEL VR PROGRAMS—EVALUATION OF STATE PROGRAMS

NPRM					Final rule				
(j) Evaluation of state programs					(d) State evaluation responsibilities				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
N/A					Management occupations staff (GS–14, Step 5).	2	5	Annual	1.
					Social & community service manager (GS–13, Step 5).	2	10		
					Management analyst (GS–12, Step 5).	2	15		

The Departments made the following updates to the State-level DOL programs, which are presented in Exhibit 45. After consultation with additional program experts, we made the following updates: (1) We replaced the manager in our previous estimate with the more appropriate occupational category of social and community service manager; (2) we replaced the two technical staff members in the previous estimate with the more appropriate occupational category of computer systems analyst and reduced the annual level of effort per staff member from 20 hours to 15 hours; (3) we added a management analyst with an annual level of effort of 10 hours; (4) we reduced the annual software and IT systems costs from $200,000 and $1 million for 20 ''low-effort'' States and 15 ''high-effort'' States, respectively, to $10,000 for all 57 SWAs; and (5) we added an annual consultant cost of $21,400. In the NPRM, we assumed that full cooperation would occur. Realistically, cooperation will be difficult to achieve because there is an overall lack of funding for evaluations; therefore, a reduced cost estimate is appropriate.

EXHIBIT 45—UPDATES TO COSTS OF STATE-LEVEL DOL PROGRAMS—EVALUATION OF STATE PROGRAMS

NPRM					Final rule				
(j) Evaluation of state programs					(d) State evaluation responsibilities				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	1	20	Annual	56 States	Computer systems analyst.	2	15	Annual	57 SWAs.
Technical staff.	2	20			Social & community service manager.	1	20		
Admin. staff	1	10			Management analyst	1	10		
Software/IT systems cost (''Low-Effort'' States).	$200,000			20 States	Office & admin. support staff.	1	10		
Software/IT systems cost (''High-Effort'' States).	$1,000,000			15 States	Software/IT systems cost.	$10,000			
					Consultant cost	$21,400			

At the State level for the AEFLA program, the Departments made the following changes, which are presented in Exhibit 46. We reduced the number of managers from five to two after determining that the number needed to reflect an average staffing level for this activity across all States and outlying areas. One of these managers is categorized as a social and community service manager. We replaced the two technical staff members in the previous estimate with the more appropriate occupational categories of computer systems analysts and management analysts. We also revised the calculation to exclude the five administrative staff members included in the previous estimate, because those occupational categories are generally not involved in the evaluation of State programs. We reduced the level of effort for the staff because we have concluded that this work does not require the level of effort we initially estimated. In addition, we eliminated the annual IT systems costs from this provision and accounted for them under subsection ''Development and Updating of State Performance Accountability Systems'' in provision (c) of this Final Rule because they were more appropriately placed there (see Exhibit 17).

EXHIBIT 46—UPDATES TO COSTS OF STATE-LEVEL AEFLA PROGRAMS—EVALUATION OF STATE PROGRAMS

NPRM					Final rule				
(j) Evaluation of state programs					(c) Performance accountability system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	5	120	Annual	57 States	*Development and Updating of State Performance Accountability Systems*				
Technical staff.	2	80			Software/IT systems cost.	$350,000		Annual	57 States.
Admin. staff	5	80			(d) State Evaluation Responsibilities				

EXHIBIT 46—UPDATES TO COSTS OF STATE-LEVEL AEFLA PROGRAMS—EVALUATION OF STATE PROGRAMS—Continued

NPRM					Final rule				
(j) Evaluation of state programs					(c) Performance accountability system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Software/IT systems cost.	$250,000				Management occupations staff.	1	10	Annual	57 SWAs.
					Computer systems analyst.	1	20		
					Social & community service manager.	1	10		
					Management analyst	1	20		

For the State VR program, the Departments replaced the technical staff member in the previous estimate with the more appropriate occupational category of computer systems analysts, as shown in Exhibit 47. In addition, we added one social community service manager and one management analyst.

EXHIBIT 47—UPDATES TO COSTS OF STATE-LEVEL VR PROGRAMS—EVALUATION OF STATE PROGRAMS

NPRM					Final rule				
(j) Evaluation of state programs					(d) State evaluation responsibilities				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	1	1	Annual	80 VR agencies.	Management occupations staff.	1	1	Annual	80 VR agencies.
Technical staff.	1	13			Computer systems analyst.	1	13		
Admin. staff	1	2			Social & community service managers.	1	5		
					Management analyst	1	5		
					Office and admin. support staff.	1	2		

The Departments made the following changes for the local-level AEFLA program, which are presented in Exhibit 48. We reconsidered the extent of local involvement in the evaluation of State programs. As a result, we concluded that hours for local staff should be eliminated for this provision.

EXHIBIT 48—UPDATES TO COSTS OF LOCAL-LEVEL AEFLA PROGRAMS—EVALUATION OF STATE PROGRAMS

NPRM					Final rule				
(j) Evaluation of state programs					(d) State evaluation responsibilities				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	40	120	Annual	57 States	N/A				
Technical staff.	40	80							
Admin. staff	40	80							

Effectiveness in Serving Employers

This section describes the updates to the rule's cost analysis. In the NPRM, the Departments did not include costs for States to implement effectiveness in serving employer approaches because, at the time of the NPRM's publication, policy decisions had not yet been made on whether these measures would be added to the rule. In the Final Rule, the Departments estimated the cost of the pilot program and the implementation

of the effectiveness in serving employers measures, which amounted to a total undiscounted 10-year cost of $6.4 million. See the cost subsection of section V.A.6 (Subject-by-Subject Analysis) below for details on this estimate.

6. Subject-by-Subject Cost-Benefit Analysis

The Departments' analysis below covers the expected costs of implementing the requirements of the Final Rule against the baseline cost under WIA, especially with regard to the following four expected costs: (a) ''Time to Review the New Rule;'' (b) ''Unified or Combined State Plans: Expanded Content, Biennial Development and Modification Process, and Submission Coordination Requirements;'' (c) ''Performance Accountability System;'' and (d) ''State Evaluation Responsibilities.''

The Departments emphasize that many of the requirements in this Final Rule are not new, for DOL programs, but rather were requirements under WIA. For example, States were required to ''prepare performance reports'' under title I of WIA and other authorizing statutes amended by WIA required States to submit performance information. Similarly, many of the requirements governing the one-stop system's infrastructure and operations under WIA are carried forward under WIOA. Therefore, these and other such costs are not considered ''new'' cost burdens under this Final Rule for some of the core programs, but rather are included in the ''baseline costs'' used as a comparison for the new burden costs. Accordingly, this regulatory analysis focuses on new costs that can be attributed exclusively to new requirements under title I of WIOA as addressed in this Final Rule.

a. Time To Review the New Rule

Upon publication of this Final Rule, the regulated community will need to learn about the new regulations and plan for compliance.

Affected entities will incur costs based primarily on the level of effort needed by relevant individuals to review and understand the Final Rule. This includes interpretation and learning how to navigate the Final Rule, but it does not include any steps beyond what is included in the baseline related to running a Federal program. Costs for developing a detailed action plan for compliance would not be included in the new cost burden because they will be accounted for in other burden estimate discussions. In addition, affected entities will incur relatively minor costs for the first steps needed to comply, such as notifying relevant personnel of the rule. The Departments estimate that learning about the new regulations and planning for compliance with those regulations will involve one-time labor costs for State-level DOL programs, State- and local-level AEFLA programs, and State VR agencies in the first analysis year. Local WDBs might incur limited costs under this provision, which are not accounted for below, because the costs for relevant individuals to comply are accounted for in the DOL, AEFLA, and VR agency estimates. DOL expects that the States will carefully review and interpret the Final Rule before passing along any necessary information to Local WDBs. Although Local WDBs are not required to review the Final Rule, those that do are likely to limit their review to a few paragraphs or sections most relevant to them.

i. Costs

At the State level for DOL's core programs (see Exhibit 5), the Departments estimated this labor cost by multiplying the estimated number of lawyers per State (4) by the time required to read and review the new rule (20 hours each), and then by the applicable hourly compensation rate ($65.48/hour). We performed the same calculation for the following occupational categories: Managers (1 manager at $65.39/hour for 20 hours) and social and community service managers (2 managers at $54.21/hour for 40 hours each). We summed the labor cost for all three categories ($10,883) and multiplied the result by the number of States (57) to estimate this one-time cost of $620,331. Over the 10-year period, this calculation yields an average annual cost of $62,033.

At the State level for the AEFLA program (see Exhibit 6), the Departments estimated this labor cost by multiplying the estimated number of lawyers per State (1) by the time required to read and review the new rule (20 hours) and then by the applicable hourly compensation rate ($65.48/hour). We performed the same calculation for the following occupational categories: Managers (1 manager at $65.39/hour for 40 hours) and social and community service managers (3 managers at $54.21/hour for 20 hours each). We summed the labor cost for all three categories ($7,178) and multiplied the result by the number of States (57). This calculation resulted in a one-time cost of $409,135, which is equal to an average annual cost of $40,913.

At the local level for the AEFLA program (see Exhibit 8), the Departments multiplied the estimated number of managers (1) by the time required to read and review the new rule (4 hours) and then by the hourly compensation rate ($63.63/hour). We repeated the calculation for social and community service managers (1 manager at $61.01/hour for 4 hours). We did not estimate lawyer hours for local-level AEFLA programs because our experience indicates that this occupational category is typically engaged only at the State level. We summed the labor cost for both occupational categories ($499) and multiplied the result by the number of local AEFLA providers (2,396). This calculation yields $1.2 million ($1,194,550) in labor costs in the first year of the rule. Over the 10-year period, this calculation yields an average annual cost of $119,455.

For State VR agencies (see Exhibit 7), the Departments multiplied the estimated number of managers per VR agency (1) by the time required to read and review the new rule (40 hours) and then by the hourly compensation rate ($65.39/hour). We performed the same calculation for the following occupational categories: Social and community service managers (3 managers at $54.21/hour for 40 hours each) and rehabilitation counselors (3 counselors at $36.66/hour for 40 hours each). We summed the labor cost for all three categories ($13,520) and multiplied the result by the number of VR agencies (80). This calculation resulted in a one-time labor cost of $1.1 million ($1,081,600), which is equal to an average annual cost of $108,160 over the 10-year period.

The sum of these costs yields a total one-time labor cost of $3.3 million ($3,305,615) for individuals from State-level DOL programs, State- and local-level AEFLA programs, and State VR agencies to read and review the new rule. Over the 10-year period of analysis, these one-time costs result in an average annual cost of $330,562.

b. Unified or Combined State Plans: Expanded Content, Biennial Development and Modification Process, and Submission Coordination Requirements

Under WIOA title I, each State must develop and submit a 4-year Unified State Plan that covers the following six core programs: The adult, dislocated worker, and youth formula programs (WIOA title I); the AEFLA program (WIOA title II); the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title

III; and the VR program as authorized by title I of the Rehabilitation Act of 1973, as amended by WIOA title IV. In the alternative, a State may submit a 4-year Combined State Plan that covers the six core programs plus one or more Combined State Plan partner programs identified in sec. 103(a)(2) of WIOA. Section 103(b)(1) of WIOA requires the portion of a Combined State Plan covering the core programs to meet the same requirements as for a Unified State Plan under sec. 102 of WIOA. States must have an approved Unified or Combined State Plan in place to receive funding for the six core programs.

Under WIA, States were required to submit separate State Plans that covered: (1) The title I and Wagner-Peyser Act Employment Service DOL programs; (2) the AEFLA program; and (3) the VR program. Because States, under WIOA, must integrate what had historically been stand-alone State Plans for the AEFLA and VR programs into a single Unified or Combined State Plan with the title I and Wagner-Peyser Act Employment Service DOL programs, the Departments anticipate added cost burdens for the States as they work together to strategize alignment of all six core programs into one Unified or Combined State Plan. Thus, the requirement that the Unified or Combined State Plan must include the ED-administered programs is new under WIOA.

Affected entities will incur costs to (1) review and develop new 4-year Unified or Combined State Plans to ensure that they satisfy the new content requirements; (2) perform the development and modification process for the plans; and (3) coordinate on developing a Unified or Combined State Plan that covers all six core programs.

i. Expanded Content

WIOA sec. 102(b) expands the content requirements for Unified and Combined State Plans, many of which are new to all core programs, such as strategic and operational planning elements. Strategic planning elements include State analyses of economic and workforce conditions, an assessment of workforce development activities (including education and training) in the State, 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 and Education, or other Secretaries (for Combined State Plan purposes), as appropriate. Most of the WIOA operational planning elements are functionally equivalent to State Plan content requirements that were required by DOL's core programs under WIA sec. 112(b). The WIOA strategic planning elements, however, constitute new or expanded State planning requirements for all core programs that were not required under WIA. For example, WIOA requires that more economic, education, and workforce data be included in the State Plan than was required under WIA.[41]

Therefore, this will be an expansion of a State planning requirement for DOL's core programs under WIOA and will be new requirements for the AEFLA and VR programs. Because DOL core programs were already analyzing and using economic, education, and workforce data under WIA, those programs will not experience as much in incremental costs associated with that particular requirement as will the AEFLA and VR programs. The Departments anticipate that any costs incurred by the States with regard to new or expanded State planning content requirements will constitute one-time incremental costs for all core programs to ensure that all Unified or Combined State Plans satisfy the new content requirements.

Costs

At the State level for the DOL core programs (see Exhibit 26), the Departments estimated this labor cost by multiplying the estimated number of lawyers per State (1) by the time required to review and develop new Unified or Combined State Plans to ensure that the new elements are included (8 hours) and by the hourly compensation rate ($65.48/hour). We performed the same calculation for the following occupational categories: Managers (4 managers at $65.39/hour for 20 hours each), social and community service managers (2 managers at $54.21/hour for 20 hours each), and office and administrative support staff members (1 staff member at $30.57/hour for 8 hours). We summed the labor cost for all four categories ($8,168) and multiplied the result by the number of States (57) to estimate this one-time cost of $465,576. Over the 10-year period, this calculation yields an average annual cost of $46,558.

At the State level for the AEFLA program (see Exhibit 27), the Departments estimated this cost by multiplying the estimated number of lawyers per State (1) by the time required to review and develop new Unified or Combined State Plans to ensure that the new elements are included (20 hours) and by the hourly compensation rate ($65.48/hour). We performed the same calculation for the following occupational categories: Managers (1 manager at $65.39/hour for 20 hours) and social and community service managers (3 managers at $54.21/hour for 20 hours each). We summed the labor cost for the three occupational categories ($5,870) and multiplied the result by the number of States (57). This calculation yields $334,590 in one-time labor costs, which is equal to an average annual cost of $33,459 over the 10-year period.

For State VR agencies (see Exhibit 28), the Departments estimated this cost by first multiplying the estimated number

[41] WIOA sec. 102(b)(1) requires:

(1) Strategic Planning Elements.—The Unified State Plan shall include strategic planning elements consisting of a strategic vision and goals for preparing an educated and skilled workforce, that include—

(A) an analysis of the economic conditions in the State, including—

(i) existing and emerging in-demand industry sectors and occupations; and

(ii) the employment needs of employers, including a description of the knowledge, skills, and abilities, needed in those industries and occupations;

(B) an analysis of the current workforce, employment and unemployment data, labor market trends, and the educational and skill levels of the workforce, including individuals with barriers to employment (including individuals with disabilities), in the State;

(C) an analysis of the workforce development activities (including education and training) in the State, including an analysis of the strengths and weaknesses of such activities, and the capacity of State entities to provide such activities, in order to address the identified education and skill needs of the workforce and the employment needs of employers in the State;

(D) a description of the State's strategic vision and goals for preparing an educated and skilled work-force (including preparing youth and individuals with barriers to employment) and for meeting the skilled work-force needs of employers, including goals relating to performance accountability measures based on primary indicators of performance described in section 116(b)(2)(A), in order to support economic growth and economic self-sufficiency, and of how the State will assess the overall effectiveness of the workforce investment system in the State; and

(E) taking into account analyses described in subparagraphs (A) through (C), a strategy for aligning the core programs, as well as other resources available to the State, to achieve the strategic vision and goals described in subparagraph (D).

WIA sec. 112(b)(4) required:

(b) Contents.—The State plan shall include—

* * * * *

(4) information describing—

(A) the needs of the State with regard to current and projected employment opportunities, by occupation;

(B) the job skills necessary to obtain such employment opportunities;

(C) the skills and economic development needs of the State; and

(D) the type and availability of workforce investment activities in the State;

of managers per VR agency (2) by the time required to review and develop new Unified or Combined State Plans to ensure that the new elements are included (21 hours each) and by the hourly compensation rate ($65.39/hour). We performed the same calculation for social and community service managers (2 managers at $54.21/hour for 21 hours each). Summing the labor cost for both categories ($5,023) and multiplying the result by the number of VR agencies (80) will result in a one-time cost of $401,856. Over the 10-year period, this calculation yields an average annual cost of $40,186.

The sum of these costs yields a total one-time cost of $1.2 million ($1,202,022) for individuals from the State-level DOL core programs, AEFLA program, and VR agencies to review and develop new Unified or Combined State Plans to ensure that the new elements are included. Over the 10-year period of analysis, these one-time costs result in an average annual cost of $120,202.

ii. New 4-Year State Plan Development and Modification

Under WIA sec. 112(d), modifications to a State Plan covering the DOL core programs were permitted but not required. For the AEFLA program under WIA sec. 224, States submitted 5-year State Plans, and revisions to plans were required only if those revisions were substantial. Upon the expiration of authorization of the program, and pending reauthorization, States submitted annual State Plan extensions containing revisions that were updated sections of their original 5-year plans. For the VR program under title IV of WIA (sec. 101 of the Rehabilitation Act), States were required to update specified State Plan attachments annually and modifications to State Plan assurances and other attachments were required only if substantive changes occurred. Under WIOA sec. 102(c)(3)(A), States must submit modifications to the Unified or Combined State Plan, at a minimum, at the end of the first 2-year period of any 4-year Plan. The modifications must reflect changes in labor market and economic conditions or other factors affecting implementation of the 4-year Unified or Combined State Plan. This mandatory biennial review and modification of a 4-year Unified or Combined State Plan is a new cost under WIOA for all six core programs.

State-level DOL programs, AEFLA programs, and VR agencies will incur biennial labor costs to review and modify the Unified or Combined State Plan at the end of the 2-year period after any 4-year plan. In the absence of significant economic or administration changes within a State, most costs resulting from the State Plan modification requirements will occur during the first and second submissions because the unified State planning process is new for all core programs and States will just be learning the new requirements of WIOA and how to coordinate among all core programs so that they become more aligned to promote an integrated workforce development system. The Departments anticipate that new Unified or Combined State Plans submitted in 2020 and thereafter, and the 2-year modifications of those Plans, will be easier for States to develop. For this reason, we present the costs by year of submission of either the development of a 4-year Unified or Combined State Plan or the 2-year modification of that Plan.

Costs

Four-Year Plan Modification—Third Year

At the State level for the DOL core programs (see Exhibit 9), the Departments estimated this labor cost by multiplying the estimated number of lawyers per State (1) by the time required to review and modify the 4-year Unified or Combined State Plan (4 hours) and by the hourly compensation rate ($65.48/hour). We performed the same calculation for the following occupational categories: Managers (1 manager at $65.39/hour for 12 hours), management analysts (2 analysts at $45.88/hour for 12 hours each), and office and administrative support staff members (1 staff member at $30.57/hour for 4 hours). We summed the labor cost for all four categories ($2,270) and multiplied the result by the number of States (57) to estimate this one-time cost of $129,390, occurring in 2018. Over the 10-year period, this calculation yields an average annual cost of $12,939.

At the State level for the AEFLA program (see Exhibit 10), the Departments estimated this cost by multiplying the estimated number of lawyers per State (1) by the time required to review and modify the 4-year Unified or Combined State Plan (10 hours) and by the hourly compensation rate ($65.48/hour). We performed the same calculation for the following occupational categories: Managers (1 manager at $65.39/hour for 10 hours) and social and community service managers (3 managers $54.21/hour for 10 hours each). We summed the labor cost for the three occupational categories ($2,935) and multiplied the result by the number of States (57). This results in a one-time cost of $167,295, occurring in 2018. Over the 10-year period of the analysis, this one-time cost results in an average annual cost of $16,730.

For State VR agencies (see Exhibit 11), the Departments estimated this cost by first multiplying the estimated number of managers per VR agency (2) by the time required to review and modify the 4-year Unified or Combined State Plan (14 hours each) and by the hourly compensation rate ($65.39/hour). We performed the same calculation for social and community service managers (2 managers at $54.21/hour for 14 hours each). Summing the labor cost for both categories ($3,349) and multiplying the result by the number of VR agencies (80), we estimate this one-time cost at $267,904, occurring in 2018. This calculation yields an average annual cost of $26,790 over the 10-year period.

The sum of these costs yields a total one-time cost of $564,589, occurring in 2018, for individuals from the State-level DOL core programs, AEFLA program, and VR agencies to review and modify the 4-year Unified or Combined State Plan. Over the 10-year period of analysis, these one-time costs result in an average annual cost of $56,459.

Development of 4-Year State Plan—Fifth Year

At the State level for the DOL core programs (see Exhibit 9), the Departments estimated this labor cost by multiplying the estimated number of lawyers per State (1) by the time required to review and develop a new 4-year Unified or Combined State Plan (4 hours) and by the hourly compensation rate ($65.48/hour). We performed the same calculation for the following occupational categories: Managers (1 manager at $65.39/hour for 12 hours), management analysts (2 analysts at $45.88/hour for 12 hours each), and office and administrative support staff members (1 staff member at $30.57/hour for 4 hours). We summed the labor cost for all four categories ($2,270) and multiplied the result by the number of States (57) to estimate this one-time cost of $129,390, occurring in 2020. This one-time cost results in an average annual cost of $12,939 over the 10-year period.

At the State level for the AEFLA program (see Exhibit 10), the Departments estimated this cost by multiplying the estimated number of lawyers per State (1) by the time required to review and develop a new 4-year Unified or Combined State Plan (15 hours) and by the hourly compensation rate ($65.48/hour). We performed the same calculation for the following occupational categories:

Managers (1 manager at $65.39/hour for 15 hours) and social and community service managers (3 managers at $54.21/hour for 15 hours each). We summed the labor cost for the three occupational categories ($4,403) and multiplied the result by the number of States (57). This will result in a one-time cost of $250,943, occurring in 2020. Over the 10-year period, this calculation yields an average annual cost of $25,094.

For State VR agencies (see Exhibit 11), the Departments estimated this cost by first multiplying the estimated number of managers per VR agency (2) by the time required to review and develop a new 4-year Unified or Combined State Plan (10 hours each) and by the hourly compensation rate ($65.39/hour). We performed the same calculation for social and community service managers (2 managers at $54.21/hour for 10 hours each). We summed the labor cost for both categories ($2,392) and multiplied the result by the number of VR agencies (80). This calculation yields $191,360 in one-time labor costs, occurring in 2020. This one-time cost results in an average annual cost of $19,136 over the 10-year period.

The sum of these costs yields a total one-time cost of $571,693, occurring in 2020, for individuals from the State-level DOL core programs, AEFLA program, and VR agencies to review and develop a new 4-year Unified or Combined State Plan. Over the 10-year period of analysis, the sum of these one-time costs results in an average annual cost of $57,169.

Four-Year State Plan Modification—Seventh Year

At the State level for the DOL core programs (see Exhibit 9), the Departments estimated this labor cost by multiplying the estimated number of lawyers per State (1) by the time required to review and modify the 4-year Unified or Combined State Plan (4 hours) and by the hourly compensation rate ($65.48/hour). We performed the same calculation for the following occupational categories: Managers (1 manager at $65.39/hour for 8 hours), management analysts (2 analysts at $45.88/hour for 8 hours each), and office and administrative support staff members (1 staff member at $30.57/hour for 4 hours). We summed the labor cost for all four categories ($1,641) and multiplied the result by the number of States (57) to estimate this cost of $93,560, occurring in 2022. This is equal to an average annual cost of $9,356.

At the State level for the AEFLA program (see Exhibit 10), the Departments estimated this cost by multiplying the estimated number of lawyers per State (1) by the time required to review and modify the 4-year Unified or Combined State Plan (5 hours) and by the hourly compensation rate ($65.48/hour). We performed the same calculation for the following occupational categories: Managers (1 manager at $65.39/hour for 5 hours) and social and community service managers (3 managers at $54.21/hour for 5 hours each). We summed the labor cost for the three occupational categories ($1,468) and multiplied the result by the number of States (57). This results in a one-time cost of $83,648, occurring in 2022. This is equal to an average annual cost of $8,365.

For State VR agencies (see Exhibit 11), the Departments estimated this cost by first multiplying the estimated number of managers per VR agency (2) by the time required to review and modify the 4-year Unified or Combined State Plan (7 hours) and by the hourly compensation rate ($65.39/hour). We performed the same calculation for social and community service managers (2 managers at $54.21/hour for 7 hours each). Summing the labor cost for both categories ($1,674) and multiplying the result by the number of VR agencies (80), we estimate this one-time cost of $133,952, occurring in 2022. This is equal to an average annual cost of $13,395.

The sum of these costs for the modification process occurring for new 4-year Unified or Combined State Plans yields a total cost of $311,159, occurring in 2022, for individuals from the State-level DOL core programs, AEFLA program, and VR agencies. Over the 10-year period of analysis, this results in an average annual cost of $31,116.

Development of 4-Year State Plan—Ninth Year

At the State level for the DOL core programs (see Exhibit 9), the Departments estimated this labor cost by multiplying the estimated number of lawyers per State (1) by the time required to review and develop a new 4-year Unified or Combined State Plan (4 hours) and by the hourly compensation rate ($65.48/hour). We performed the same calculation for the following occupational categories: Managers (1 manager at $65.39/hour for 10 hours), management analysts (2 analysts at $45.88/hour for 10 hours each), and office and administrative support staff members (1 staff member at $30.57/hour for 4 hours). We summed the labor cost for all four categories ($1,956) and multiplied the result by the number of States (57) to estimate this one-time cost of $111,475, occurring in 2024. This one-time cost results in an average annual cost of $11,147 over the 10-year period.

At the State level for the AEFLA program (see Exhibit 10), the Departments estimated this cost by multiplying the estimated number of lawyers per State (1) by the time required to review and develop a new 4-year Unified or Combined State Plan (10 hours) and by the hourly compensation rate ($65.48/hour). We performed the same calculation for the following occupational categories: Managers (1 manager at $65.39/hour for 10 hours) and social and community service managers (3 managers at $54.21/hour for 10 hours each). We summed the labor cost for the three occupational categories ($2,935) and multiplied the result by the number of States (57). This will result in a one-time cost of $167,295, occurring in 2024. Over the 10-year period, this calculation yields an average annual cost of $16,730.

For State VR agencies (see Exhibit 11), the Departments estimated this cost by first multiplying the estimated number of managers per VR agency (2) by the time required to review and develop a new 4-year Unified or Combined State Plan (7 hours each) and by the hourly compensation rate ($65.39/hour). We performed the same calculation for social and community service managers (2 managers at $54.21/hour for 7 hours each). We summed the labor cost for both categories ($1,674) and multiplied the result by the number of VR agencies (80). This calculation yields $133,952 in one-time labor costs, occurring in 2024. This one-time cost results in an average annual cost of $13,395 over the 10-year period.

The sum of these costs yields a total one-time cost of $412,722, occurring in 2024, for individuals from the State-level DOL core programs, AEFLA program, and VR agencies to review and develop a new 4-year Unified or Combined State Plan. Over the 10-year period of analysis, the sum of these one-time costs results in an average annual cost of $41,272.

In total, the cost for the biennial development and modification process over the 10-year period is $1.9 million ($1,860,163). This estimated total 10-year cost results in an average annual cost of $186,016.

iii. Coordinating Submissions

Affected entities will incur costs associated with coordinating actions among the core programs administered by DOL and ED because, as explained above, under WIA, only the DOL core programs were covered by a single State Plan; the AEFLA and VR programs each

had stand-alone State Plans under WIA. For State WDBs, the Departments estimate that costs will be associated with State planning attributed to the extra effort to coordinate and develop a plan that covers all six core programs, which is a new requirement under WIOA.

The Departments estimate that the AEFLA and VR programs will incur one-time costs associated with coordinating and participating in statewide stakeholder meetings and other activities to coordinate, develop, and review their first-time State Plan submissions. We anticipate that the AEFLA and VR programs will incur a larger cost than the DOL core programs because, under WIA, neither the AEFLA nor VR program were required to coordinate with other partner programs in developing a State Plan. We also anticipate that the DOL core programs will experience an incremental increase in their coordination costs because this will be the first time that DOL core programs must coordinate with the AEFLA and VR programs for State planning purposes. Although the DOL core programs have had to coordinate with each other under WIA, because new relationships will need to be formed with the AEFLA and VR partners, their costs will increase.

In addition, in some States, different agencies that previously have not worked together will have to build infrastructure to form partnerships. Working together might take the form of ''shaking hands'' and following a ''model agreement'' involving State councils.

Compliance with this provision will increase biennial labor costs—in connection with the development of a 4-year Unified or Combined State Plan or the 2-year modifications of each of those plans—for State-level DOL core programs, State- and local-level AEFLA programs, and State-level VR agencies.

Costs

At the State level for the DOL core programs (see Exhibit 26), the Departments estimated this labor cost by multiplying the estimated number of managers per State (1) by the time required to coordinate on developing a Unified or Combined State Plan among all six core programs (8 hours) and by the hourly compensation rate ($65.39/hour). We performed the same calculation for the following occupational categories: Management analysts (2 analysts at $45.88/hour for 8 hours each) and office and administrative support staff members (1 staff member at $30.57/hour for 8 hours). We summed the labor cost for all three categories ($1,502) and multiplied the result by the number of States (57) to estimate this biennial cost of $85,600. Over the 10-year period, this calculation yields a total cost of $428,002, which is equal to an average annual cost of $42,800.

At the State level for the AEFLA program (see Exhibit 27), the Departments estimated this labor cost by multiplying the estimated number of lawyers per State (1) by the time required to coordinate on developing the Unified or Combined State Plan submission (4 hours) and by the hourly compensation rate ($65.48/hour). We performed the same calculation for the following occupational categories: Managers (1 manager at $65.39/hour for 8 hours), social and community service managers (3 managers at $54.21/hour for 8 hours each), and office and administrative support staff members (1 staff member at $30.57/hour for 8 hours). We summed the labor cost for all four categories ($2,331) and multiplied the result by the number of States (57). This calculation yields a biennial cost of $132,846. Over the 10-year period, this calculation results in a total cost of $664,232, which is equal to an average annual cost of $66,423.

At the local level for the AEFLA program (see Exhibit 29), the Departments estimated this cost by multiplying the estimated number of managers per local AEFLA provider (1) by the time required to coordinate on developing the Unified or Combined State Plan submission (4 hours) and by the hourly compensation rate ($63.63/hour). We repeated the calculation for social and community service managers (1 manager at $61.01/hour for 4 hours). We summed the labor cost for the two occupational categories ($499) and multiplied the result by the number of local AEFLA providers (2,396). The biennial cost at the local level for the AEFLA program is estimated to be $1.2 million ($1,194,550). Over the 10-year period, this calculation results in a total cost of $6.0 million ($5,972,749), which is equal to an average annual cost of $597,275.

For State VR agencies (see Exhibit 28), the Departments estimated this cost by first multiplying the estimated number of managers per VR agency (2) by the time required to coordinate and develop the Unified or Combined State Plan submission (14 hours each) and by the hourly compensation rate ($65.39/hour). We performed the same calculation for social and community service managers (2 managers at $54.21/hour for 14 hours each). Summing the labor cost for both categories ($3,349) and multiplying the result by the number of VR agencies (80) results in a biennial cost of $267,904 for State VR agencies. Over the 10-year period, this calculation yields a total cost of $1.3 million ($1,339,520), which is equal to an average annual cost of $133,952.

The sum of these costs yields a biennial cost of $1.7 million ($1,680,901). Over the 10-year period, this calculation results in a total cost of $8.4 million ($8,404,503), which is equal to an average annual cost of $840,450, for individuals from State-level DOL core programs, State- and local-level AEFLA programs, and State-level VR agencies to coordinate actions among all six core programs.

The sum of the costs for the Unified or Combined State Plans: Expanded Content, Biennial Development and Modification Process, and Submission Coordination requirements, which includes the costs to expand content requirements, develop and modify State Plans, and coordinate the submission of State Plans results in a 10-year total cost of $11.5 million ($11,466,688), which results in an average annual cost of $1.1 million ($1,146,669).

c. Performance Accountability System

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 six core programs (WIOA sec. 116(b)(3)(A)(ii)). With few exceptions, including the local accountability system under WIOA sec. 116(c), the performance accountability requirements apply across all six core programs.

Affected entities will incur costs to (1) develop and update their State performance accountability system; (2) implement measures for data collection and reporting on effectiveness of serving employers; (3) negotiate levels of performance; (4) run statistical adjustment model to adjust levels of performance based on actual economic conditions and characteristics of participants; (5) collect data to report on any additional State performance accountability indicators; (6) provide technical assistance to States; (7) develop a performance report template that reports outcomes via the new WIOA performance accountability metrics; develop, update, and submit ETP reports; and collect, analyze, and report performance data; (8) obtain UI wage data; and (9) purchase data analytic software and perform training.

i. Development and Updating of State Performance Accountability Systems

Under WIOA sec. 101(d)(8), States must help Governors develop 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. This WIOA provision specifies that such strategies must include design and implementation of common intake, data collection, case management information, and performance accountability measurement and reporting processes. The strategies also must incorporate local input to such design and implementation to improve coordination of services across one-stop partner programs.

Although this State WDB requirement is implemented in the DOL WIOA Final Rule, one-stop partner programs will have to contribute to the development of the data system alignment strategies required by WIOA. Moreover, the implementation of these data system alignment strategies developed by the State WDBs—the actual alignment of technology and data systems across one-stop partner programs—would impose costs on one-stop partners. For these reasons, the Departments consider the costs imposed on State WDBs and the potential future costs to one-stop partner programs by this WIOA requirement a cost of this Final Rule.

WIOA sec. 116(b)(2)(A)(i) establishes six primary indicators of performance for measuring the effectiveness of activities provided for under each of the core programs:

(1) Percentage of program participants who are in unsubsidized employment during the second quarter after exit from the program;

(2) Percentage of program participants who are in unsubsidized employment during the fourth quarter after exit from the program;

(3) Median earnings of program participants who are in unsubsidized employment during the second quarter after exit from the program;

(4) Percentage of program participants who obtain a recognized postsecondary credential, or a secondary school diploma or its recognized equivalent, during participation in or within 1 year after exit from the program;

(5) Percentage of program participants who, during a program year, are in an education or training program that leads to a recognized postsecondary credential or employment and who are achieving measurable skill gains toward such a credential or employment; and

(6) Indicator(s) of effectiveness in serving employers.[42]

Under WIOA sec. 116(b)(2)(A)(i), however, the fourth and fifth indicators are not applicable to the Wagner-Peyser Act Employment Service program because that program provides no education or training services, which are measured by those performance indicators. Additionally, for youth activities authorized under WIOA title I, subtitle B, WIOA specifies slightly modified versions of the first two primary indicators of performance.[43] Under WIA sec. 136, the performance indicators differed and applied only to activities under the adult, dislocated worker, and youth formula programs administered by DOL. Under WIA sec. 212, the AEFLA program was subject to indicators of performance that applied specifically to that program. The VR program was subject to standards and indicators of performance established under the Rehabilitation Act. Thus, the task of measuring program effectiveness through the calculation and updating of levels of performance as indicated by the specific performance indicator metrics established in WIOA is somewhat new for all six core programs.

The Departments assume that the potential implementation of the strategies for aligning technology and data systems across one-stop partner programs would involve consulting and software and IT systems for State-level DOL programs and VR agencies. There would be larger upfront consulting costs to design the system and software and IT systems costs to purchase hardware and implement the system. Subsequent software and IT systems costs would also be incurred for maintaining the systems. Some States are already working to better align technology and data systems where feasible and are at varying points in the alignment process. States that are farther in the process will require less effort for alignment than those using legacy systems. We estimate that 40 percent of State-level DOL programs (*i.e.,* SWAs) (23 SWAs) and VR agencies (32 agencies) will be ''low-effort'' SWAs and VR agencies, and 60 percent will be ''high-effort'' SWAs (34 SWAs) and VR agencies (48 agencies). These estimates are based on the Departments' experience with WIA programs and information received from SWAs, and represent costs for average SWAs and VR agencies within each effort classification. We understand that some SWAs and VR agencies will experience costs far exceeding those we account for in ''high-effort'' entities and far below those estimated for ''low-effort'' entities. In addition, the Departments anticipate that the State-level AEFLA programs will incur annual software and IT systems costs to enhance their participation in the SLDS Grant Program, which supports the design, development, implementation, and expansion of P–20W (early learning through the workforce) longitudinal data systems.

The affected entities will incur costs to develop and update their performance accountability systems, which involves establishing the capabilities to collect and regularly update the relevant performance data. State-level DOL core programs, State- and local-level AEFLA programs, and Federal- and State-level VR agencies will incur labor costs related to complying with this provision's requirements in the first year of the Final Rule. Furthermore, compliance will result in a one-time non-labor cost for software and IT systems for the Federal DOL program. For State-level DOL core programs, compliance will result in one-time non-labor costs for software and IT systems and consultants and annual non-labor costs for licensing fees. In addition, compliance will result in annual software and IT systems costs for the AEFLA program at the State level.

Costs

Aligning Technology and Data Systems Across One-Stop Partner Programs

For the future costs associated with implementing strategies for aligning technology and data systems across one-stop partner programs (see Exhibit 22), the Departments estimated costs for ''low-'' and ''high-effort'' SWAs for DOL core programs. We estimated the consultant cost for ''low-effort'' SWAs by multiplying the one-time consultant cost ($100,000) by the number of ''low-effort'' SWAs (23). This calculation yields a one-time cost of $2.3 million ($2,300,000) in the first year of the Final Rule, which is equal to an average annual cost of $230,000 over the 10-year period.

The Departments estimated the consultant cost for ''high-effort'' SWAs

[42] WIOA sec. 116(b)(2)(A)(iv) requires DOL and ED to develop one or more indicators of performance to measure the effectiveness of the core programs in serving employers.

[43] WIOA sec. 116(b)(2)(A)(ii) establishes the following youth performance indicators in place of the first and second indicators applicable to the other core programs: (1) 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; and (2) 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.

by multiplying the sum of the consultant cost for the first year of the rule ($200,000) and for the second year ($100,000) by the number of ''high-effort'' SWAs (34). This results in a 10-year total cost of $10.2 million ($10,200,000), which is equal to an average annual cost of $1.0 million ($1,020,000).

The Departments estimated the software and IT systems cost for ''low-effort'' SWAs by multiplying the sum of the cost for the first year of the rule ($200,000) and the cost for the second and third years ($100,000 per year) by the number of ''low-effort'' SWAs (23). This calculation yields a total 10-year cost of $9.2 million ($9,200,000), which is equal to an average annual cost of $920,000.

The Departments estimated the software and IT systems cost for ''high-effort'' SWAs by multiplying the sum of the cost for the first and second years of the rule ($200,000 per year) and the cost in for the third year through the fifth year ($100,000 per year) by the number of ''high-effort'' SWAs (34). This calculation results in an average annual cost of $2.4 million ($2,380,000), which is equal to a total cost of $23.8 million ($23,800,000) over the 10-year period.

For the State-level AEFLA program (see Exhibit 23), the Departments estimated the software and IT systems cost for States to enhance their participation in the SLDS Grant Program by multiplying the annual software and IT cost ($100,000) by the number of States (57). This calculation results in a total 10-year cost of $57.0 million ($57,000,000), which is equal to an average annual cost of $5.7 million ($5,700,000).

The Departments estimated implementation and future alignment costs for ''low-'' and ''high-effort'' VR agencies (see Exhibit 24). We estimated the consultant cost for ''low-effort'' VR agencies by multiplying the one-time consultant cost ($100,000) by the number of ''low-effort'' VR agencies (32). This calculation yields a one-time cost of $3.2 million ($3,200,000) in the first year of the rule, which is equal to an average annual cost of $320,000 over the 10-year period.

The Departments estimated the consultant cost for ''high-effort'' VR agencies by multiplying the sum of the consultant cost for the first year of the rule ($200,000) and the second year ($100,000) by the number of ''high-effort'' VR agencies (48). This results in a total 10-year cost of $14.4 million ($14,400,000), which is equal to an average annual cost of $1.4 million ($1,440,000) over the 10-year period.

The Departments estimated the software and IT systems cost for ''low-effort'' VR agencies by multiplying the sum of the cost for the first year of the rule ($200,000) and the cost for the second and third years ($100,000 per year) by the number of ''low-effort'' VR agencies (32). This calculation yields a total 10-year cost of $12.8 million ($12,800,000), which is equal to an average annual cost of $1.3 million ($1,280,000).

The Departments estimated the software and IT systems cost for ''high-effort'' VR agencies by multiplying the sum of the cost for the first and second years of the rule ($200,000 per year) and the cost for the third year through the fifth year ($100,000 per year) by the number of ''high-effort'' VR agencies (48). This calculation results in a total 10-year cost of $33.6 million ($33,600,000), which is equal to an average annual cost of $3.4 million ($3,360,000).

The sum of these potential costs for aligning technologies and data systems across one-stop partner programs yields a total cost of $166.5 million ($166,500,000) in non-labor costs from the SWAs, the State-level AEFLA program, and VR agencies. Over the 10-year analysis, these costs result in an average annual cost of $16.7 million ($16,650,000).

Development and Updating of State Performance Accountability Systems

For the costs related to developing and updating State performance accountability systems (see Exhibit 13), the Departments estimated the one-time Federal software and IT systems cost for DOL to be $750,000 in the first year of the Final Rule. This is equivalent to an average annual cost of $75,000.

At the State level for DOL core programs (*i.e.,* SWAs) (see Exhibit 16), the Departments estimated this labor cost by first multiplying the estimated number of managers per SWA (1) by the time required to develop and update the performance accountability system (32 hours) and by the hourly compensation rate ($65.39/hour). We performed the same calculation for computer systems analysts (3 analysts at $56.17/hour for 80 hours each) and office and administrative support staff members (1 staff member at $30.57/hour for 72 hours). We summed the labor cost for all three categories ($17,774) and multiplied the result by the number of SWAs (57) to estimate a one-time cost of $1.0 million ($1,013,136). Over the 10-year period, this calculation yields an average annual cost of $101,314.

The Departments estimated the software and IT systems cost for SWAs by multiplying the software and IT systems cost per SWA ($100,000) by the number of SWAs (57). This calculation yields a one-time cost of $5.7 million ($5,700,000) in the first year of the rule, which results in an average annual cost of $570,000 over the 10-year period.

The Departments estimated the licensing fees for SWAs by multiplying the annual licensing fee per SWA ($50,000) by the number of SWAs (57). This calculation results in an annual cost of $2.9 million ($2,850,000), which is equal to a 10-year total cost of $28.5 million.

The Departments estimated the consultant cost for SWAs by multiplying the consultant cost per SWA ($75,000) by the number of SWAs (57). This calculation yields a one-time cost of $4.3 million ($4,275,000) in the first year of the rule, which is equal to an average annual cost of $427,500 over the 10-year period.

At the State level for the AEFLA program (see Exhibit 17), the Departments estimated this labor cost by first multiplying the estimated number of managers per State (1) by the time required to develop and update the performance accountability system (60 hours) and by the hourly compensation rate ($65.39/hour). We repeated the calculation for computer systems analysts (1 analyst at $56.17/hour for 80 hours), social and community service managers (3 managers at $54.21/hour for 60 hours each), and database administrators (1 administrator at $57.02/hour for 80 hours). We summed the labor cost for all four categories ($22,736) and multiplied the result by the number of States (57), resulting in an estimated one-time cost of $1.3 million ($1,295,975).[44] Over the 10-year period, this calculation yields an average annual cost of $129,597.

The Departments estimated the software and IT systems cost for the State-level AEFLA program by multiplying the software and IT systems cost per State ($350,000) by the number of States (57). This calculation yields an annual cost of $20.0 million ($19,950,000), which is equal to a total 10-year cost of $199.5 million ($199,500,000).

At the local level for the AEFLA program (see Exhibit 20), the Departments estimated this cost by first multiplying the estimated number of managers per local AEFLA provider (1) by the time required to develop and update the performance accountability system (4 hours) and by the hourly compensation rate ($63.63/hour). We

[44] This provision will be a joint effort between State and local AEFLA staff.

performed the same calculation for database administrators (1 administrator at $59.60/hour for 4 hours). We summed the labor cost for the two occupational categories ($493) and multiplied the result by the number of local AEFLA providers (2,396), resulting in a one-time cost of $1.2 million ($1,181,036). Over the 10-year period, this calculation yields an average annual cost of $118,104.

At the Federal level for the VR program (see Exhibit 15), the Departments estimated this labor cost by first multiplying the estimated number of GS–14 level, Step 5 data management specialists (1) by the time required to program the database and perform related software development tasks (768.63 hours) and by the hourly compensation rate ($76.48/hour). We performed the same calculation for GS–13 level, Step 5 data management specialists (1 specialist at $64.71/hour for 768.63 hours). We summed the labor cost for both categories to estimate this one-time cost of $108,523, which is equal to an average annualized cost of $10,852.

For State VR agencies (see Exhibit 18), the Departments estimated the cost associated with the establishment of State performance goals and the State's evaluation and analysis of progress toward such goals by first multiplying the estimated number of managers per VR agency (1) by the time required to develop and update the performance accountability system (80 hours) and by the hourly compensation rate ($65.39/hour). We repeated the calculation for the following occupational categories: Social and community service managers (3 managers at $54.21/hour for 80 hours each), database administrators (2 administrators at $57.02/hour for 100 hours each), and SRC Board members (12 members at $45.88/hour for 3 hours each). We summed the labor cost for the four categories ($31,297) and multiplied the result by the number of VR agencies (80) to estimate the biennial cost as $2.5 million ($2,503,782). In addition, to estimate the cost of updating and modifying VR agency case management systems we multiplied the estimated number of computer systems analysts per large VR agency that is updating case management and reporting systems using in-house staff (5) by the time required to make system changes (360) and by the hourly compensation rate ($56.17/hour). We multiplied the result ($101,106) by the number of large VR agencies updating systems using in-house staff (5) to estimate this one-time cost of $505,530. We then multiplied the estimated number of computer systems analysts per small or medium VR agency that is updating case management and reporting systems using in-house staff (2) by the time required to make system changes (360 hours) and by the hourly compensation rate ($56.17/hour). We multiplied the result ($40,442) by the number of small and medium VR agencies updating systems using in-house staff (45) to estimate this one-time cost of $1.8 million ($1,819,908). Finally, we multiplied the estimated number of computer systems analysts per VR agency that has a maintenance contract with a single CMS vendor (2) by the time required to make system changes (54 hours) and by the hourly compensation rate ($56.17/hour). We multiplied the result ($6,066) by the number of VR agencies with a maintenance contract (30) to estimate this one-time cost of $181,991. In total, the sum of these calculations yields a total 10-year cost of $15.0 million ($15,026,341), which results in an average annual cost of $1.5 million ($1,502,634) over the 10-year period.

The Departments estimated the annual licensing fees cost for State VR agencies by multiplying the annual licensing fee per VR agency ($6,930) by the number of VR agencies that receive vendor-supplied CMS software (48). This calculation results in an annual cost of $332,640, which is equal to a 10-year total cost of $3.3 million ($3,326,400).

The sum of these costs for the development and updating of State performance accountability systems yields a total 10-year cost of $260.7 million ($260,676,411) in costs from the SWAs, AEFLA program, and VR program. Over the 10-year analysis period, these costs result in an average annual cost of $26.1 million ($26,067,641).

The sum of the costs for individuals from the Federal- and State-level DOL core programs, State- and local-level AEFLA programs, and Federal- and State-level VR agencies to implement strategies for aligning technology and data systems across one-stop partners and to develop and update the performance accountability measures yields a total 10-year cost of $427.2 million ($427,176,411) and an average annual cost of $42.7 million ($42,717,641).

ii. Effectiveness in Serving Employers

WIOA sec. 116(b)(2)(A)(i)(VI) provides that the sixth primary indicator of performance will be an indicator of effectiveness in serving employers, which will be established pursuant to WIOA sec. 116(b)(2)(A)(iv). This indicator will measure program effectiveness in serving employers. Under WIOA sec. 116(b)(2)(A)(iv), the Departments must consult with stakeholders on proposed approaches to defining this indicator. The NPRM described three approaches to measure employer satisfaction. In the first approach, States would use wage records to identify whether a participant's identification matches the same FEIN in the second and fourth quarters. The second approach to define this performance indicator would use the number or percentage 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). The third approach would measure the repeated use rate for employers' use of the core programs. Both the market penetration and repeat business measure should come from already existing data sources. For market penetration, States will have to produce the total number of business customers, as well as the total number of businesses, which is readily available through BLS. For repeat businesses, these figures will also come from the business customer database and will be shown as a sum within the reporting period.

In this Final Rule, the Departments are initially implementing the performance indicator of effectiveness in serving employers in the form of a pilot program to test the rigor and feasibility of the three proposed approaches and to develop a standardized indicator. The performance indicator for effectiveness in serving employers will not be included in sanctions determinations until the standardized indicator is developed in accordance with rulemaking requirements. The WIOA Joint Performance ICR and the DOL Performance ICR include the data elements and specifications to calculate all three measures proposed in the NPRM (employee retention with the same employer, market penetration, and repeat business). States will be required to choose two of the three measures of effectiveness in serving employers for data collection and reporting for PYs 2016 and 2017 with results to be included in the WIOA annual reports due in October.

The Departments cannot anticipate which of the three approaches States will select, limiting our ability to estimate the cost of these activities. Due to this uncertainty, the Departments estimated the costs of the pilot program in 2016 and 2017 using the assumption that the realized cost will be the midpoint of the range of the total costs if on the low end, all States choose the

two lowest-cost approaches; if on the high end, all States choose the two highest-cost approaches. The Departments similarly estimated the cost of the implementation beginning in 2019 using the assumption that this cost will be the midpoint of the range of the total costs if on the low end, all States choose the lowest-cost approach; on the high end, all States choose the highest-cost approach. Below we discuss the estimated costs for each approach in the pilot program if all States were to choose that approach. We then use these values to estimate the cost of this provision as discussed.

Costs

Approach 1—Retention With the Same Employer

At the Federal level for the DOL core programs, the Departments estimated the one-time labor cost associated with the first approach by multiplying the estimated number of GS–14, Step 5 management analysts (1) by the time required for technical assistance development (8 hours) and by the hourly compensation rate ($76.48/hour). This calculation would result in a one-time labor cost of $612.

The Departments estimated DOL's annual labor costs for the first approach by multiplying the estimated number of GS–14, Step 5 management analysts (1) by the time required for technical assistance delivery (4 hours) and by the hourly compensation rate ($76.48/hour). This calculation would result in an annual labor cost of $306.

At the State level for the DOL core programs, the Departments estimated the first approach's one-time labor cost by multiplying the estimated number of management analysts (1) by the time required for programming and data collection (8 hours) and by the hourly compensation rate ($45.88/hour). We multiplied the labor cost ($367) by the number of States (57) to estimate this one-time cost of $20,921.

The Departments estimated the State-level DOL core programs' annual labor cost associated with the first approach in the pilot program by multiplying the estimated number of management analysts (1) by the sum of time required for data collection (4 hours) and for Federal reporting (4 hours) and by the hourly compensation rate ($45.88/hour). We multiplied the labor cost ($367) by the number of States (57) to estimate this annual cost of $20,291.

At the Federal level for the AEFLA program, the Departments estimated the one-time labor cost associated with the first approach in the pilot program by multiplying the estimated number of GS–14, Step 5 management analysts (1) by the time required for technical assistance development (8 hours) and by the hourly compensation rate ($76.48/hour). This calculation would result in a one-time labor cost of $612.

The Departments estimated AEFLA's annual labor cost for the first approach by multiplying the estimated number of GS–14, Step 5 management analysts (1) by the time required for technical assistance delivery (4 hours) and by the hourly compensation rate ($76.48/hour). This calculation would result in an annual labor cost of $306.

At the State level for the AEFLA program, the Departments estimated the first approach's one-time labor cost by multiplying the estimated number of management analysts (1) by the time required for programming and data collection (8 hours) and by the hourly compensation rate ($45.88/hour). We multiplied the labor cost ($367) by the number of States (57) to estimate this one-time cost of $20,921.

The Departments estimated the State-level AEFLA program's annual labor cost associated with the first approach by multiplying the estimated number of management analysts (1) by the sum of time required for data collection (4 hours) and for Federal reporting (4 hours) and by the hourly compensation rate ($45.88/hour). We multiplied the labor cost ($367) by the number of States (57) to estimate this annual cost of $20,921.

At the Federal level for the VR program, the Departments estimated the one-time labor cost associated with the first approach in the pilot program by multiplying the estimated number of GS–14, Step 5 management analysts (1) by the time required for technical assistance development (8 hours) and by the hourly compensation rate ($76.48/hour). This calculation would result in a one-time labor cost of $612.

The Departments estimated the annual labor costs for the VR program associated with the first approach by multiplying the estimated number of GS–14, Step 5 management analysts (1) by the time required for technical assistance delivery (4 hours) and by the hourly compensation rate ($76.48/hour). This calculation would result in an annual labor cost of $306.

At the State level for the VR program, the Departments estimated the first approach's one-time labor cost by multiplying the estimated number of management analysts (1) by the time required for programming and data collection (8 hours) and by the hourly compensation rate ($45.88/hour). We multiplied the labor cost ($367) by the number of VR agencies (80) to estimate this one-time cost of $29,363.

The Departments estimated the State-level AEFLA program's annual labor cost associated with the first approach by multiplying the estimated number of management analysts (1) by the sum of time required for data collection (4 hours) and for Federal reporting (4 hours) and by the hourly compensation rate ($45.88/hour). We multiplied the labor cost ($367) by the number of VR agencies (80) to estimate this annual cost of $29,363.

In total, Approach 1 would result in one-time costs of $73,041 for individuals from the Federal- and State-level DOL core programs, AEFLA program, and VR program. In addition, Approach 1 would result in $72,123 in annual costs for these entities.

Approach 2—Percentage of Employers Using Services Out of All Employers in the State

At the Federal level for the DOL core programs, the Departments estimated the one-time labor cost associated with the second approach in the pilot program by multiplying the estimated number of GS–14, Step 5 management analysts (1) by the time required for technical assistance development (8 hours) and by the hourly compensation rate ($76.48/hour). This calculation would result in a one-time labor cost of $612.

The Departments estimated DOL's annual labor cost associated with the second approach by multiplying the estimated number of GS–14, Step 5 management analysts (1) by the time required for technical assistance delivery (4 hours) and by the hourly compensation rate ($76.48/hour). This calculation would result in an annual labor cost of $306.

At the State level for the DOL core programs, the Departments estimated the second approach's annual labor cost by multiplying the estimated number of management analysts (1) by the sum of time required for data collection (4 hours), providing training and technical assistance to Local WDBs (3 hours), and Federal reporting (4 hours) and by the hourly compensation rate ($45.88/hour). We multiplied the labor cost ($505) by the number of States (57) to estimate this annual cost of $28,767.

For local-level DOL core programs, the Departments estimated the annual labor cost for the second approach by multiplying the estimated number of management analysts (1) by the time required for data collection (4 hours) and by the hourly compensation rate ($60.60/hour). We multiplied the labor cost ($242) by the number of Local

WDBs (580) to estimate this annual cost of $140,592.

At the Federal level for the AEFLA program, the Departments estimated the one-time labor cost associated with the second approach in the pilot program by multiplying the estimated number of GS–14, Step 5 management analysts (1) by the time required for technical assistance development (8 hours) and by the hourly compensation rate ($76.48/hour). This calculation would result in a one-time labor cost of $612.

The Departments estimated AEFLA's annual labor cost associated with the second approach by multiplying the estimated number of GS–14, Step 5 management analysts (1) by the time required for technical assistance delivery (4 hours) and by the hourly compensation rate ($76.48/hour). This calculation would result in an annual labor cost of $306.

At the State level for the AEFLA program, the Departments estimated the second approach's annual labor cost by multiplying the estimated number of management analysts (1) by the sum of time required for data collection (4 hours), providing training and technical assistance to local AEFLA providers (3 hours), and Federal reporting (4 hours) and by the hourly compensation rate ($45.88/hour). We multiplied the labor cost ($505) by the number of States (57) to estimate this annual cost of $28,767.

For the local-level AEFLA program, the Departments estimated the annual labor cost for the second approach by multiplying the estimated number of management analysts (1) by the time required for data collection (4 hours) and by the hourly compensation rate ($60.60/hour). We multiplied the labor cost ($242) by the number of local AEFLA providers (2,396) to estimate this annual cost of $580,790.

At the Federal level for the VR program, the Departments estimated the one-time labor cost associated with the second approach in the pilot program by multiplying the estimated number of GS–14, Step 5 management analysts (1) by the time required for technical assistance development (8 hours) and by the hourly compensation rate ($76.48/hour). This calculation would result in a one-time labor cost of $612.

The Departments estimated the VR program's annual labor cost associated with the second approach by multiplying the estimated number of GS–14, Step 5 management analysts (1) by the time required for technical assistance delivery (4 hours) and by the hourly compensation rate ($76.48/hour). This calculation would result in an annual labor cost of $306.

At the State level for the VR program, the Departments estimated the second approach's one-time labor cost by multiplying the estimated number of staff trainers (1) by the time required for training of rehabilitation counselors (4 hours) and by the hourly compensation rate ($54.21/hour). We repeated the calculation for the rehabilitation counselors (62 assistants at $36.66/hour for 1 hour each). We summed the labor cost for both categories ($2,490) and multiplied it by the number of VR agencies (80) to estimate this one-time cost of $199,181.

The Departments estimated the State-level VR program's annual labor cost associated with the second approach by multiplying the estimated number of management analysts (1) by the time required for Federal reporting (4 hours) and by the hourly compensation rate ($45.88/hour). In addition, we added the estimated number of rehabilitation counselors (62 assistants) by the time required for data collection (1 hour each) and by the hourly compensation rate ($36.66/hour). We summed the labor cost for both categories ($2,456) and multiplied it by the number of VR agencies (80) to estimate this annual cost of $196,515.

In total, Approach 2 would result in one-time costs of $201,016 for individuals from the Federal-level DOL core programs, AEFLA program, and VR program and the State-level VR program. In addition, Approach 2 would result in $976,349 in annual costs for the Federal-, State-, and local-level DOL core programs and AEFLA program and the State-level VR program.

Approach 3—Percentage of Repeat Employers Using Services Within the Previous 3 Years

At the Federal level for the DOL core programs, the Departments estimated the one-time labor cost associated with the third approach in the pilot program by multiplying the estimated number of GS–14, Step 5 management analysts (1) by the time required for technical assistance development (8 hours) and by the hourly compensation rate ($76.48/hour). This calculation would result in a one-time labor cost of $612.

The Departments estimated DOL's annual labor cost associated with the third approach by multiplying the estimated number of GS–14, Step 5 management analysts (1) by the time required for technical assistance delivery (4 hours) and by the hourly compensation rate ($76.48/hour). This calculation would result in an annual labor cost of $306.

At the State level for the DOL core programs, the Departments estimated the third approach's annual labor cost by multiplying the estimated number of management analysts (1) by the sum of time required for data collection (4 hours), providing training and technical assistance to Local WDBs (3 hours), and Federal reporting (4 hours) and by the hourly compensation rate ($45.88/hour). We multiplied the labor cost ($505) by the number of States (57) to estimate this annual cost of $28,767.

For the local-level DOL core programs, the Departments estimated the annual labor cost for third approach in the pilot program by multiplying the estimated number of management analysts (1) by the time required for data collection (6 hours) and by the hourly compensation rate ($60.60/hour). We multiplied the labor cost ($364) by the number of Local WDBs (580) to estimate this annual cost of $210,888.

At the Federal level for the AEFLA program, the Departments estimated the one-time labor cost associated with the third approach in the pilot program by multiplying the estimated number of GS–14, Step 5 management analysts (1) by the time required for technical assistance development (8 hours) and by the hourly compensation rate ($76.48/hour). This calculation would result in a one-time labor cost of $612.

The Departments estimated AEFLA's annual labor cost associated with the third approach by multiplying the estimated number of GS–14, Step 5 management analysts (1) by the time required for technical assistance delivery (4 hours) and by the hourly compensation rate ($76.48/hour). This calculation would result in an annual labor cost of $306.

At the State level for the DOL core programs, the Departments estimated the third approach's annual labor cost by multiplying the estimated number of management analysts (1) by the sum of time required for data collection (4 hours), providing training and technical assistance to local AEFLA providers (3 hours), and Federal reporting (4 hours) and by the hourly compensation rate ($45.88/hour). We multiplied the labor cost ($505) by the number of States (57) to estimate this annual cost of $28,767.

For the local-level AEFLA program, the Departments estimated the annual labor cost for the third approach by multiplying the estimated number of management analysts (1) by the time required for data collection (6 hours) and by the hourly compensation rate ($60.60/hour). We multiplied the labor cost ($364) by the number of local AEFLA providers (2,396) to estimate this annual cost of $871,186.

At the Federal level for the VR program, the Departments estimated the

one-time labor cost associated with the third approach in the pilot program by multiplying the estimated number of GS–14, Step 5 management analysts (1) by the time required for technical assistance development (8 hours) and by the hourly compensation rate ($76.48/hour). This calculation would result in a one-time labor cost of $612.

The Departments estimate the VR program's annual labor cost associated with the third approach by multiplying the estimated number of GS–14, Step 5 management analysts (1) by the time required for technical assistance delivery (4 hours) and by the hourly compensation rate ($76.48/hour). This calculation would result in an annual labor cost of $306.

At the State level for the VR program, the Departments estimated the third approach's one-time labor cost by multiplying the estimated number of staff trainers (1) by the time required for training of rehabilitation counselors (4 hours) and by the hourly compensation rate ($54.21/hour). We repeated the calculation for the rehabilitation counselors (62 counselors at $36.66/hour for 1 hour each). We summed the labor cost for both categories ($2,490) and multiplied it by the number of VR agencies (80) to estimate this one-time cost of $199,181.

The Departments estimated the State-level VR program annual labor cost associated with the third approach by multiplying the estimated number of management analysts (1) by the time required for Federal reporting (4 hours) and by the hourly compensation rate ($45.88/hour). In addition, we added the estimated number of rehabilitation counselors (62 counselors) by the time required for data collection (1 hour each) and by the hourly compensation rate ($36.66/hour). We summed the labor cost for both categories ($2,456) and multiplied it by the number of VR agencies (80) to estimate this annual cost of $196,515.

In total, Approach 3 would result in one-time costs of $201,016 for individuals from the Federal-level DOL core programs, AEFLA program, and VR program and the State-level VR program. In addition, Approach 3 would result in $1.3 million (1,337,040) in annual costs for the Federal-, State-, and local-level DOL core programs and AEFLA program and the State-level VR program.

As presented in Exhibit 49, Approach 1 is the lowest-cost approach with $73,041 in one-time costs and $72,124 in annual costs for Federal- and State-level costs for DOL, AEFLA, and the VR program. Approach 3 is the highest-cost approach with $201,016 in one-time costs and $1.3 million ($1,337,040) in annual costs for Federal-, State-, and local-level costs for DOL and AEFLA and Federal- and State-level costs for the VR program.

EXHIBIT 49—ESTIMATED COST OF THE PILOT PROGRAM BY APPROACH

Approach	One-time cost	Annual cost
Approach 1—Retention with the Same Employer	$73,041	$72,124
Approach 2—Percentage of Employers Using Services Out of All Employers in the State	201,016	976,349
Approach 3—Percentage of Repeat Employers Using Services within the Previous 3 Years	201,016	1,337,040

The Departments estimated the one-time labor cost for the pilot program to be incurred in 2016 and the annual labor cost to be incurred in 2017 by taking the average of the low-end range of costs (*i.e.,* if all States were to choose the two lowest-cost approaches) and the high-end range of costs (*i.e.,* if all States were to choose the two highest-cost approaches). If all States chose the two lowest-cost approaches (*i.e.,* Approaches 1 and 2), the one-time cost to the States would be $274,057 ($73,041 + $201,016). If all States chose the two highest-cost approaches (*i.e.,* Approaches 2 and 3), the one-time cost to the States would be $402,032 ($201,016 + $201,016). We took the average of this range to estimate the one-time cost of the pilot program of $338,045 to be incurred in 2016. We repeated this calculation to estimate the annual cost for the pilot program. If all States chose the two lowest-cost approaches, the annual cost to the States would be $1.0 million ($1,048,473) ($72,124 + $976,349). If all States chose the two highest-cost approaches, the annual cost to the States would be $2.0 million ($2,313,389) ($976,349 + $1,337,040). We took the average of this range to estimate the annual cost of the pilot program of $1.7 million ($1,680,931) to be incurred in 2017. The sum of these calculations results in a total 10-year cost of $2.0 million ($2,018,976), which is equal to an average annual cost of $201,898 for the pilot program.

The Departments estimated the one-time labor cost for implementation to be incurred in 2019 and the annual labor cost to be incurred annually starting in 2020 by taking the average of the low-end range of costs (*i.e.,* if all States were to choose the lowest-cost approach) and the high-end range of costs (*i.e.,* if all States were to choose the highest-cost approach). If all States chose the lowest-cost approach (*i.e.,* Approach 1), the one-time cost to the States would be $73,041. If all States chose the highest-cost approach (*i.e.,* Approach 2), the one-time cost to the States would be $201,016. We took the average of this range to estimate the one-time cost of the program of $137,029 to be incurred in 2019. We repeated this calculation to estimate the annual cost for the program. If all States chose the lowest-cost approach, the annual cost to the States would be $72,124. If all States chose the highest-cost approach, the annual cost to the States would be $1.3 million ($1,337,040). We took the average of this range to estimate the annual cost of the program of $704,582 to be incurred beginning in 2020. The sum of these calculations results in a total 10-year cost of $4.4 million ($4,364,521), which is equal to an average annual cost of $436,452 for the implementation.

The sum of the costs for the pilot program and the implementation results in a total 10-year cost of $6.4 million ($6,383,497), which is equal to an average annual cost of $638,350 for the implementation.

iii. Negotiation of Levels of Performance

WIOA sec. 116(b)(3) requires States to negotiate with DOL and ED and agree on levels of performance for each performance indicator for each core program every 2 years. States must establish expected levels of performance for each of the six core programs in the submitted Unified or Combined State Plan. Prior to approving the Unified or Combined State Plan, however, DOL and ED must negotiate with the States to agree on an adjusted performance level (referred to as a ''negotiated level of performance'' in § 677.170(b) of these final regulations). The negotiated level of performance must be incorporated into the Unified or Combined Plan prior to its approval. The negotiated levels of performance are based on factors including how the expected levels compare to other States, the statistical

adjustment model, the extent to which the levels promote continuous improvement, and the extent to which the levels will assist the State in meeting its long-term performance goals. This negotiation of levels of performance will result in recurring costs incurred by each core program.

Costs will be incurred by entities at Federal, State, and local levels to negotiate adjusted levels of performance. Specifically, biennial labor costs will be incurred at the Federal, State, and local levels for the DOL core programs, at the Federal and State levels for the AEFLA program, and at the Federal and State levels for the VR program.

Costs

At the Federal level for DOL core programs (see Exhibit 13), the Departments estimated this labor cost by first multiplying the estimated number of GS–14 level, Step 5 managers (1) by the time required to negotiate levels of performance (8 hours) and by the hourly compensation rate ($76.48/hour). We performed the same calculation for GS–12 level, Step 5 management analysts (2 analysts at $54.43/hour for 8 hours each). We summed the labor cost for both categories to estimate this biennial cost of $1,483. This calculation results in a total 10-year cost of $7,414, which is equal to an average annual cost of $741.

At the State level for DOL core programs (see Exhibit 16), the Departments estimated this labor cost by first multiplying the estimated number of managers per State (1) by the time required to negotiate levels of performance (8 hours) and by the hourly compensation rate ($65.39/hour). We performed the same calculation for office and administrative support staff members (2 staff members at $30.57/hour for 8 hours each). We summed the labor cost for both categories ($1,012) and multiplied the result by the number of States (57). This calculation yields a biennial cost of $57,698. Over the 10-year period, this calculation results in a total cost of $288,488, which is equal to an average annual cost of $28,849.

At the local level for DOL core programs (see Exhibit 19), the Departments estimated this labor cost by first multiplying the estimated number of managers per Local WDB (1) by the time required to negotiate levels of performance (8 hours) and by the hourly compensation rate ($63.63/hour). We performed the same calculation for office and administrative support staff members (2 staff members at $29.36/hour for 8 hours each). We summed the labor cost for both categories ($979) and multiplied the result by the number of Local WDBs (580), which results in a biennial cost of $567,704. This calculation results in a total 10-year cost of $2.8 million ($2,838,520), which is equal to an average annual cost of $283,852.

At the Federal level for the AEFLA programs (see Exhibit 14), the Departments estimated this labor cost by first multiplying the estimated number of GS–14 level, Step 5 managers (4) by the time required to negotiate levels of performance (24 hours each) and by the hourly compensation rate ($76.48/hour). We performed the same calculation for GS–13 level, Step 5 social and community service managers (4 managers at $64.71/hour for 24 hours each). We summed the labor cost for both categories to estimate this biennial cost of $13,554. Over the 10-year period, this calculation yields a total cost of $67,771, which is equal to an average annual cost of $6,777.

At the State level for the AEFLA program (see Exhibit 17), the Departments estimated this labor cost by first multiplying the estimated number of managers per State (1) by the time required to negotiate levels of performance (12 hours) and by the hourly compensation rate ($65.39/hour). We repeated the calculation for social and community service managers (1 manager at $54.21/hour for 12 hours). We summed the labor cost for both categories ($1,435) and multiplied the result by the number of States (57). This calculation results in a biennial cost of $81,806. Over the 10-year period, this calculation results in a total cost of $409,032, which is equal to an average annual cost of $40,903.

At the Federal level for the VR program (see Exhibit 15), the Departments estimated this biennial labor cost by first multiplying the estimated number of GS–14 level, Step 5 managers (4) by the time required to negotiate levels of performance (12 hours each) and by the hourly compensation rate ($76.48/hour).[45] The biennial labor cost of $3,671 results in a total 10-year cost of $18,355, which is equal to an average annual cost of $1,836.

For State VR agencies (see Exhibit 18), the Departments estimated the cost of negotiating levels of performance by first multiplying the estimated number of managers per VR agency (1) by the time required to negotiate adjusted levels of performance (12 hours) and by the hourly compensation rate ($65.39/hour). We repeated the calculation for the following occupational categories: social and community service managers (2 managers at $54.21/hour for 12 hours each) and management analysts (2 analysts at $45.88/hour for 12 hours each). We summed the labor cost for the three categories ($3,187) and multiplied the result by the number of VR agencies (80) to estimate this biennial cost as $254,947. This calculation results in a 10-year cost of $1.3 million ($1,274,736), which is equal to an average annual cost of $127,474 over the 10-year analysis period.

The sum of these calculations yields a biennial cost of $980,863 for individuals from the Federal, State, and local level for the DOL core programs, from the Federal- and State-levels for the AEFLA program, and from the Federal and State levels for the VR program to negotiate levels of performance. This results in a total 10-year cost of $4.9 million ($4,904,316), which is equal to an average annual cost of $490,432.

iv. Running Statistical Adjustment Model To Adjust Levels of Performance Based on Actual Economic Conditions and Characteristics of Participants

WIOA sec. 116(b)(3) requires DOL, ED, and States to ensure that negotiated levels of performance are adjusted using a statistical adjustment model—developed and disseminated by DOL and ED—based on the differences among States in (1) actual economic conditions (including differences in unemployment rates and job losses or gains in particular industries) and (2) the characteristics of participants when they entered the relevant program (including indicators of poor work history, lack of work experience, lack of education or occupational skills attainment, dislocation from high-wage and high-benefit employment, low levels of literacy or English proficiency, disability status, homelessness, ex-offender status, and welfare dependency). Regularly adjusting the levels of performance for each primary performance indicator for each core program will result in annual costs being incurred at the Federal, State, and local levels for the DOL core programs, at the Federal level for the AEFLA program, and at the Federal and State levels for the VR program to collect and update data on participants. Furthermore, DOL will experience costs related to annual licensing fees.

Costs

At the Federal level for DOL core programs (see Exhibit 13), the Departments estimated this labor cost by first multiplying the estimated number

[45] Managers include data, VR program, State liaison, and unit chief participation.

of GS–14 level, Step 5 managers (1) by the time required to collect and update data on the core programs' participants (250 hours) and by the hourly compensation rate ($76.48/hour). We performed the same calculation for GS–13 level, Step 5 computer systems analysts (2 analysts at $64.71/hour for 1,000 hours each). We summed the labor cost for both categories to estimate this annual cost of $148,540, which results in a total 10-year cost of $1.5 million ($1,485,400).[46]

The Departments estimated the annual licensing fee for DOL to be $10,000, or a total cost of $100,000 over the 10-year analysis period.

At the State level for DOL core programs (see Exhibit 16), the Departments estimated this labor cost by first multiplying the estimated number of managers per State (1) by the time required to collect and update data on the programs' participants (10 hours) and by the hourly compensation rate ($65.39/hour). We performed the same calculation for the following occupational categories: computer systems analysts (2 analysts at $56.17/hour for 40 hours each) and office and administrative support staff members (2 staff members at $30.57/hour for 20 hours each). We summed the labor cost for the three categories ($6,370) and multiplied the result by the number of States (57) to estimate this annual cost of $363,107. This result is equal to a total 10-year cost of $3.6 million ($3,631,071).

At the local level for DOL core programs (see Exhibit 19), the Departments estimated this labor cost by first multiplying the estimated number of managers per Local WDB (1) by the time required to collect and update data on the programs' participants (10 hours) and by the hourly compensation rate ($63.63/hour). We performed the same calculation for the following occupational categories: computer systems analysts (2 analysts at $60.76/hour for 40 hours each) and office and administrative support staff members (2 staff members at $29.36/hour for 20 hours each). We summed the labor cost for both categories ($6,672) and multiplied the result by the number of Local WDBs (580). The annual cost is estimated to be $3.9 million ($3,869,470), which results in a 10-year total cost of $38.7 million ($38,694,700).

At the Federal level for the AEFLA program (see Exhibit 14), the Departments estimated this labor cost by first multiplying the estimated number of GS–14 level, Step 5 managers (2) by the time required to provide Federal oversight and technical assistance (40 hours each) and by the hourly compensation rate ($76.48/hour). We performed the same calculation for GS–12 level, Step 5 management analysts (2 analysts at $54.43/hour for 80 hours each). We summed the labor cost for both categories to estimate this annual cost of $14,827, which results in a total 10-year cost of $148,272.

At the Federal level for the VR program (see Exhibit 15), the Departments estimated this biennial labor cost by first multiplying the estimated number of GS–14 level, Step 5 managers (2) by the time required to collect and update data on its participants (52 hours each) and by the hourly compensation rate ($76.48/hour).[47] The Departments repeated the calculation for GS–13 level, Step 5 database administrators (2 administrators at $64.71/hour for 156 hours each). We summed the annual labor cost for the two categories ($28,143), which results in a total 10-year cost of $281,434.

For State VR agencies (see Exhibit 18), the Departments estimated this cost by first multiplying the estimated number of managers per VR agency (1) by the time required to collect and update data on its participants (4 hours) and by the hourly compensation rate ($65.39/hour). We repeated the calculation for the following occupational categories: Database administrators (1 administrator at $57.02/hour for 20 hours), computer systems analysts (1 analyst at $56.17/hour for 4 hours), and management analysts (1 analyst at $45.88/hour for 4 hours). We summed the labor cost for the four categories ($1,810) and multiplied the result by the number of VR agencies (80) to estimate this annual cost as $144,813, which results in a total 10-year cost of $1.4 million ($1,448,128).

The sum of these calculations yields an annual cost of $4.6 million ($4,578,901) for individuals from the Federal, State, and local levels for the DOL core programs, the Federal level for the AEFLA program, and the Federal and State levels for the VR program to collect and update data on their participants. This is equal to a 10-year total cost of $45.8 million ($45,789,005).

v. Additional State Performance Accountability Indicators (Beyond Required Performance Indicators)

Under WIOA sec. 116(b), States must include levels of performance for the six primary performance indicators in their Unified or Combined State Plans. In addition, WIOA sec. 116(b)(2)(B) permits States to identify in the State Plan additional performance accountability indicators for the core programs beyond the six required primary indicators. Although States had similar latitude under WIA, no State has ever established additional performance indicators. Therefore, the Departments do not expect any State to establish additional performance accountability indicators under WIOA. If a State chooses to do so, however, we have conservatively calculated a burden estimate based on five States establishing additional indicators of performance. The costs associated with this activity are those incurred by State-level DOL core programs, State- and local-level AEFLA programs, and State VR agencies having to collect additional data to report on the additional performance indicators in the first year of the Final Rule.

Costs

At the State level for DOL core programs (see Exhibit 31), the Departments estimated this labor cost by first multiplying the estimated number of managers per State providing additional data (1) by the time required to collect additional data (16 hours) and by the hourly compensation rate ($65.39/hour). We performed the same calculation for computer systems analysts (3 analysts at $56.17/hour for 40 hours each) and office and administrative support staff members (1 staff member at $30.57/hour for 36 hours). We summed the labor cost for all three categories ($8,887) and multiplied the result by the number of States providing additional data (5) to estimate this one-time cost of $44,436. Over the 10-year period, this calculation yields an average annual cost of $4,444.

At the State level for the AEFLA program (see Exhibit 32), the Departments estimated this labor cost by first multiplying the estimated number of managers per State providing additional data (1) by the time required to collect additional data (8 hours) and by the hourly compensation rate ($65.39/hour). We repeated the calculation for the following occupational categories: Database administrators (1 administrator at $57.02/hour for 8 hours), computer systems analysts (1 analyst at $56.17/

[46] For DOL programs, the Federal program will experience the heaviest burden as ETA will produce all State and local calculations and disseminate them to States and local areas.

[47] Managers will include data unit database administrative staff and management staff.

hour for 8 hours), and social and community service managers (3 managers at $54.21/hour for 8 hours each). We summed the labor cost for all four categories ($2,730) and multiplied the result by the number of States providing additional data (5) to estimate this one-time cost of $13,648.[48] Over the 10-year period, this calculation yields an average annual cost of $1,365.

At the local level for the AEFLA program (see Exhibit 34), the Departments estimated this cost by first multiplying the estimated number of managers per local AEFLA provider proving additional data (1) by the time required to collect additional data (4 hours) and by the hourly compensation rate ($63.63/hour). We performed the same calculation for database administrators (1 administrator at $59.60/hour for 4 hours). We summed the labor cost for the two occupational categories ($493) and multiplied the result by the number of local AEFLA providers providing additional data (200) to estimate this one-time cost of $98,584. Over the 10-year period, this calculation yields an average annual cost of $9,858.

For State VR agencies (see Exhibit 33), the Departments estimated this cost by first multiplying the estimated number of managers per VR agency providing additional data (1) by the time required to collect additional data (8 hours) and by the hourly compensation rate ($65.39/hour). We repeated the calculation for the following occupational categories: Database administrators (1 administrator at $57.02/hour for 8 hours), computer systems analysts (1 analyst at $56.17/hour for 8 hours), and social and community service managers (3 managers at $54.21/hour for 8 hours each). We summed the labor cost for the four categories ($2,730) and multiplied the result by the number of VR agencies providing additional data (5) to estimate this one-time cost as $13,648. Over the 10-year period, this calculation yields an average annual cost of $1,365.

The sum of these calculations yields a total first-year cost of $170,317 from the State-level DOL core programs, State- and local-level AEFLA programs, and State VR agencies to collect additional data. This is equal to an average annual cost of $17,032.

vi. Technical Assistance to States

The cost of this activity reflects the Federal cost for procuring a consultant to provide technical assistance to States in the collection of data to comply with the new performance accountability requirements of WIOA. The cost for this activity was not included in the NPRM, because the FY 2017 budget request was in the process of being developed. For FY 2017, the Administration requested funds to help meet WIOA performance requirements through improved data infrastructure along with $1 million for ED to provide technical assistance to help AEFLA grantees comply with the new requirements, including the collection of new WIOA data elements. The total 10-year cost (undiscounted) for this activity represents a one-time Federal consultant cost of $1 million in the second year of WIOA.

Costs

At the Federal level for the AEFLA program (see Exhibit 14), the Departments estimated the cost related to providing technical assistance to States to comply with the new WIOA performance accountability requirements, including the collection and reporting of new data as a one-time consultant cost ($1,000,000) in the second year of the rule. Over the 10-year period, this calculation yields an average annual cost of $100,000.

vii. Performance Reports

Under WIOA sec. 116(d)(6), States must make available (including by electronic means) performance reports for local areas and for ETPs under title I of WIOA. WIA required DOL to make State performance reports publicly available but did not require States, themselves, to make their performance reports available (*see* WIA sec. 136(d)(3)). Section 116(d)(1) of WIOA requires the Departments to provide a performance reporting template to be used by States, Local WDBs, and ETPs for the performance reports required in WIOA secs. 116(d)(2) through (4). This Final Rule requires States to submit quarterly participant and performance data reports for each of the DOL core programs. Because DOL has required quarterly reporting for its programs prior to WIOA, the frequency of the reporting requirement should not result in incremental cost increases for any of the DOL core programs; rather, the Federal costs associated with this rule's performance reporting requirements will be associated with the implementation of the new performance reporting template. In addition, DOL State-level costs will be associated with developing, updating, and submitting ETP reports because while ETP reporting was required under WIA, many States received waivers allowing them not to make the submissions. Under WIOA, DOL does not expect to allow waivers for this reporting requirement. The State-level AEFLA programs reported annually under WIA, while local-level AEFLA programs reported annually to States under WIA, and both will continue to do so under WIOA. AEFLA programs will incur costs to collect, analyze, and report performance data. Under WIA, VR agencies submitted annual performance data on closed service records through the RSA–911 Case Service Report, and under WIOA, they will incur costs to transition to reporting on open and closed service records on a quarterly basis.

The DOL and ED, for purposes of the DOL core programs and the AEFLA program, will incur annual Federal level costs to collect, analyze, and report performance data. Furthermore, both Federal agencies will experience annual costs for software and IT systems. The Departments do not anticipate an increase in annual Federal-level costs for the VR program compared to the baseline. However, ED will incur a one-time software and IT systems cost to support its ability to compile quarterly data reported by VR agencies into annual reports required under WIOA. At the State level for the DOL core programs, the AEFLA program, and the VR program, as well as at the local level for the AEFLA program, there will be annual costs to collect, analyze, and report performance data.

Costs

At the Federal level for DOL core programs (see Exhibit 35), the Departments estimated this labor cost by first multiplying the estimated average number of GS–14, Step 5 managers (1) by the time required to implement and review the new performance reporting template (8 hours) and by the hourly compensation rate ($76.48/hour). We performed the same calculation for GS–13, Step 5 computer systems analysts (1 analyst at $64.71/hour for 5 hours) and GS–12, Step 5 management analysts (1 analyst at $54.43/hour for 16 hours). We summed the labor cost for all three categories to estimate an annual cost of $1,806, which results in a total cost of $18,063 over the 10-year analysis period.

The Departments estimated the annual software and IT systems cost at the Federal level for the DOL core programs to be $250,000, which yields a total cost of $2.5 million ($2,500,000) over the 10-year analysis period.

At the State level for the DOL core programs (see Exhibit 38), the Departments estimated this labor cost by first multiplying the estimated average number of managers per State (1) by the

[48] This provision will be a joint effort between State and local AEFLA staff.

time required to develop, update, and submit ETP reports (8 hours) and by the hourly compensation rate ($65.39/hour). We performed the same calculation for the following occupational categories: Computer system analysts (1 analyst at $56.17/hour for 40 hours), management analysts (1 analyst at $45.88/hour for 60 hours), and office and administrative staff members (4 staff members at $30.57/hour for 20 hours each). We summed the labor cost for all four categories ($7,968) and multiplied the result by the number of States (57) to estimate an annual cost of $454,194, which results in a total cost of $4.5 million ($4,541,942) over the 10-year analysis period.

At the Federal level for the AEFLA program (see Exhibit 36), the Departments estimated this labor cost by first multiplying the estimated number of GS–14, Step 5 managers (1) by the time required to collect, analyze, and report performance data (8 hours) and by the hourly compensation rate ($76.48/hour). We repeated the calculation for GS–13, Step 5 social and community service managers (1 manager at $64.71/hour for 16 hours) and GS–13, Step 5 database administrators (1 administrator at $64.71/hour for 40 hours). We summed the labor cost for all three categories to estimate an annual cost of $4,236. Over the 10-year period, this calculation yields a total cost of $42,356.

The Departments estimated a one-time software and IT systems cost at the Federal level for the AEFLA program to be $5 million for development, modernization, and enhancement. Over the 10-year period, this calculation yields an average annual cost of $500,000.

The Departments also estimated the annual software and IT systems cost for the AEFLA program at the Federal level to be $250,000 to maintain the steady state. Over the 10-year period, this calculation yields a cost of $2.5 million ($2,500,000).

At the State level for the AEFLA program (see Exhibit 39), the Departments estimated this labor cost by first multiplying the estimated average number of managers per State (1) by the time required to collect, analyze, and report performance data (40 hours) and by the hourly compensation rate ($65.39/hour). We repeated the calculation for the following occupational categories: Computer systems analysts (1 analyst at $56.17/hour for 40 hours), social and community service managers (3 managers at $54.21/hour for 40 hours each), and database administrators (1 administrator at $57.02/hour for 40 hours). We summed the labor cost for all four categories ($13,648) and multiplied the result by the number of States (57) to estimate an annual cost of $777,959. Over the 10-year period, this calculation yields a total cost of $7.8 million ($7,779,588).[49]

At the local level for the AEFLA program (see Exhibit 41), the Departments estimated this cost by first multiplying the estimated number of managers per local AEFLA provider (1) by the time required to collect, analyze, and report performance data (8 hours) and by the hourly compensation rate ($63.63/hour). We performed the same calculation for social and community service managers (1 manager at $61.01/hour for 8 hours) and database administrators (1 administrator at $59.60/hour for 8 hours). We summed the labor cost for all three occupational categories ($1,474) and multiplied the result by the number of local AEFLA providers (2,396) to estimate an annual cost of $3.5 million ($3,531,512). Over the 10-year period, this calculation yields a total cost of $35.3 million ($35,315,123).

At the Federal level for the VR program (see Exhibit 37), the Departments estimated a one-time software and IT systems cost to be $68,925 to support ED's ability to compile quarterly data reported by VR agencies into annual reports required under WIOA. Over the 10-year period, this calculation yields an average annual cost of $6,893.

For State VR agencies (see Exhibit 40), the Departments estimated this cost by first multiplying the estimated number of managers per VR agency (1) by the time required to review and verify the annual performance report that RSA will assemble from the quarterly RSA–911 data that the States have previously reported (5 hours) and by the hourly compensation rate ($65.39/hour). We repeated the calculation for the following occupational categories: Computer systems analysts (1 analyst at $56.17/hour for 5 hours), social and community service managers (2 managers at $54.21/hour for 10 hours each), and database administrators (1 administrator at $57.02/hour for 25 hours). We summed the labor cost for all four categories ($3,118) and multiplied the result by the number of VR agencies (80) to estimate an annual cost as $249,400, which results in a total 10-year cost of $2.5 million ($2,494,000).[50]

For State VR agencies (see Exhibit 40), the Departments estimated this cost by first multiplying the estimated number of staff trainers per VR agency (1) by the time required to train staff on new data collection (6 hours) and by the hourly compensation rate ($54.21/hour). We repeated the calculation for rehabilitation counselors (62 counselors at $36.66/hour for 3 hours each). We summed the labor cost for both categories ($7,144) and multiplied the result by the number of VR agencies (80) to estimate a one-time cost of $571,522, which results in an average annual cost of $57,152.

For State VR agencies (see Exhibit 40), the Departments estimated this cost by first multiplying the estimated number of rehabilitation counselors (62) by the time required to collect data in the first year (58 hours) and by the hourly compensation rate ($36.66/hour). We summed the labor cost ($131,829) and multiplied the result by the number of VR agencies (80) to estimate a first year cost of $10.5 million ($10,546,349). We then multiplied the estimated number of rehabilitation counselors (62) by the time required to collect data in the second and subsequent years (15 hours) and by the hourly compensation rate ($36.66/hour). We summed the labor cost ($34,094) and multiplied the result by the number of VR agencies (80) to estimate an annual cost of $2.7 million ($2,727,504). This results in a total 10-year cost of $35.1 million ($35,093,885), which is equivalent to an average annual cost of $3.5 million ($3,509,388).

The sum of these calculations yields an average annual cost of $9.6 million ($9,592,540) for individuals from the Federal- and State-level DOL core programs, the Federal-, State-, and local-level AEFLA programs, and the Federal- and State-level VR agencies, that will incur costs related to the performance reports. This is equal to a total 10-year cost of $95.9 million ($95,925,404).

viii. Obtain UI Wage Data

WIOA core programs will need access to quarterly State UI wage data to efficiently identify exited participants who are employed in the second and fourth full quarters after exit to report on the employment performance indicators. These core programs also will need access to the State quarterly UI wage data to identify the individual quarterly wages in the second full quarter to calculate the median wage performance measure. Prior to WIOA, the AEFLA program obtained quarterly UI wage data on its participants and DOL's public workforce systems had costs associated with UI wage matches. This will be the first time, however, that

[49] This provision will be a joint effort between State and local AEFLA staff.

[50] Costs for the Federal RSA program are not estimated because Federal costs for report generation will not be in excess of current RSA–911 report costs.

State VR agencies will be required to obtain and report UI wage data. VR programs will need to contribute a reasonable and proportional share of the costs for maintaining and using the State UI wage system and interstate wage information systems, on a per individual, per query, monthly, quarterly, or annual basis.

Costs

For State VR agencies (Exhibit 18), the Departments estimated this cost by first multiplying the data query cost for large VR agencies ($20,000) by the number of large VR agencies (10). We then multiplied the data query cost for medium VR agencies ($8,000) by the number of medium VR agencies (42). Finally, we multiplied the data query cost for small VR agencies ($4,000) by the number of small VR agencies (28). We summed the annual data query cost for all VR agencies ($648,000), which results in a total 10-year cost of $6.5 million ($6,480,000).[51]

ix. Data Analytic Software and Training

VR agencies also will require data analytic and reporting software to extract the information required from their data collection systems necessary to match individual cases to the employment and quarterly earnings data contained in the UI wage data system. DOL and AEFLA, which have the software and perform the analytics, will experience no incremental costs related to this activity. This software also will be required to import the wage and earnings information to their information collection and reporting systems, and complete the calculations necessary to report on the second quarter employment and median-age performance indicators, and on the fourth-quarter employment indicator.

Costs

For State VR agencies (see Exhibit 18), the Departments estimated this cost by first multiplying the software and IT systems cost for large VR agencies ($25,000) by the number of large VR agencies (10). We then multiplied the software and IT systems cost for medium VR agencies ($15,000) by the number of medium VR agencies (42). Finally, we multiplied the software and IT systems cost for small VR agencies ($10,000) by the number of small VR agencies (28). We summed the one-time software and IT systems cost for all VR agencies, resulting in a total one-time cost of $1.2 million ($1,160,000), which is equivalent to an average annual cost of $116,000.[52]

The sum of the costs for the Performance Accountability System, which includes the costs to:

- Develop and update State performance accountability systems (which includes the cost to align technology and data systems across one-stop partner programs);
- Implement measures for data collection and reporting on the effectiveness in serving employers;
- Negotiate levels of performance;
- Run a statistical adjustment model to adjust levels of performance;
- Obtain data to report on any additional State performance accountability indicators beyond required performance indicators;
- Provide technical assistance to States;
- Develop a performance report template;
- Develop, update and submit ETP reports;
- Collect, analyze, and report performance data; and provide training;
- Collect UI wage data; and
- Purchase data analytic software and provide training.

This calculation results in a 10-year total cost of $589.0 million ($588,988,950), which is equal to an average annual cost of $58.9 million ($58,898,895).

d. State Evaluation Responsibilities

WIOA sec. 116(e)(1) requires States, in coordination with Local WDBs and agencies responsible for administering core programs, to conduct ongoing evaluations of title I activities carried out in the State under the core programs. Such program evaluations were required under WIA; however, WIOA specifies that SWAs and other State agencies must coordinate the evaluations with the evaluation and research conducted by the Secretary of Labor or the Secretary of Education under the provisions of Federal law identified in WIOA secs. 169 and 242(c)(2)(D); secs. 12(a)(5), 14, and 107 of the Rehabilitation Act of 1973 (29 U.S.C. 709(a)(5), 711, 727) (applied with respect to the VR program); 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)). Additionally, WIOA sec. 116(e)(4) directs that SWAs and other State agencies must, to the extent practicable, cooperate in the evaluations (including related research projects) conducted under the provisions of Federal law identified in the preceding sentence. Specifically, such cooperation must include the provision of data and responses to surveys, as well as allowing timely site visits. These directives regarding coordination within States as well as coordination with and cooperation in Federal evaluations were not present in WIA. Finally, WIOA sec. 116(e)(3) requires States to prepare and submit annually to the State and Local WDBs within a State, and make available to the public (including by electronic means), any reports containing the results of evaluations conducted by the State under this section. Under WIA sec. 136(e)(3), States were required to prepare and submit periodically evaluation reports to the State and Local WDBs within the State and to DOL as part of their annual report, but were not required to make them electronically available to the public.

Requirements related to Federal coordination to support State evaluations will be new to the AEFLA and VR programs under WIOA; however, DOL core programs had evaluation-related requirements under WIA, as discussed above.

DOL will incur Federal-level costs for SWA evaluation activities under sec. 116(e) of WIOA. The Federal-level AEFLA and VR programs will incur costs for providing technical assistance and promoting State AEFLA and VR agency participation, respectively, in the coordination process (which may include the design and development of State evaluation activities). All Federal programs will incur costs for technical assistance, monitoring, and dissemination. Costs will be incurred by affected entities to coordinate any evaluations of activities carried out in the States and in cooperating in the provision of various forms of data for Federal evaluations. The Departments estimate that implementing these requirements will generate annual labor costs at the Federal and State level for DOL and ED programs. In addition, there will be some marginal software and IT systems and consultant costs for State-level DOL programs.

i. Costs

At the Federal level for DOL core programs (see Exhibit 42), the Departments estimated this labor cost by first multiplying the estimated number of GS–14, Step 5 managers per State (2) by the time required to support State evaluation activities (25 hours each) and by the hourly compensation rate ($76.48/hour). We performed the same

[51] Costs for the Federal RSA program are not estimated because Federal costs for report generation will not be in excess of current RSA–911 report costs.

[52] Costs for the Federal RSA program are not estimated because Federal costs for report generation will not be in excess of older RSA–911 report costs.

calculation for GS–13, Step 5 computer system analysts (1 analyst at $64.71/hour for 3 hours) and GS–12, Step 5 management analysts (2 analysts at $54.43/hour for 30 hours each). We summed the labor cost for all three categories ($7,284) to estimate the costs this entity will incur annually. This is equivalent to a 10-year cost of $72,839.

At the State level for DOL core programs (see Exhibit 45), the Departments estimated this labor cost by first multiplying the estimated number of computer systems analysts per State (2) by the time required to coordinate any evaluations of activities carried out in the States and to cooperate in the provision of various forms of data for Federal evaluations (15 hours each) and by the hourly compensation rate ($56.17/hour). We performed the same calculation for the following occupational categories: Social and community managers (1 manager at $54.21/hour for 20 hours), management analysts (1 analyst at $45.88/hour for 10 hours), and office and administrative staff members (1 staff member at $30.57/hour for 10 hours). We summed the labor cost for all four categories ($3,534) and multiplied the result by the number of States (57) to estimate an annual cost of $201,427. This is equivalent to a 10-year cost of $2.0 million ($2,014,266).

At the State level for DOL core programs, the Departments estimated the software and IT systems costs. We first multiplied the software and IT systems cost ($10,000) by the number of States (57) to estimate an annual cost of $570,000. This estimate represents the cost associated with this Final Rule beyond the IT expenditures currently incurred by SWAs. This is equivalent to a 10-year cost of $5.7 million ($5,700,000).

At the State level for DOL core programs, the Departments estimated the consultant costs. We first multiplied the consultant costs ($21,400) by the number of States (57) to estimate an annual cost of $1.2 million ($1,219,800). This is equivalent to a 10-year cost of $12.2 million ($12,198,000).

At the Federal level for the AEFLA program (see Exhibit 43), the Departments estimated the labor cost by first multiplying the estimated number of GS–14, Step 5 managers per State (4) by the time required to support State adult education agency participation in the coordination process (10 hours each) and the hourly compensation rate ($76.48/hour). We performed the same calculation for the following occupational categories: GS–13, Step 5 computer systems analysts (1 analyst at $64.71/hour for 5 hours), and GS–12, Step 5 management analysts (2 analysts at $54.43/hour for 30 hours each). We summed the labor cost for all three categories to estimate an annual cost of $6,649. This is equivalent to a 10-year cost of $66,486.

At the State level for the AEFLA program (see Exhibit 46), the Departments estimated this labor cost by first multiplying the estimated number of managers per State (1) by the time required to coordinate any evaluations of activities carried out in the States and in cooperating in the provision of various forms of data for Federal evaluations (10 hours) and by the hourly compensation rate ($65.39/hour). We performed the same calculation for the following occupational categories: Computer systems analysts (1 analyst at $56.17/hour for 20 hours), social and community managers (1 manager at $54.21/hour for 10 hours), and management analysts (1 analyst at $45.88/hour for 20 hours). We summed the labor cost for all four categories ($3,237) and multiplied the result by the number of States (57) to estimate an annual cost of $184,509. This is equivalent to a 10-year cost of $1.8 million ($1,845,090).

At the Federal level for the VR program (see Exhibit 44), the Departments estimated the labor cost by first multiplying the estimated number of GS–14, Step 5 managers per State (2) by the time required to support State VR agency participation and coordination in carrying out State evaluations (5 hours each) and the hourly compensation rate ($76.48/hour). We performed the same calculation for the following occupational categories: GS–13, Step 5 social and community service managers (2 managers at $64.71/hour for 10 hours each) and GS–12, Step 5 management analysts (2 analysts at $54.43/hour for 15 hours each). We summed the labor cost for all three categories to estimate an annual cost of $3,692. This is equivalent to a 10-year cost of $36,919.

At the State level for the VR program (see Exhibit 47), the Departments estimated this labor cost by first multiplying the estimated number of managers per State (1) by the time required to coordinate any evaluations of activities carried out in the States and for cooperating in the provision of various forms of data for Federal evaluations (1 hour) and by the hourly compensation rate ($65.39/hour). We performed the same calculation for the following occupational categories: Computer systems analysts (1 analyst at $56.17/hour for 13 hours), social and community service managers (1 manager at $54.21/hour for 5 hours), management analysts (1 analyst at $45.88/hour for 5 hours), and office and administrative support staff (1 staff member at $30.57/hour for 2 hours). We summed the labor cost for all five categories ($1,357) and multiplied the result by the number of VR agencies (80) to estimate an annual cost of $108,575. This is equivalent to a 10-year cost of $1.1 million ($1,085,752).

The sum of these calculations yields a total 10-year cost of $23.0 million ($23,019,352) resulting in an average annual cost of $2.3 million ($2,301,935), for individuals from the Federal- and State-level DOL, AEFLA and VR programs related to State evaluation responsibilities.

Relative to the baseline of practice under WIA, the four provisions of the WIOA Final Rule described above are expected to result in costs of $626.8 million ($626,780,605) over the 10-year period. This is equivalent to an average annual cost of $62.7 million ($62,678,060). See section V.A.7 (Summary of Analysis) for a summary of these costs.

7. Summary of Analysis

Exhibit 50 summarizes the estimated undiscounted average annual costs for each provision of this Final Rule. The exhibit also presents a high-level qualitative 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 this Final Rule over the 10-year period of analysis to be $62.7 million. The largest contributor to this cost is the provision related to the development and updating of State performance accountability systems, which is estimated at $42.7 million per year. The next largest cost results from performance reports at an estimated $9.6 million per year, followed by the average cost of adjusting performance based on actual economic conditions and characteristics of participants at an estimated $4.6 million per year.

EXHIBIT 50—ESTIMATED COSTS OF THE DEPARTMENTS OF EDUCATION AND LABOR FINAL RULE BY PROVISION

Provision	Average annual cost (undiscounted)	Percent of total cost	Qualitative benefit highlights
(a) Time to Review the New Rule	$330,562	0.53	General requirement.
(b)(i) Unified or Combined State Plans—Expanded Content Requirements.	120,202	0.19	Enhanced data for management decision-making and policy integration; avoided program service duplication; enhanced internal State planning; avoids "silos" and service duplications; more efficient use of public resources.
(b)(ii) Unified or Combined State Plans—Biennial Development and Modification Process.	186,016	0.30	
(b)(iii) Unified or Combined Plans—Coordinating Submission of State Plans.	840,450	1.34	
(c)(i) Development and Updating of State Performance Accountability Systems.	42,717,641	68.15	Clear articulation of expectations and outcomes for accountability purposes; improved policy and management decision-making from performance measure data; better management and policy decisions using outcome data; improved service and placements; more accountability.
(c)(ii) Effectiveness of Serving Employers	638,350	1.02	1.02%
(c)(iii) Negotiation of Levels of Performance	490,432	0.78	
(c)(iv) Running Statistical Adjustment Model to Adjust Levels of Performance Based on Actual Economic Conditions and Characteristics of Participants.	4,578,901	7.31	
(c)(v) Additional State Performance Accountability Indicators (Beyond Required Performance Indicators).	17,032	0.03	
(c)(vi) Technical Assistance to States	100,000	0.16	
(c)(vii) Performance Reports, including collection of new data.	9,592,540	15.30	
(c)(viii) Obtain UI Wage Data	648,000	1.03	
(c)(ix) Data Analytic Software and Training	116,000	0.19	
(d) State Evaluation Responsibilities	2,301,935	3.67	Improved service delivery and customer service; enhanced policy-making and system building; more accountability.
Total Costs	62,678,060	100.00	

Note: Totals might not sum due to rounding.

Exhibit 51 summarizes the first-year costs for each provision of this Final Rule. The Departments estimated the total first-year cost of this Final Rule to be $135.5 million. The largest contributor to the first-year cost is the provision related to developing and updating State performance accountability systems at $97.5 million. The next largest first-year cost results from performance reports, amounting to $21.7 million, followed by adjusting levels of performance based on actual economic conditions and characteristics at $4.6 million.

EXHIBIT 51—ESTIMATED FIRST-YEAR COSTS OF THE FINAL RULE BY PROVISION

Provision	Total first-year cost	Percent of total first-year cost
(a) Time to Review the New Rule	$3,305,615	2.44
(b)(i) Unified or Combined State Plans—Expanded Content Requirements	1,202,022	0.89
(b)(ii) Unified or Combined State Plans—Biennial Development and Modification Process	0	0.00
(b)(iii) Unified or Combined Plans—Coordinating Submission of State Plans	1,680,901	1.24
(c)(i) Development and Updating of State Performance Accountability Systems	97,467,521	71.91
(c)(ii) Effectiveness of Serving Employers	338,045	0.25
(c)(iii) Negotiation of Levels of Performance	980,863	0.72
(c)(iv) Running Statistical Adjustment to Adjust Levels of Performance Based on Actual Economic Conditions and Characteristics of Participants	4,578,901	3.38
(c)(v) Additional State Performance Accountability Indicators (Beyond Required Performance Indicators)	170,317	0.13
(c)(vi) Technical Assistance to States	0	0.00
(c)(vii) Performance Reports, including collection of new data	21,705,903	16.01
(c)(viii) Obtain UI Wage Data	648,000	0.48
(c)(ix) Data Analytic Software and Training	1,160,000	0.86
(d) State Evaluation Responsibilities	2,301,935	1.70
Total Cost	135,540,023	100.00

Note: Totals might not sum due to rounding.

Exhibit 52 summarizes the estimated annual and total costs of this Final Rule. The estimated total (undiscounted) cost of the rule sums to $626.8 million over the 10-year analysis period, which is equal to an average annual cost of $62.7 million per year. In total, the estimated 10-year discounted costs of the Final Rule range from $495.2 million to $558.9 million (with 7- and 3-percent discounting, respectively).

To contextualize the cost of this Final Rule, the average annual budget for WIA implementation over FY 2012–2014 for the Departments of Labor and Education combined was $7.2 billion.[53] Thus, the annual additional cost of implementing this Final Rule is 0.9 to 1 percent of the average annual WIA budget for FY 2012–2014 (with 3-percent and 7-percent discounting, respectively). In response to public comments, the Departments also contextualize the cost of the Final Rule relative to the amount of administrative and transition funds available to States, which averaged $200.1 million between PY 2014 and PY 2015.[54] The annual additional cost of implementing the Final Rule is between 32.7 percent and 35.2 percent of the average annual administrative and transition funds budget (with 3-percent and 7-percent discounting, respectively).

EXHIBIT 52—ESTIMATED MONETIZED COSTS OF DEPARTMENTS OF LABOR AND EDUCATION FINAL RULE

[2015 dollars]

2016	$135,540,023
2017	77,389,018
2018	64,038,222
2019	52,945,116
2020	59,249,908
2021	45,312,669
2022	50,789,374
2023	45,312,669
2024	50,890,937
2025	45,312,669
Undiscounted 10-Year Total	626,780,605
10-Year Total with 3% Discounting	558,940,877
10-Year Total with 7% Discounting	495,158,156
10-Year Average	62,678,060
Annualized with 3% Discounting	65,524,922
Annualized with 7% Discounting	70,499,382

Note: Totals might not sum due to rounding.

Regulatory Benefits

The Departments were unable to quantify several important benefits to society due to data limitations and a lack of existing data or evaluation findings on particular items.[55] These include increased employment opportunities for unemployed or underemployed U.S. workers, enhanced ETP process, and evaluation of State programs. Below, we describe qualitatively the benefits related to this Final Rule.

The Departments provide a qualitative description of the anticipated WIOA benefits below. The anticipated WIOA benefits are the results of expanded services to a larger number of people and/or improving services that are already being offered under WIA. These qualitative forecasts are predicated on program experience and are outcomes for which data will become available only after implementation. The studies discussed below are largely based on programs and their existing requirements under WIA and therefore they capture the benefits associated with WIA. However, they still can illustrate the types of benefits that are expected from this Final Rule.

Increased alignment of training with local labor markets through economic, education, and workforce data. Under WIOA, more substantial economic, education, and workforce data are required to be integrated into the State Plan than was required under WIA for ED programs. Under WIA, economic, education, and workforce data were not included in State Plans for ED programs.[56] Hence, it was possible that some program participants were being trained for jobs with no local demand at the time of the participants' exit from the training program, even though the demand for the job might have existed elsewhere. Under WIOA, economic, education, and workforce data will be shared by DOL and ED via the core programs in the State Plan. Relative to WIA, the use of economic, education, and workforce data are expected to result in training that is better aligned with local labor market demand (*i.e.,* the likelihood that more participants are learning skills that are applicable to jobs for which there will be local demand is increased).

This is expected to result in three potential benefits: (1) Improved employment outcomes in the local area, (2) higher wages, and (3) reduced costs associated with returning training participants. First, because training participants will primarily be trained for jobs with local demand, these individuals will have an increased likelihood of obtaining employment following their training due to their applicable skill set and the increased availability of local labor market positions. This could minimize the duration of unemployment in some local areas. Second, these individuals could be paid a higher wage because they will possess job-specific training for jobs in demand in the local area. Finally, under WIA, if an individual was not employed after exiting a training program, he or she was able to participate in some additional training programs, which resulted in greater costs for those training providers and one-stop partners. Under WIOA, the Departments expect costs for returning participants could decrease due to some participants' increased likelihood of obtaining employment. Overall, having better aligned training programs will have a positive effect on the economy from benefits such as reduced retraining

[53] U.S. Department of Labor, Employment and Training Administration. (2015). Archive of State Statutory Formula Funding. Retrieved from: *https://www.doleta.gov/budget/py01_py09_arra_archive.cfm.* The Departments used data from the following files to estimate the average annual WIA budget: WIA Adult Activities Program (PYs 2011, 2012, 2013, and 2014); WIA Dislocated Worker Activities Program (PYs 2011, 2012, 2013, and 2014); and WIA Youth Activities (PYs 2012, 2013, and 2014). Note that for adult and dislocated worker activities, the Departments summed the program year's July funding with the previous program year's October funding to calculate the amount of funding per fiscal year. The youth activities funding is obligated to States in April and therefore corresponds to the fiscal year in which it is obligated. We inflated the funding for each fiscal year, so that the average annual WIA budget is in 2015 dollars.

U.S. Department of Labor, Employment and Training Administration. (2015) State Statutory Formula Funding. Retrieved from: *https://www.doleta.gov/budget/statfund.cfm.* The Departments also used data from the following files to estimate the average annual WIA budget: Employment Services Program Dollar Tables (PYs 2012, 2013, and 2014). Note that Wagner-Peyser Act funds for a program year are obligated to States in July; therefore, these funds correspond to the fiscal year in which they are obligated. We inflated the funding for each fiscal year, so that the average annual WIA budget is in 2015 dollars.

U.S. Department of Education. (2016). Department of Education Budget Tables. Retrieved from: *http://www2.ed.gov/about/overview/budget/tables.html?src=ct.* The Departments used data from the following files to estimate the average annual WIA budget: Congressional Action (FYs 2012, 2013, and 2014). The budget was updated to 2015 dollars.

[54] Training and Employment Guidance Letter (TEGL) 34–14, TEGL 12–14, TEGL 24–14. The Departments inflated the funding for each program year.

[55] The Departments were able to estimate many but not all of the inputs that would be necessary to quantify a benefit to DOL programs that could result from this Final Rule if affected entities choose to integrate DOL program participant records. This activity is highly encouraged but not required by this Final Rule; hence, one of the key inputs to the benefits calculation (the number of entities choosing to integrate) is highly uncertain. Given the inability to reliably estimate this input, no quantitative estimate of cost savings is presented; instead these ancillary benefits are discussed at the end of this benefits section.

[56] DOL already included economic, education, and workforce data in the State Plans under WIA, so DOL programs will not experience as much in incremental costs associated with this particular requirement as will the AEFLA and VR programs.

costs, and improved worker morale. The lengthy and involved process of implementing changes to existing programs and developing new programs, however, might delay the benefits derived from improved economic, education, and workforce data.[57]

State evaluation research. In support of a State's strategic plan and goals, State-conducted evaluations and other forms of research will 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, potentially leading to higher employment rates and earnings among participants. Implementing various innovations that have been tested and found effective also could 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 to improve participant labor market outcomes, lower unit costs, or increase the number served.

Training's impact on job 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.[58] The study noted, however, 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.[59] The WIA youth program remains largely untested.[60] One study found that WIA training services increase placement rates by 4.4 percent among adults and by 5.9 percent among dislocated workers,[61] while another study concluded that placement rates are 3 to 5 percent higher among all training recipients.[62]

Participants in occupational training had a reemployment rate 5 percentage points higher 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 points.[63] The study found that training, however, did not correspond to higher employment retention or earnings.[64] 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.[65] 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.[66]

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.[67] WIA training increased participants' quarterly earnings by $660; these impacts persisted beyond 2 years and were largest among women.[68] 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 addition to core and intensive services initially earned less but caught up within 10 quarters with the earnings of participants who received only 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.[69] WIA training services also improved participants' long-term wage rates, doubling earnings after 10 quarters over those not receiving training services.[70] WIA participants who did not receive training, however, 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.[71]

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

[57] Johnson, T., Gritz, M., Jackson, R., Burghardt, J., Boussy, C., Leonard, J., and Orians, C. (1999). *National Job Corps Study: Report on the process analysis.* Prepared by Mathematica Policy Research, Inc. for U.S. Department of Labor, Employment and Training Administration. Retrieved from: *http://wdr.doleta.gov/research/FullText_Documents/99-jc_analysis.pdf.*

[58] U.S. Department of Labor, U.S. Department of Commerce, U.S. Department of Education, and U.S. Department of Health and Human Services. (2014). *What works in job training: A synthesis of the evidence.* Retrieved from: *http://www.dol.gov/asp/evaluation/jdt/jdt.pdf.*

[59] *Ibid.*

[60] Decker, P.T., & Berk. J.A. (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.

[61] Hollenbeck, K., Schroeder, D., King, C.T., and Huang, W.J. (2005). *Net impact estimates for services provided through the Workforce Investment Act* (Occasional Paper 2005–06). Washington, DC: U.S. Department of Labor, Employment and Training Administration, Office of Policy and Research, Division of Research and Demonstration. Retrieved from: *http://wdr.doleta.gov/research/FullText_Documents/Net%20Impact%20Estimates%20for%20Services%20Provided%20through%20the%20Workforce%20Investment%20Act-%20Final%20Report.pdf.*

[62] Heinrich, C.J., Mueser, P.R., and Troske, K.R. (2009). *Workforce Investment Act non-experimental net impact evaluation.* Columbia, MD: IMPAQ International, LLC. Retrieved from: *http://wdr.doleta.gov/research/FullText_Documents/Workforce%20Investment%20Act%20Non-Experimental%20Net%20Impact%20Evaluation%20-%20Final%20Report.pdf.*

[63] Park, J. (2011). *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. Retrieved from: *https://wdr.doleta.gov/research/FullText_Documents/ETAOP_2011-09.pdf.*

[64] *Ibid.*

[65] Jackson, R.H., Malené Dixon, R., McCoy, A., Pistorino, C., Zador, P., Lopdell, J., . . . and Bruno., L. (2007). *Youth Opportunity Grant Initiative: Impact and synthesis report.* Prepared by Decision Information Resources, Inc. for U.S. Department of Labor, Employment and Training Administration. Retrieved from: *http://wdr.doleta.gov/research/FullText_Documents/YO%20Impact%20and%20Synthesis%20Report.pdf.*

[66] U.S. Department of Labor, Employment and Training Administration, Office of Policy Development and Research. (2013). *Five-Year research and evaluation strategic plan program years 2012–2017.* Retrieved from: *http://wdr.doleta.gov/research/FullText_Documents/ETAOP_2013_21.pdf.*

[67] Barnow, B., and Gubits, D. (2003) *Review of recent pilot, demonstration, research, and evaluation initiatives to assist in the implementation of programs under the Workforce Investment Act* (Occasional Paper 2003–10). U.S. Department of Labor, Employment and Training Administration. Retrieved from: *http://wdr.doleta.gov/research/FullText_Documents/ETAOP%202003-10%20Review%20of%20Recent%20Pilot%2C%20Demonostration%2C%20Research%2C%20and%20Evaluation%20Initiatives.pdf.*

[68] *Ibid.*

[69] Chrisinger, C.K. (2011). *Earnings progression among workforce development participants: Evidence from Washington State.* U.S. Department of Labor, Employment and Training Administration. Retrieved from: *http://wdr.doleta.gov/research/FullText_Documents/ETAOP_2011-11.pdf.*

[70] Heinrich, C.J., Mueser, P.R., and Troske, K.R. (2009). *Workforce Investment Act non-experimental net impact evaluation.* Columbia, MD: IMPAQ International, LLC. Retrieved from: *http://wdr.doleta.gov/research/FullText_Documents/Workforce%20Investment%20Act%20Non-Experimental%20Net%20Impact%20Evaluation%20-%20Final%20Report.pdf.*

[71] *Ibid.*

did not complete training experienced no increase.[72] Another publication noted that on average, adults experienced a $743 quarterly post-exit earnings boost.[73]

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.[74] 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 such as the recent Survey of Adult Skills [75] provide strong evidence of the need for and economic value of adult basic skills (ABS). A growing body of research indicates strong economic return on basic skills at given levels of education. Estimates have been made of the potential economic benefits that would accrue from increased educational attainment and levels of basic skills. The Longitudinal Study of Adult Learning [76] (LSAL) randomly sampled approximately 1,000 high school dropouts and followed them for nearly a decade from 1998 to 2007. LSAL followed both participants and nonparticipants in ABS programs, assessing their literacy skills and skill uses over long periods, along with changes in their social, educational, and economic status, offering a rich picture of adult literacy development. The study found that individuals who participate in ABS programs have higher future earnings, and income premiums are larger with more intensive participation.[77] Individuals who participate in ABS programs tend to have higher levels of future literacy proficiency. Their proficiency premiums are larger with more intensive participation.[78] The study also found a robust impact of ABS program participation on secondary school credential attainment [79] and engagement in postsecondary education.[80]

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.[81]

The following are channels through which the benefits discussed above might be achieved:

Better information for workers. The performance accountability measures will 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 will help trainees and providers target their efforts and develop reasonable expectations about outcomes.

Consumers of educational services, including those with barriers to employment, such as 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 information about available courses and the fields with the highest economic return.[82] Given these information gaps and financial pressures, it is important that displaced workers learn of the economic returns to various training plans.[83] Still, one study concluded 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.[84]

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

Implementation of follow-up measures, rather than termination-based measures, might improve long-term labor market outcomes, although some

[72] Gritz, M., and Johnson, T. (2001). *National Job Corps Study: Assessing program effects on earnings for students achieving key program milestones.* Prepared by Battelle Memorial Institute for U.S. Department of Labor, Employment and Training Administration, Office of Policy and Research. Retrieved from: *http://wdr.doleta.gov/research/FullText_Documents/MilestoneImpactReport-Final.pdf.*

[73] Hollenbeck, K., Schroeder, D., King, C.T., and Huang, W.J. (2005). *Net impact estimates for services provided through the Workforce Investment Act* (Occasional Paper 2005–06). Washington, DC: U.S. Department of Labor. Retrieved from: *http://wdr.doleta.gov/research/FullText_Documents/Net%20Impact%20Estimates%20for%20Services%20Provided%20through%20the%20Workforce%20Investment%20Act-%20Final%20Report.pdf.*

[74] Needels, K., Bellotti, J., Dadgar, M., and Nicholson, W. (2006). *Evaluation of the Military Base National Emergency Grants: Final report* (Occasional Paper 2007–02). Prepared by Mathematica Policy Research for U.S. Department of Labor, Employment and Training Administration, Office of Policy Development and Research. Retrieved from: *https://wdr.doleta.gov/research/FullText_Documents/Evaluation%20of%20the%20Military%20Base%20National%20Emergency%20Grants%20Final%20Report.pdf.*

[75] OECD. About the Survey of Adult Skills (PIAAC). Retrieved from: *https://www.oecd.org/site/piaac/surveyofadultskills.htm.*

[76] Portland State University. (2010). *Introduction* to LSAL. Retrieved from: *http://www.lsal.pdx.edu/index.html.*

[77] U.S. Department of Education, Office of Career, Technical, and Adult Education. *The Impact of ABS Program Participation on Long-Term Economic Outcomes.* Washington, DC, 2014. Retrieved from: *http://lincs.ed.gov/employer/1_ABS_Economic_Outcomes.pdf.*

[78] U.S. Department of Education, Office of Career, Technical, and Adult Education. *The Impact of ABS Program Participation on Long-Term Literacy Growth.* Washington, DC, 2014. Retrieved from: *http://lincs.ed.gov/employer/2_ABS_Literacy_Growth.pdf.*

[79] U.S. Department of Education, Office of Career, Technical, and Adult Education. *The Impact of ABS Program Participation on Long-Term GED Attainment.* Washington, DC, 2014. Retrieved from: *http://lincs.ed.gov/employer/3_ABS_GED_Attainment.pdf.*

[80] U.S. Department of Education, Office of Career, Technical, and Adult Education. *The Impact of ABS Program Participation on Long-Term Postsecondary Engagement.* Washington, DC, 2014. Retrieved from: *http://lincs.ed.gov/employer/4_ABS_Postsecondary_Engagement.pdf.*

[81] Johnson, T., Gritz, M., Jackson, R., Burghardt, J., Boussy, C., Leonard, J. and Orians, C. (1999). *National Job Corps study: Report on the process analysis.* Prepared by Mathematica Policy Research, Inc. for U.S. Department of Labor, *Employment* and Training Administration. Retrieved from: *http://wdr.doleta.gov/research/FullText_Documents/99-jc_analysis.pdf.*

[82] Greenstone, M., and Looney, A. (2011). *Building America's job skills with effective workforce programs: A training strategy to raise wages and increase work opportunities.* Washington, DC: The Hamilton Project. Retrieved from: *http://www.brookings.edu/~/media/research/files/papers/2011/11/training-greenstone-looney/11_training_greenstone_looney.pdf.*

[83] Jacobson, L.S., Lalonde, R.J., and Sullivan, D. (2011). *Policies to reduce high tenured displaced workers' earnings losses through retraining* (Discussion Paper 2011–11). Washington, DC: The Hamilton Project. Retrieved from: *http://www.brookings.edu/~/media/research/files/papers/2011/11/displaced-jacobson-lalaonde-sullivan/11_displaced_jls_paper.pdf.*

[84] Heinrich, C.J., Mueser, P.R., Troske, K.R., Jeon, K.S., and Kahvecioglu, D.C. (2009). *New estimates of public employment and training program net impacts: A nonexperimental evaluation of the Workforce Investment Act program* (Discussion Paper 4569). Bonn, Germany: Institute for the Study of Labor (IZA). Retrieved from: *http://ftp.iza.org/dp4569.pdf.*

could divert resources from training activities.[85]

Before-after earning metrics capture the contribution of training to earnings potential and minimize incentives to select only training participants with high initial earnings.[86] With the exception of programs in a few States, current incentives do not reward enrollment of the least advantaged.[87] In addition, the study noted evidence that the performance-standards can be ''gamed'' in an attempt to maximize centers' measured performance.[88]

Pressure to meet performance levels could lead providers to focus on offering services to participants most likely to succeed. For example, current performance 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.[89]

The following subsections present additional channels by which economic benefits may be associated with various aspects of this Final 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 quarterly earnings by $951.[90] Another study, however, found that training in the WIA dislocated worker program had a net benefit close to zero or even below zero.[91]

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.[92]

Workers with disabilities. A study of individuals with disabilities enrolled in training for a broad array of occupations 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 Final Rule, the Departments have concluded that the societal benefits justify the anticipated costs.

Ancillary Benefits

The following section describes the ancillary benefit to the DOL program that may result from this Final Rule due to integrated DOL program participant records—an activity that is highly encouraged in the Final Rule, but is not required.

Integrated DOL Program Participant Records. Section 504 of WIOA requires State and Local WDBs to establish procedures and criteria that will simplify reporting requirements and reduce reporting burdens. Under WIOA, States will be highly encouraged to submit one record for an individual participating in one or more DOL title I and Wagner-Peyser Act Employment Service core programs. The individual records would be standardized in terms of data elements and associated reporting specifications. Under WIA, for the DOL core programs, States were required to provide two separate individual records for an individual receiving services under the DOL title I programs and the Wagner-Peyser Act Employment Service program. A single integrated individual record for DOL core programs would eliminate duplicative reporting of an individual's demographic information across programs.

According to a recent report which sampled 28 local areas, career counselors reported that their high caseloads (approximately 50 to 100 cases per counselor) limited the amount of time they could spend providing individualized career services (individualized career services under WIOA) per client.[93] Efficiencies in the intake process will allow case managers to spend more time per client delivering intensive services. The study also found that intensive services led to increased employment and earnings, and individuals that received intensive services were more likely to have stable jobs with more benefits.[94] In addition to the technical benefits of integrated systems, this process will reduce administrative burdens in service delivery that existed under WIA. WIOA removes a sequence of service requirement that in some cases may have prolonged or created barriers to effective service delivery. Under WIOA, career planners can deliver the needed services without going through these administrative processes. By doing so, individuals will get the services they need sooner which can lead to quicker entry into employment or training. Furthermore, having integrated records will help the programs find the best mix of services for individuals, which can result in UI payment reductions, improved job placement rates, higher paying jobs, and reduced government assistance. Although there will be some upfront costs to develop the system (as discussed in provision (c) ''State Performance Accountability System''), the Departments expect long-term benefits.

Transfers

In addition, there are two important transfers that the Departments were unable to quantify. Below, we describe qualitatively the transfers that are expected to result from improved system alignment and the Reemployment and Eligibility Assessment Program.

Improved system alignment. Under WIOA, State WDBs must help Governors develop strategies for

[85] Courty, P., and Marschke, G. (2007). Making government accountable: Lessons from a federal job training program. *Public Administration Review, 67*(5), 904–916.

[86] Heckman, J.J., Heinrich, C., and Smith, J.A. (1997). Assessing the performance of performance standards in public bureaucracies. *American Economic Review, 87*(2), 389–395.

[87] *Ibid.*

[88] *Ibid.*

[89] Dunham, K., Mack, M., Salzman, J., and Wiegand, A. (2005). *Evaluation of the WIA performance measurement system: Survey report.* Prepared by Social Policy Research Associates for U.S. Department of Labor, Employment and Training Administration. Retrieved from: *http://wdr.doleta.gov/research/FullText_Documents/Evaluation%20of%20the%20WIA%20Performance%20Measurement%20System%20-%20Survey%20Report.pdf.*

[90] Hollenbeck K., Schroeder, D., King, C.T., and Huang, W.-J. (2005). *Net impact estimates for services provided through the Workforce Investment Act* (Occasional Paper 2005–06). Washington, DC: U.S. Department of Labor, Employment and Training Administration, Office of Policy and Research, Division of Research and Demonstration. Retrieved from: *http://wdr.doleta.gov/research/FullText_Documents/Net%20Impact%20Estimates%20for%20Services%20Provided%20through%20the%20Workforce%20Investment%20Act-%20Final%20Report.pdf.*

[91] Heinrich, C.J., Mueser, P.R., and Troske, K.R. (2009). *Workforce Investment Act non-experimental net impact evaluation.* Columbia, MD: IMPAQ International, LLC. Retrieved from: *http://wdr.doleta.gov/research/FullText_Documents/Workforce%20Investment%20Act%20Non-Experimental%20Net%20Impact%20Evaluation%20-%20Final%20Report.pdf.*

[92] Kosanovich, W., Fleck, H., Yost, B., Armon, W., and Siliezar, S. (2001). *Comprehensive assessment of self-employment assistance programs.* Prepared by DTI Associates for U.S. Department of Labor, Office of Workforce Security. Retrieved from: *http://wdr.doleta.gov/research/FullText_Documents/Comprehensive%20Assessment%20of%20Self-Employment%20Assistance%20Programs.pdf.*

[93] D'Amico, R. *et al.* (2015). *Providing public workforce services to job seekers: Implementation findings on the WIA Adult and Dislocated Worker Programs.* Washington, DC: Mathematic Policy Research.

[94] McConnell, S. *et al.* (2016). *Providing public workforce services to job seekers: 15-Month impact findings on the WIA Adult and Dislocated Worker Programs.* Washington, DC: Mathematica Policy Research.

aligning technology and data systems across one-stop partner programs to enhance service delivery and improve efficiencies in reporting on performance accountability measures. Improved system alignment will allow States to better understand and address State-level problems. 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. For example, participants in a title I job training program, who need to improve their basic literacy skills, will be able to access the title II adult education services they need in one location which will help to facilitate concurrent service delivery by the one-stop core partner programs and ultimately accelerate overall timeliness for outcome attainment. With this improved information, States will have the ability to negotiate levels of performance more accurately, which will subsequently reduce the likelihood that States will receive sanctions for failing to meet the State-adjusted levels of performance for a program for a second consecutive program year or for failing to submit a report for any program year.

The Reemployment and Eligibility Assessment program. The Reemployment and Eligibility Assessment program, which has now evolved to become the Reemployment Service and Eligibility Assessment program, was effective in assisting claimants to exit the UI program and avoid exhausting regular UI benefits in Florida, Idaho, and Nevada. By avoiding UI benefit exhaustion, the program led to reductions in the likelihood of receiving unemployment compensation benefits. There exists notable evidence that the Reemployment and Eligibility Assessment program is cost-effective, particularly when provided through an integrated service delivery model, which WIOA also promotes.[95] The program reduced UI payments and increased tax revenue resulting from increased worker earnings.

[95] Poe-Yamagata, E., Benus, J., Bill, N., Carrington, H., Michaelides, M., and Shen, T. (2011). *Impact of the Reemployment and Eligibility Assessment (REA) Initiative.* Columbia, MD: IMPAQ International, LLC. Retrieved from: *http://wdr.doleta.gov/research/FullText_Documents/ETAOP_2012_08_Impact_of_the_REA_Initiative.pdf.*

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 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 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 Final Rule.

Affected Small Entities

The Final 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 WDB, with the approval of the chief 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.

This Final 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.[96]

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. We have highlighted costs that are new to WIOA implementation and this Final Rule. Therefore, we expect that this WIOA Final Rule will have no cost impact on small entities.

C. Small Business Regulatory Enforcement Fairness Act of 1996

The Departments have concluded that this Joint WIOA Final Rule 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 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 public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the PRA. *See* 44 U.S.C. 3506(c)(2)(A). This activity helps to ensure that the public understands the collection instructions, respondents can provide the requested data in the desired format, reporting

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

burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Departments can properly assess the impact of collection requirements on respondents.

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).

In accordance with the PRA, the Departments submitted two ICRs—(1) Workforce Innovation and Opportunity Act Common Performance Reporting and (2) Unified or Combined State Plan and Plan Modifications under the Workforce Innovation and Opportunity Act, Wagner-Peyser Act WIOA Title I Programs, and Vocational Rehabilitation Adult Education—to OMB when the NPRM was published. The NPRM provided an opportunity for the public to send comments on the two information collections directly to the Departments; commenters also were advised that comments under the PRA could be submitted directly to OMB. OMB issued a notice of action for each request asking the Departments to resubmit the ICRs, after considering public comments, at the Final Rule stage. Given that information collection instruments were not ready at the time the NPRM published, the Departments provided additional opportunities for the public to comment on the information collections through notices in the **Federal Register** that provided additional comment periods on the associated forms and instructions. These comment periods provided at least 60 days for comments to be submitted to the agencies. Each of these ICRs was then submitted for OMB approval, and additional notices were published in the **Federal Register** that invited comments to be sent to OMB for a period lasting at least 30 days. The Departments also submitted each ICR for further approval to incorporate the provisions of this Joint WIOA Final Rule; these Final Rule ICRs were not subject to further public comment. The Departments provide a status of each ICR in the summary section that immediately follows in this portion of the preamble. Where a review remained pending, when this preamble was drafted, the Department will publish an additional notice to announce OMB's final action on the ICR. The Departments also discuss the public comments received related to the ICRs in this section of the preamble. It should be noted that these ICRs have been submitted under a procedure that allows a collection to be sponsored by one agency and later subscribed to by other agencies. Such ICRs are classified as ''common forms.'' In making the initial request, the host agency submits the request and claims its portion of the burden; ultimately, the full burden is accounted for as other agencies subscribe and claim their share of the burden. For purposes of this Joint WIOA Final Rule preamble, only the DOL share of the burden is discussed. The full burden is addressed in the supporting statement used to justify the request.

It should be noted that the ICR review status reported in this section only relates to requests related directly to the Final Rule. Certain ICR packages that were previously approved are being updated to change references to those in the Joint WIOA Final Rule. As has been the practice throughout WIOA implementation, the agencies will continue to update stakeholders on the status of the joint ICRs related to State planning and performance accountability through other means.

The Required Elements for the Submission of the Unified or Combined State Plan and Plan Modifications Under the Workforce Innovation and Opportunity Act Information Collection, OMB 1205–0522 substantive requirements were approved via a notice of action dated February 19, 2016. As of the date of the drafting of this preamble, the information collection is being updated to reflect references in the Joint WIOA Final Rule. Also, the Workforce Innovation and Opportunity Act Common Performance Reporting ICR review is pending as of the date this preamble was drafted. The substantive requirements will be approved through a notice of action by OMB, and will take effect as of that date. The Departments will announce this approval.

The information collections in this Final Rule are summarized as follows.

Workforce Innovation and Opportunity Act Common Performance Reporting

Agency: DOL–ETA.

Title: Workforce Innovation and Opportunity Act Common Performance Reporting.

Type of Review: New collection.

OMB Control Number: 1205–0526.

Affected Public: State, Local, and Tribal Governments; Private Sector; and Individuals or Households.

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

Total Estimated Number of Respondents Annually: 16,246,121.

Total Estimated Number of Annual Responses: 32,456,962.

Frequency of Response: On occasion.

Total Estimated Annual Time Burden: 8,372,737 hours.

Total Estimated Annual Other Costs Burden: $26,147,067.

Regulations Sections: 20 CFR part 680 (adult and dislocated worker programs, and ETPs); 20 CFR part 681 (youth program); 20 CFR part 652 (Wagner-Peyser Act Employment Service program); 34 CFR parts 462 and 463 (AEFLA program); and 34 CFR part 361 (VR program).

ICR Approval Status: Not yet approved.

Overview and Response to Comments Received

Overview: This information collection will collect common performance data required under sec. 116 of WIOA from all six core programs—the adult, dislocated worker, youth, Wagner-Peyser Act Employment Service, AEFLA, and VR programs—as well as from ETPs. The Departments will use a common approach to standardize the quarterly and annual reporting, as appropriate, of common data elements for all core programs and ETPs. These data are in addition to other performance data reported by each of the core programs under current information collections in accordance with final joint and program-specific regulations discussed elsewhere in this issue of the **Federal Register**. The Departments note that the OMB control number for this new information collection was shown in the NPRM as 1205–0420. After further review and consultation with OMB, due to the need to continue reporting other data associated with WIA, 1205–0420 will remain as a WIA-only collection and the new WIOA performance collection will receive the control number 1205–0526.

Response to Comments Received: The Departments received general and specific comments concerning this performance information collection. The comments focused specifically upon three areas: Measurable skill gains; ETP; and the ICR instruments.

General Comments

General comments focused on data collection and overall burden.

Comments: One commenter stated that the Departments should be aware that the proposed definitions and rules could create unintended incentives that do not align with program objectives. Another commenter stated that there is too much data included in the WIOA Joint Performance ICR. Several commenters requested clarification about data collection, reducing the burden, and other requirements.

Departments' Response: The Departments have established a reporting system that reflects all the requirements of WIOA and, to the extent possible, safeguards against false or inaccurate reporting. The statistical adjustment model will contribute greatly to such efforts. The WIOA Performance Management, Information, and Reporting System includes only those elements that are required by statute or are a necessary component of the calculation of performance indicators or report items. While the Departments recognize that the data requirements are potentially burdensome, the Departments have made every effort to minimize the burden as much as possible. Additionally, the Departments recognize concerns regarding clarification about data collection for several of the primary indicators of performance and the burden of collection and management of data on common performance accountability requirements, as well as ensuring consistency in reporting across programs. The Departments recognize that State agencies will be faced with the challenges and burden of implementing the new requirements and responsibilities imposed by WIOA, including revising their management information systems. The Departments are working together to provide both joint and program-specific guidance and technical assistance to assist States in implementing these changes. The ETA will also issue an agency-specific reporting handbook for the PIRL along with guidance.

Comments: A few commenters discussed the use of supplemental data (*i.e.,* a proxy for wage records that do not exist) in the context of the median earnings performance indicator. Specifically, two commenters expressed opposition to the use of supplemental data for the median wage indicator, commenting that under WIA reporting, any wage-related measure relied exclusively on wage records. Another commenter remarked that the collection of supplemental data on wages is burdensome. Other commenters recommended that calculation of median earnings should not permit the utilization of supplemental data, but should rely solely on quarterly wage records.

Departments' Response: The Departments considered the concerns expressed by commenters regarding the possible burden and reliability of supplemental data and follow-up methods to report on the median wage indicator. However, the Departments have concluded that in order to hold States accountable for employment and earnings outcomes of all program participants, States will be allowed to collect and verify supplemental wage information to demonstrate employment outcomes in the 2nd and 4th quarters after exit in those instances where wage records are not available. Using supplemental data ensures that programs may track participants even if those participants' employment and wage information is not contained in the State's quarterly wage record system. If a State uses supplemental information to report on the employment rate indicators, the State must also use supplemental information to report on the median earnings indicator. States that elect not to use supplemental data and follow-up methods are expected to include participants who do not have the necessary data points to complete a wage record match in the denominator of the calculation. Those individuals would be counted as failures on the three employment indicators. In some programs, follow-up procedures have already been established and have been used historically to supplement wage record matching. The Departments conclude that allowing States to use supplemental follow-up methods for individuals who are self-employed, do not provide a valid SSN, or other specified reasons will provide a more comprehensive picture of program performance. The Departments will issue joint guidance to define further what constitutes acceptable forms of supplemental data and follow-up methods.

Comments: Many commenters discussed the credential attainment rate indicator, several of whom commented on the calculation methodology. In particular, three commenters said the proposed methodology for calculating the credential attainment rate would overlook the progress and accomplishments of students who enter adult education programs with high school credentials. A commenter remarked that if the denominator for the credential attainment indicator includes all participants, it would serve as a disincentive to co-enrollment; however, if it only includes participants in training, it would create a disincentive for widespread access to training. Two commenters stated that the proposed calculation of the credential rate denominator would create a negative incentive and serve to steer low-skilled individuals away from training services. Another commenter suggested that only participants who received training services should be counted in this indicator. Still another commenter urged the Departments to design this indicator to prevent counting a participant more than once. Two commenters recommended that secondary and postsecondary results be separated for the calculation of the credential attainment rate indicator. Some commenters requested clarification on various aspects of the credential attainment rate indicator. Three commenters asked the Departments to clarify what would constitute a certificate. A commenter requested that the Departments provide clear definitions for the terms ''recognized postsecondary credentials'' and ''industry recognized credentials.'' Similarly, two other commenters suggested that the Departments provide guidance on this issue. Another commenter recommended that clarification be provided regarding how far in the past a date of enrollment in education or training may be to count for purposes of this indicator. Two commenters requested clarification regarding whether Adult Basic Education (ABE) participation in classes at the ninth grade equivalent or higher would count as enrollment in secondary education. A different commenter requested additional information regarding the counting of participants who obtain multiple credentials during the same program year. A couple of commenters requested clarification about what services would qualify as a participant having received training for the purpose of the credential attainment rate. Finally, two commenters asked whether the credential obtained must be based on WIOA-funded services and provided by an ETP.

Departments' Response: The Departments understand the concerns expressed by many commenters about whether the credential attainment rate indicator includes all participants of any core program. The credential attainment rate indicator focuses on participants who are enrolled in an education or training program because the purpose of the indicator is to measure performance related to attainment of credentials received as a result of successful participation in these programs; therefore, it would not be reasonable to measure credential attainment against a universe that

includes other individuals who are seeking critical WIOA services other than a credential. The final regulations, as well as the final WIOA Joint Performance ICR, will make clear that this indicator measures the percentage of those participants enrolled in an education or training program (excluding those in OJT and customized training) who obtained a recognized postsecondary credential or a secondary school diploma, or its recognized equivalent, during participation in or within 1 year after exit from the program. Moreover, a participant who has obtained a secondary school diploma or its recognized equivalent is only included in the percentage of participants who obtained a secondary school diploma or recognized equivalent if the participant is also employed or is enrolled in an education or training program leading to a recognized postsecondary credential within 1 year after exit from the program. This WIOA Joint Performance ICR has been revised accordingly such that the postsecondary portion of the credential attainment rate denominator includes only those postsecondary exiters in an education or training program. Postsecondary exiters in on-the-job training and customized training are excluded from the credential attainment rate indicator because the Departments recognize that those trainings do not typically lead to a credential.

A ''recognized postsecondary credential'' is defined in WIOA sec. 3(52) as ''a credential consisting of an industry-recognized certificate or certification, a certificate of completion of an apprenticeship, a license recognized by the State involved or Federal Government, or an associate or baccalaureate degree.'' The Departments will issue joint guidance that further defines what constitutes an acceptable credential for the credential attainment rate numerator, including guidance regarding an acceptable industry-recognized certificate or certification and definitions for each type of credential. The Departments have not provided a threshold for participation in education or training programs for inclusion in the indicator. The Departments will provide further program-specific guidance on what constitutes education or training for inclusion in the credential attainment rate indicator, for purposes of the core programs. The credential obtained is not required to be WIOA-funded or based on services provided by an eligible training provider. There is no reason to capture the date training concluded. The credential indicator is calculated based on those in education or training at any point in the program or within 1 year after exiting the program, regardless of whether the training ended.

Because WIOA sec. 116(b)(2) specifies the percentage of participants who obtain a recognized postsecondary credential or secondary school diploma or its recognized equivalent in a single indicator, the Departments will not separate secondary and postsecondary credential attainment into two separate indicators. Any acceptable credential attained during the program or within 1 year following program exit counts toward the credential attainment rate indicator. The PIRL records outcomes regarding this indicator in the following manner.

First, for participants enrolled in a postsecondary education or training program (other than OJT and customized training), PIRL 1811, Most Recent Date Enrolled in Education or Training Program Leading to a Recognized Postsecondary Credential or Employment During the Program, records enrollment. Participants enrolled in such a program are included in the denominator for calculating outcomes for this indicator. PIRL 1801, Date Attained Recognized Credential, records the date on which an individual attained a recognized credential, and PIRL 1800, Type of Recognized Credential, records the type of recognized credential attained. The Departments note that PIRL 1801 (formerly PIRL 1705) has been renamed as suggested by a commenter. Participants are included as successes in the numerator of this indicator if at least one recognized credential is earned either during participation in the program or within 1 year (*i.e.,* four quarters) after exit from the program. A participant counts in the denominator and numerator only one time regardless of how many credentials a ''participant'' attains prior to an ''exit.'' However, if a ''participant'' ''exits'' more than once in a program year and attains a credential prior to each exit, the program will report the credential attained prior to each exit. The Departments note that participants who enter a program with a secondary school credential are counted as a success on this indicator if they earn a postsecondary credential during participation in the program or within 1 year after exit from the program.

Second, for participants who attain a secondary school diploma or its recognized equivalent, PIRL 1401, Enrolled in a Secondary Education Program, records enrollment. ABE participation in classes at the ninth grade equivalent or higher will count as enrollment in secondary education. Participants enrolled in such a program are included in the denominator for calculating outcomes regarding this indicator. As stated above, PIRL 1801, Date Attained Recognized Credential, records the date on which an individual attained a recognized credential, and PIRL 1800, Type of Recognized Credential, records the type of recognized credential attained, including high school diploma or equivalency. WIOA sec. 116(b)(2)(A)(iii) requires that program participants who obtain a secondary school diploma or its recognized equivalent shall be included in the percentage counted as meeting the criterion only if such participants have obtained or retained employment or are in an education or training program leading to a recognized postsecondary credential within 1 year after exit from the program. To that end, PIRL 1406, Date Enrolled in a Post Exit Education or Training Program, records the date of post-exit enrollment in such a program. Participants are included as successes in the numerator of this indicator if, during the program or within 1 year after exit from the program, they are enrolled in a post-exit education or training program (PIRL 1406), attain a recognized postsecondary credential (PIRL 1800), or obtain or retain employment (PIRL 1600, PIRL 1602, PIRL 1604, PIRL 1606). In the final WIOA Joint Performance ICR, those participants who are receiving adult education services while incarcerated will not count in the employment retention, earnings, credential attainment, or effectiveness of serving employers indicators. These individuals will only be counted, for performance calculation purposes, in the measurable skill gains indicator. The Departments recognize burden concerns for tracking credential attainment. WIOA requires the collection and reporting of the credential attainment rate indicator for all core programs, except for the Employment Service program, authorized under the Wagner-Peyser Act as amended by title III of WIOA (*see* WIOA sec. 116(b)(2)(A)(i)). The Departments will provide guidance and technical assistance for tracking and reporting credential attainment.

Comments: A few commenters expressed concern that a participant may only be in the denominator once but may be in the numerator multiple times, thereby disproportionately affecting the indicator. Commenters suggested that the measurable skill gains report templates be aligned with the

reporting instructions and designed so that a participant is not counted multiple times. Another recommended that the Departments revise the reporting period to include a reasonable lag period, which would provide participants with a reasonable opportunity to achieve a gain. Three commenters suggested that participants who receive educational or training services while incarcerated or institutionalized be included in the measurable skill gains performance indicator in order to avoid a disincentive to serve these populations. However, a commenter remarked that institutionalized individuals should be excluded from the indicator because they will not likely be able to continue in secondary or postsecondary education. A commenter requested clarification on the inclusion of incarcerated individuals in this indicator. One commenter stated that the program year timeline does not align with the performance needs of the participant and would result in an underestimation of the true rate of skill gains. The commenter also contended that if a participant is receiving services under multiple programs, the individual could be counted multiple times, creating an incentive to recruit and promote providers offering short-term trainings with easily achieved milestones.

Departments' Response: The performance calculation for the measurable skill gains indicator is the same as it is for all other indicators. If a participant exits a program more than once in a program year and achieves measurable skill gains prior to exiting each time, then that participant could achieve more than one measurable skill gain in a program year. A participant may achieve more than one measurable skill gain prior to each exit, but only one gain per exit will be counted in the performance calculations. If a participant is co-enrolled in multiple core programs and meets the definition of participant for each of the multiple programs in which the participant is enrolled, the participant would count in each program's indicators of performance, including the measurable skill gains indicator.

The Departments will provide program-specific guidance and technical assistance to define the types of services and trainings that constitute ''an education or training program that leads to a recognized postsecondary credential or employment''. Individuals not in the types of programs specified will not be included in the measurable skill gains indicator.

The Departments recognize the concern raised by commenters that the program year timeline may not provide participants with reasonable opportunity to achieve a gain, particularly when a participant enters the program late in a program year. Therefore, the Departments considered whether a minimum time threshold should be incorporated into the measurable skill gains indicator. However, the Departments have concluded that given the diversity of participant needs and program services, imposing a time period by which progress is to be documented would be somewhat arbitrary and difficult. Such practice could result in excluding a number of participants from performance accountability reporting requirements, even if those participants achieve a gain under one of the measures of progress. The Departments note that the negotiations process can and should take into account enrollment patterns and lower baseline data when establishing negotiated levels of performance for the measurable skill gains indicator.

All participant outcomes, regardless of whether achieved at the end of the reporting period in which a participant enrolled or in the next reporting period, will count as positive outcomes for the program. The Departments are concerned about incentivizing behavior that discourages service providers from enrolling disconnected youth, in particular, when they first approach programs, or that purposefully attempts to focus service on individuals who are more likely to obtain a positive outcome. The Departments emphasize that programs must not delay enrollment or prohibit participants from entering a program late in the program year.

It is not the Departments' intent to exclude incarcerated individuals from the measurable skill gains indicator. The PIRL includes a code value for incarcerated participants in PIRL 923, Other Reasons for Exit (formerly PIRL 971, Exclusionary Reasons). This element is used to exclude incarcerated participants who are enrolled in adult education from all performance indicators except for the measurable skill gains indicator if they remain incarcerated at program exit. The Departments recognize that some programs (*i.e.,* the youth and adult education programs) offer educational services to incarcerated individuals, and participants may make interim progress or other gains in secondary or postsecondary education. The final information collection specifies that the purpose of the code values specific to incarcerated participants is to exclude incarcerated individuals from the performance calculations for the employment indicators (employment in 2nd and 4th quarter after exit, median wages, and effectiveness in serving employers) and the credential attainment indicator, but not to exclude them from performance calculations for the measurable skill gains indicator. This means that programs that serve incarcerated individuals would be held accountable for the measurable skill gains indicator.

Comments: Regarding the burden of collecting data for measurable skill gains, commenters stated that the performance indicator would be too burdensome to collect for adult and dislocated worker programs. Commenters also inquired how frequently the data used to calculate this indicator need to be collected. One commenter remarked that it has not tracked the data required to calculate measurable skill gains and it would be burdensome to gather this information retroactively. A commenter emphasized the need for guidance regarding measurable skill gains. Another commenter requested that guidance for the indicator consider skills beyond typical quantifiable measures, using the NFJP model as a basis, which includes developing detailed custom training plans for each participant. One commenter inquired whether local areas will be required to implement a standard measure or test of proficiency and whether there will be technical assistance to operationalize the real-time recording of proficiency levels. This commenter compared the potential challenges of the measurable skill gains indicator for local areas to the challenges experienced under the WIA literacy/numeracy gains common measure. One commenter supported the proposal to phase in the implementation of the measurable skill gains indicator and suggested that grade point average (GPA) be used as a method to measure and document skill gains.

Departments' Response: The Departments recognize burden concerns for States due to the changes in the performance reporting requirements; however, WIOA sec. 116(b)(2)(A)(i) requires that the measurable skill gains indicator apply across all core programs, except for the Wagner-Peyser Act Employment Service program, in order to assess the effectiveness of States and local areas in achieving positive outcomes for individuals served by those programs. Therefore, the implementation of the measurable skill gains indicator cannot be phased in and States are required to begin collecting

data for this indicator in PY 2016. Having said this, the Departments recognize that some programs will not be able to collect data and report on all indicators immediately. The Departments will provide program-specific guidance as appropriate.

In order to address the various comments and questions received regarding the measurable skill gains indicator, the Departments will provide program guidance and technical assistance regarding each core program in WIOA titles I, II, and IV to further clarify the measurable skill gains indicator. The Departments have concluded, however, that additional types of documented progress for determining whether a participant has achieved measurable skill gains beyond the five types set forth in final § 677.155(a)(1)(v) will not be included. The Departments note the five gain types included in the regulation and the WIOA Joint Performance ICR share a level of rigor and provide enough flexibility to allow for the commenters' recommended option.

The Departments acknowledge the suggestion to use GPA as a method to measure skill gains. The Departments reiterate that, as stated above, both the Final Rule at § 677.155(a)(1)(v) and the WIOA Joint Performance ICR will define only five standardized ways States can measure and document participants' measurable skill gains. The Departments note, however, that GPA may be reflected in PIRL 1807 (former PIRL 1801) and PIRL 1808 (former PIRL 1801). Each of these elements records measurable skill gains as documented by a transcript or report card for either secondary or postsecondary education for a sufficient number of credit hours to show that a participant is meeting the State unit's academic standards.

Comments: A commenter suggested that measurable skill gains should include attainment of competencies to stay abreast of innovative educational practices; secondary and postsecondary education should be measured separately to enhance precision and clarity of the indicator; and interim progress should be achieved after attainment of 12 rather than 24 credit hours. Another commenter inquired as to what is considered an adequate rate of measurable skill gains for part-time students.

Departments' Response: The Departments acknowledge the suggestion to include attainment of competencies to stay abreast of innovative educational practices but have not added measures beyond the five standardized ways for documenting measurable skill gains in § 677.155(a)(1)(v) and the WIOA Joint Performance ICR. In regard to the comment related to measuring secondary and postsecondary education separately, the Departments will not separate secondary and postsecondary credential attainment into two separate indicators of performance because WIOA specifies the percentage of students who obtain a recognized postsecondary credential or secondary school diploma as a single indicator of performance for the performance accountability measures. However, the Departments note that it is important to capture data on students who achieve a high school diploma or its recognized equivalent, as well as a recognized postsecondary credential; therefore, both will be included in one indicator for performance accountability purposes (as indicated by the ''Credential Attainment Rate'' tab in the WIOA Statewide Performance Report Template), but programs will be able to collect data on achievement of both types of credentials, as appropriate, in PIRL 1800 (former PIRL 1700), which records Type of Recognized Credential attained. The Departments conclude that for the measurable skill gains indicator, the multiple gain types proposed are rigorous and provide flexibility to allow for gains to be captured in a variety of ways. While commenters may be concerned about how the Departments will adjust for variation among States in gains for clients enrolled in longer-term postsecondary programs, the Departments note that participants would have the opportunity for success in the transcript type gain, which would allow a program to record a gain for such participants in every year. Furthermore, the statistical adjustment model is designed to compensate for these variations in the consideration of levels of performance, thereby compensating for State-to-State variances in the length of postsecondary education. The Departments will not weigh performance indicators based on degree of program difficulty. The Departments emphasize that programs may not purposefully attempt to focus service on individuals perceived as more likely to obtain a positive outcome, or selectively enroll participants in programs in which positive outcomes on these indicators are perceived as more likely, but for which such enrollment is not in the best interest of the participants.

Lastly, the Departments recognize concerns regarding credit hours for interim progress. In the NPRM, the Departments proposed a measure requiring a transcript or report card for 1 academic year or for 24 credit hours. The Departments agree with the concern that a transcript for 1 academic year or 24 credit hours is too onerous for part-time students and have changed this measure to require that the transcript or report card reflect a sufficient number of credit hours to show a participant is achieving the State unit's academic standards. This change will be reflected in the Joint WIOA Final Rule at § 677.155(a)(1)(v)(C), which will document progress through receipt of a secondary or postsecondary transcript or report card for a sufficient number of credit hours that shows a participant is meeting the State unit's academic standards. The Departments anticipate that, for participants in postsecondary education, a sufficient number of credit hours would be at least 12 hours per semester or, for part-time students, a total of at least 12 hours over the course of two completed consecutive semesters during the program year that shows a participant is achieving the State unit's academic standards (or the equivalent for other than credit-hour programs).

Comments: A commenter recommended that the Departments implement processes in data collection and reporting that are sensitive to diverse populations. Specifically, this commenter pointed out that the significant barriers for some students (especially those at the lowest literacy levels or non-native English speakers) are often not taken into consideration when developing measures to track goals and student performance. Another commenter suggested that special programming efforts may require new regulations or exceptions to existing regulations. Other commenters recommended that special priority populations, including ''low-level learners'', be reported as separate cohorts and suggested that the reporting methods take into consideration the more difficult process for data collection to follow up with these populations.

Departments' Response: The Departments acknowledge the recommendation to implement processes for data collection and reporting that are sensitive to special populations with barriers to employment. The Departments recognize that, given the diversity of participant needs and program services, the State agencies will be faced with the challenges and burden of implementing the new requirements and responsibilities imposed by WIOA, including the challenges associated with revising the management information systems to collect information on diverse populations.

However, for consistency purposes in reporting, the Departments will not implement additional exceptions to these final regulations. The Departments have provided rules to accommodate certain exceptional circumstances. For example, criminal offenders in correctional facilities are not included in employment and earnings indicators or the credential attainment rate indicator if they remain incarcerated at program exit, since they do not have the same opportunity to engage in unsubsidized employment or postsecondary education as do others in the general population. Likewise, participants who score at low levels of literacy are not included in credential attainment rate indicators unless they are enrolled in programs that provide instruction at or above the ninth grade level. These measures provide a reasonable approach to providing accountability while acknowledging the needs of vulnerable populations.

Comments: Multiple commenters provided feedback on two basic approaches to compiling the information necessary for a compliant ETP performance report that would achieve the stated objective of maximizing the value of the template for stakeholders. In the first approach, grantees would complete the ETP performance reports and make them available using the proposed template. Under that approach, one commenter favored grantees completing and making available the information using the proposed template, reasoning that it would give States the flexibility to compile and reconcile their own data. Commenters in another State agreed this approach would maximize the value of the report for local use. One commenter said that its State does not collect program level data for its large public institutions as part of the criteria to be an ETP, but the commenter recommended that program level data should be reported for those who provide training to participants in the WIOA adult and dislocated worker programs. In the second approach, grantees would send the necessary aggregate data to the Department, which would then compile, format and display the data.

One commenter favored this approach because it would increase the likelihood that reporting would be consistent, which would facilitate analysis and comparison. Another commenter suggested that, because each State has different access rights to information, the burden on States could be drastically reduced if WIOA partners could submit their reports to their Federal reporting agency that is then responsible for consolidating the information. Another commenter requested that DOL not specify the manner in which ETP performance reports are filed, reasoning that it would be easier for State agencies to run data required by the template rather than requiring ETPs to modify their systems to capture all the information required by the report. A commenter agreed that much of the information in the ETP report could be more efficiently provided by State and local governments—notably one-stop caseworkers—rather than ETPs, which have little or no access to some of the data. Commenters in another State remarked that local areas collect and track information for the ETP performance report constantly and stated that transferring the data to a centralized point for display to the public seems unnecessary and burdensome. Some commenters supported flexibility and urged the Departments not to mandate a method for filing reports, allowing either of the two approaches: grantees complete the ETP performance reports using a template and provide the Departments with the appropriate location of the report, or grantees send the necessary aggregate data to the Departments where the data could be compiled, formatted and displayed in a standardized user-friendly template and made available as required by WIOA sec. 116(d)(6)(B).

Departments' Response: WIOA sec. 116(d)(1) requires the Secretary of Labor, in conjunction with the Secretary of Education, to develop a template for performance reports to be used by States, Local WDBs, and ETPs for reporting on outcomes achieved by participants in the six core programs. The statute further requires that these templates for performance reports be designed in a manner that reflects the need to maximize the value of these templates for workers, job seekers, employers, local elected officials, State officials, Federal policy-makers, and other key stakeholders. Ultimately, as required by WIOA sec. 116(d)(6), the State must make available, in an easily understandable format, the performance reports for the ETPs. Based on review and consideration of the comments, the Departments have concluded that the standardization of the submission approach would lead to the best results in terms of data quality and will be providing submission details in a separate publication.

Comments: Many commenters expressed concern regarding the level of burden to ETPs for collecting the required data. Comments on burden pertained to required data elements as well as the data required for WIOA and non-WIOA students in particular. Some of these commenters recommended that the Departments lessen the burden by providing States the flexibility to develop ETP reporting requirements specifically for the elements related to wage data. One commenter acknowledged the data collection challenge for some ETPs but asserted it was important to have data on all students in order to help WIOA participants make informed decisions when selecting a training program. Another commenter remarked that it would be challenging to track down students to identify information as needed. A State agency expressed concern that ETPs would incur substantial burden to modify their systems to track and report data specific to WIOA participants. Another commenter said it is unlikely all providers will be able to collect the required data, so there may be data gaps for non-WIOA participants. A commenter expressed concern that the ETP performance report would not encourage entities other than colleges to participate in training because the data collection would seem intrusive to smaller facilities. This commenter also stated that collecting detailed program level data would be ineffective due to the small number of enrollments in training programs. Other commenters expressed similar concerns that data collection for the ETP performance report would seem intrusive to smaller training facilities and that information and documentation for low-income and younger clients would be difficult. Another commenter stated that disaggregated reports would be largely blank due to the relatively small number of participants and the need to maintain confidentiality.

Departments' Response: The Departments acknowledge the commenters' concerns and recognize the need to identify effective data collection strategies. However, the Departments have no authority to reduce the ETP reporting requirements set forth in WIOA sec. 116(d)(4), which mandate the collection of specific information for WIOA participants and for all individuals engaged in a program of study (or equivalent) for each such program of study provided by each eligible training provider, as outlined in the final regulations at § 677.230(a). The Departments recognize concerns expressed regarding the level of burden to ETPs for collecting the required data. In particular, WIOA sec. 116(d)(4)(A) requires information specifying the levels of performance achieved, for all

individuals engaged in a program of study, with respect to the primary indicators of performance for employment, earnings, and credential attainment. Moreover, WIOA sec. 116(d)(4)(B) requires the total number of individuals exiting from a program of study. Finally, WIOA secs. 116(d)(4)(C)–(F) require additional information regarding participant counts, participant exits, average cost per participant, and number of participants with barriers to employment as described in the proposed definitions.

In addition, the Departments have concluded that States are permitted to use ITAs for out-of-school WIOA youth participants ages 18 to 24, as provided in the DOL WIOA Final Rule at 20 CFR 681.550. For the purpose of the annual ETP performance report, WIOA out-of-school youth, ages 18 to 24, participating in a program of study using an ITA are reported in both the ETP performance report as well as in the State and Local annual reports. Because WIOA sec. 116(d)(4) does not describe such youth, the Departments note that when such youth are reported in the ETP performance reports, their performance is reported using the same performance indicators as prescribed for WIOA adult and dislocated worker participants (*i.e.,* the primary indicators of performance specified under WIOA sec. 116(b)(2)(A)(i)), which will be further specified in implementing regulations at § 677.155(a)(1)(i) through (vi). Using the same metrics for out-of-school youth using ITAs as well as for other WIOA participants and individuals in a course of study (or equivalent) minimizes the burden on ETPs. The Departments note that such youth are excluded from the required reporting identified at § 677.230(a)(1)(i) through (iii), but are included in the counts required by (a)(2) through (a)(4). The Departments further note that such youth are additionally reported on in the State and Local annual reports in accordance with §§ 677.155(d), 677.160, and 677.205 as described in those sections. The Departments will provide additional guidance on the treatment of these out-of-school youth using ITAs through the information collection process and in guidance. Therefore, for purposes of reporting on the ETP performance report, references to the adult and dislocated worker programs under title I of the WIOA adult program include out-of-school WIOA youth ages 18 to 24 participating in a program of study using an ITA.

The Departments have concluded that the WIOA Joint Performance ICR is in line with WIOA sec. 116(d) and will not reduce the number of required elements in the ETP reporting template. The Departments recognize the contribution of ETPs that may serve smaller populations and acknowledge that suppression standards may limit data, but have concluded that the WIOA Joint Performance ICR aligns with WIOA sec. 116. The Departments also recognize the interest in establishing processes for accessing wage related data. The Departments will provide additional information on the parameters of the collection and reporting of this information through the associated ICR and program specific guidance.

Comments: Regarding the PIRL, multiple commenters addressed the use of unique identifiers for program participants. A commenter requested clarification regarding how States would match unique identifiers when not using SSNs. Similarly, three commenters asked whether all core programs would be required to use the same unique identifier for a participant. Other commenters requested that the Departments clarify if the unique identifier must be an SSN. Another commenter recommended that a method for implementing a unique identifier be identified and phased in over time in order to allow States time to develop the necessary data collection systems. One commenter remarked that its core programs are not interconnected and would be unable to share unique identifiers.

Departments' Response: The unique identifier is not required to be an SSN. However, wage matching with the State UI system will be impossible for any participant for whom an SSN is not available. In those circumstances, programs will need to rely on supplemental follow-up methods for determining wages at 2nd quarter and 4th quarter following program exit. State VR agencies use a unique identifier now and the VR program may be a resource for other core programs when developing such a system. The Departments understand that many State data systems for Education and Labor programs are not interconnected. There is no requirement to share a common data system. Having separate systems does not preclude matching data to identify employment outcomes.

Comments: Commenters also discussed cultural barriers to employment. Four commenters urged the Departments to define cultural barriers clearly. Similarly, two commenters recommended that the Departments provide a less subjective definition of cultural barriers to allow for more consistency in the data. Another commenter suggested that the definition of cultural barriers be expanded to include limited English abilities. Two commenters stated that PIRL 705 identifies both displaced homemaker and cultural barriers. A commenter expressed opposition to tracking cultural barriers, reasoning this could alienate populations it should be serving and create liability for discrimination-based lawsuits. Similarly, another commenter expressed concern about posing this question without appearing discriminatory. Two commenters opposed collecting information on cultural barriers, stating that it is subjective and adds no significant value. Another commenter asked whether cultural barriers should be identified by the participant. One commenter recommended that the service providers, rather than the participant, be responsible for identifying cultural barriers. However, another commenter suggested only substantial, self-identified cultural barriers should be reported. Still another commenter contended that PIRL 705 is defined using a lesser standard than WIOA, which references a substantial cultural barrier. Two commenters requested that the Departments provide guidance indicating how to collect data on cultural barriers. A commenter suggested that participants may be unaware of the cultural barriers to employment that they face, making the data inaccurate.

Departments' Response: The statute identifies ''individuals who are English language learners, individuals who have low levels of literacy and individuals facing substantial cultural barriers'' as three categories of an ''individual with a barrier to employment.'' These three categories are treated as separate data elements in the PIRL because both individuals who are English language learners and individuals with low levels of literacy are elements that are required to be used in the statistical adjustment model, while the data element for individuals who are facing substantial cultural barriers is not required to be used in the model. The Departments understand that the determination of cultural barriers is highly subjective and have provided a definition that allows a program to base the designation on a participant's self-perception as to whether his or her attitudes, beliefs, customs, or practices pose a hindrance to employment.

Comments: Five commenters expressed concern and requested clarification about the discrepancies between the PIRL and RSA–911. For example, a commenter stated that the RSA–911 does not currently collect PIRL 1802 (Date of Most Recent

Measurable Skill Gains: Training Milestone) or PIRL 1803 (Date of Most Recent Measurable Skill Gains: Skills Progression). Another commenter recommended that the Departments align the PIRL and RSA–911 definitions and reporting options for PIRL data elements 1800 through 1804. Similarly, another commenter suggested that the Departments align the PIRL and RSA–911 or provide a crosswalk between the two sets of data elements.

Departments' Response: The Departments note the RSA–911 ICR was published prior to the proposed WIOA Joint Performance ICR, which includes the PIRL. Therefore, the RSA–911 did not reflect all of the changes necessary to align with the PIRL. The final RSA–911 ICR will include new and/or revised data elements and definitions as necessary to provide alignment with the PIRL. In addition, RSA–911 data will be submitted quarterly in order to align reporting under the VR program, which operates on a Federal fiscal year basis, to the reporting of performance on a program year basis as required under these regulations.

Comments: Two commenters expressed concern that the PIRL is centered on DOL programs and is difficult for other core programs to use. A commenter said that it is unclear which programs are responsible for the transmission of the PIRL, or if each core program should submit the report separately. A commenter said that a combined core PIRL would be duplicative if States are required to submit quarterly and annual reports as well.

Departments' Response: Individual core programs will submit data through each core program's information collection. The entity that will submit this data will vary by State based on the level of data integration. The Departments strongly encourage States to improve data integration across programs. The purpose of this collection is to specify the elements that are required to be reported by all core programs and align the definitions of the different data elements across the core programs, thereby ensuring consistency and comparability of the data among all core programs and States. The Departments note that, for the programs that require submissions of quarterly and annual reports, the information obtained through this collection will be part of these quarterly and annual reports and not a duplication of those reports.

Comments: A number of stakeholders submitted comments on the burden estimates for the State performance report template, noting that the costs are underestimated. In particular, commenters suggested that the time to collect data should be more than 15 minutes per response. Commenters also cited the burden to obtain information that is not currently available, including the requirement to track individuals after program exit and the need to monitor data quality. A commenter enumerated significant IT time and costs, including more frequent reporting and integration with partnering agencies, to implement the required changes. Another commenter remarked that staff time spent on these activities results in fewer direct services to program participants. A commenter asked for clarification about reporting for multiple years and possible duplication for co-enrolled participants, commenting that enhancing the quality, utility, and clarity of the information collected would reduce the burden on those who must respond. Another commenter requested that an effort be made to utilize any existing Federal and State databases that already contain some of the WIOA-required data elements that need to be collected. One commenter suggested that the Departments develop a standardized application or supplemental form that includes fields for applicants to self-report the required data elements.

Departments' Response: The Departments acknowledge that an increase in the burden estimate is necessary to reflect more accurately the costs in time and resources to begin collecting, validating, and reporting new requirements under WIOA's new reporting system, particularly for the VR program. As such, the burden estimates in the RIA section of this Joint WIOA Final Rule (see section V.A), as well as the tables in section 12 of the Supporting Statement for the WIOA Joint Performance ICR (which cover burden estimates) have been modified . For example, in response to comments, RSA has revised its methodology for estimating burden related to new data collection requirements in order to more accurately reflect needed State investments in personnel, time, and other resources.

The Departments also understand the increased administrative burden for follow up and the collection of new statutorily required data under WIOA, such as cost per WIOA participant served (*see* WIOA sec. 116(d)(2)(F), which requires the State performance report to include ''the average cost per participant of those participants who received career and training services, respectively, during the most recent program year and the three preceding program years''). The Departments made every effort to provide a comprehensive estimate of the costs incurred by programs, State agencies, and all other stakeholders in adhering to all WIOA requirements and will provide direction on issues such as identifying clients without SSNs, streamlining processes and eliminating duplication, timelines for integration, alignment of the RSA–911 with the WIOA PIRL, and best practices for providing optimal initial and follow-up services to participants in subsequent guidance. Also, the Departments agree with the commenter that the enhanced use of technology in the data collection and reporting process will result in greater efficiencies and reduced burden for States and local programs. With regard to the commenter's other concerns about data sharing among the core partners, the Departments are currently working on additional guidance to facilitate that process. The burden estimate for the collection and reporting of data was updated in the issuance of the final WIOA Joint Performance ICR to more accurately reflect the time staff spent obtaining and entering the required data elements.

States may use existing databases to assist in obtaining the required data elements provided the data sharing meets the required statutory and regulatory privacy requirements. However, States remain responsible for ensuring the accuracy and timely submission of required data elements. States are not prohibited from developing a standardized form that would allow individuals to self-report data, apart from information that is necessary for the program to receive Federal funds.

Comments: Several commenters provided input on the definition of participant and/or participation period. The majority of commenters expressed opposition to establishing a new exit date for an individual who has exited and returned within the same program year. A few commenters stated that the proposed exit methodology will increase the implementation burden while producing less informative data. Another commenter mentioned that the proposal to combine multiple periods of participation (POPs) when a participant exits more than once in a program year would reduce the reliability of quarterly reports, increase the burden to manage programs, and decrease the effectiveness of the statistical adjustment model. A few other commenters said that implementing the definition of ''exit'' as proposed would require modifications to case management systems. A commenter suggested that the definition of ''exiter'' remain the same as under

WIA. This commenter also remarked that the definition of ''exiter'' as proposed in the WIOA Joint Performance ICR would provide an accurate count of participants in a program year for participant and ''exiter'' measures, but would potentially duplicate participants in primary performance outcome measures. A commenter remarked that the proposed definitions of ''participant'' and ''exit'' would require a rolling system for reporting, but it is not clear how this could be done accurately to track performance.

Departments' Response: The Departments acknowledge the commenters' many concerns and suggestions related to the Departments' proposed approach to participation and exit for individuals who exit more than once in the same program year. To respond to these concerns, the Departments have altered the approach to unique participants that was published in the proposed WIOA Joint Performance ICR. For performance reporting purposes, States should report participants separately for each time the participant exits the program, with the period of time the participant received services prior to exiting sometimes commonly called a ''POP.'' In addition, States should provide to the Departments, for each of the WIOA titles I and II core programs, and the VR program, a unique identifier that stays the same across multiple POP for the same participant, but not necessarily the same identifier across different programs if the participant receives services from multiple programs in the same program year. The Departments will use this unique identifier to calculate a count of unique participants in each program for each State, which will be reported on the State Performance Reporting Template. The performance measures will be calculated using the ''exits'' (*i.e.,* POP), which the Departments conclude will incentivize the provision of the most effective and appropriate service delivery strategy regardless of how many previous POP an individual has had. The Departments will provide further guidance and technical assistance to implement this in order to ensure a consistent approach that facilitates comparability across programs.

Core programs administered by ETA already utilize a ''rolling four quarter methodology'' for quarterly reporting. In other words, for each data element, the most recent four quarters worth of data are reported (which will be different for different data elements due to the timing of the availability of the data). ETA will continue utilizing this approach, which adjusts for seasonality and which allows 1 year of data to be reported on any given quarterly report.

Comments: Several commenters discussed the collection of data pertaining to barriers to employment. A few commenters said that collecting the data on barriers of employment would be challenging and burdensome. Similarly, a commenter stated that the collection of this data would increase the burden more than the value it would provide and asked how the Departments plan to communicate the results of the data to local areas. Another commenter stated that the proposed data on barriers to be collected is unnecessary. A few commenters requested clarification on barriers to employment. In particular, one of these commenters asked whether it is expected to collect data on all barriers to employment for each client. Another commenter requested clarification on how data on barriers to employment would be collected. A different commenter suggested the Departments confirm that a participant may be reported in multiple categories for barriers to employment.

Departments' Response: WIOA sec. 116 requires a statewide report that includes a breakout by those with barriers to employment. The WIOA Joint Performance ICR provides information about the barriers to employment that must be collected and how these data will be collected. Additional information on how these categories are populated can be found in the PIRL and Statewide Annual Report Specifications.

Comments: Some Commenters pointed out that every barrier to employment should not have to require documentation to be validated. Two commenters asked whether PIRL 802 (formerly PIRL 702) determining ''Low Income'', would apply to adult education participants and whether supporting documentation from the participant would be required. Similarly, another commenter said that describing artificial barriers for ex-offenders is a poor word choice for describing their barriers to employment.

Departments' Response: WIOA specifies new reporting requirements, including data reporting related to barriers to employment. The definition of an ''individual with a barrier to employment'' encompasses mandatory populations. Low income and ex-offenders are just two of the populations included in the definition, representing barriers to employment that must be collected for purposes of the performance accountability system under WIOA. The Departments recognize the importance of ensuring that individuals with barriers to employment receive services, and the Departments recognize that States may experience challenges with this data collection. The Departments intend to issue joint- and program-specific guidance and technical assistance to provide further clarification on each employment barrier, how the data should be collected, and necessary documentation for each barrier.

Unified or Combined State Plan and Plan Modifications Under the Workforce Innovation and Opportunity Act, Wagner-Peyser WIOA Title I Programs, and Vocational Rehabilitation Adult Education

Agency: DOL–ETA.

Title of Collection: Unified or Combined State Plan and Plan Modifications under the Workforce Innovation and Opportunity Act, Wagner-Peyser WIOA Title I Programs, and Vocational Rehabilitation Adult Education.

Type of Review: Revision.

OMB Control Number: 1205–0522.

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.

Total Estimated Number of Annual Responses: 38.

Frequency of Responses: On Occasion.

Total Estimated Annual Time Burden: 8,136 hours.

Total Estimated Annual Other Costs Burden: $0.

Regulations Sections: 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. ED programs—34 CFR parts 361, 462 and 463.

ICR Approval Status: Not yet approved.

Overview and Response to Comments Received

Overview: WIOA requires each State to submit either a Unified or Combined State Plan that fosters strategic alignment of the six core programs, which include the adult, dislocated worker, youth, Wagner-Peyser Act Employment Service, AEFLA, and VR programs. The Departments have interpreted ''State,'' in this context, to include the outlying areas of Guam, American Samoa, Northern Mariana Islands, the U.S. Virgin Islands, and, as applicable, the Republic of Palau. This

means that each of the outlying areas must submit a Unified or Combined State Plan, in accordance with secs. 102 and 103 of WIOA, just as any State does. The Unified or Combined State Plan requirements improve service integration and ensure that the public workforce system is industry-relevant and responds to the economic needs of the State and successfully matches employers with skilled workers. The Unified or Combined State Plan describes how the State will develop and implement a unified and integrated service delivery system rather than separately discuss the State's approach to operating each core program individually. This information collection implements secs. 102 and 103 of WIOA.

While each State, at a minimum, must submit a Unified State Plan covering the six core programs, sec. 103 of WIOA permits a State to submit a Combined State Plan that includes the six core programs plus one or more additional Combined State Plan partner programs listed in sec. 103(a)(2) of WIOA. If the State chooses to include one or more Combined State Plan partner programs, its Combined State Plan must include all of the common planning elements contained in the Unified State Plan and an additional element describing how the State will coordinate the additional Combined State Plan partner programs with the six core programs (WIOA sec. 103(b)(3)).

Comments: One commenter recommended that State Plans require a labor market analysis.

Departments' Response: Although the Departments agree with the comment, no change to the WIOA State Plan ICR is needed because it already requires a labor market analysis consistent with sec. 102(b)(1) of WIOA.

Comments: Another commenter expressed concern that the trucking industry may struggle to secure ''in-demand'' recognition in many States unless a State's obligations are further clarified under section II of the Draft Unified and Combined State Plan Requirements document.

Departments' Response: The Departments decline to change the WIOA State Plan ICR in response to this comment because States are encouraged to use a variety of accurate, reliable, and timely labor market information on which to base their analyses in the State Plan. The use of a variety of labor market information allows States to reliably determine ''in-demand'' labor market needs, including for the trucking industry.

Comments: Several commenters provided input on section II(a)(1)(A)(iii), in which commenters proposed that States include an assessment of the employment needs of employers in certain industries and sectors, including a description of the knowledge, skills, abilities, and credentials and licenses required for employers. The commenters also recommended replacing ''credentials and licenses'' with ''recognized postsecondary credentials.''

Departments' Response: The Departments conclude that it was appropriate to keep ''credentials and licenses'' rather than narrowing the meaning of term by replacing it with ''postsecondary credentials'' since it is a broad term that allows maximum flexibility to States to determine their needs and the WIOA State Plan ICR already requires States to include ''recognized postsecondary credentials.''

Comments: A commenter stated that when assessing the needs of employers, it would be beneficial to collect information on whether these various employers are subject to sec. 503 of the Rehabilitation Act.

Departments' Response: The Departments decline to change the WIOA State Plan ICR because it is not the appropriate vehicle for collecting information on whether employers are subject to sec. 503 of the Rehabilitation Act.

Comments: Some commenters noted that section II(a)(1)(B) would be an appropriate opportunity to include labor force participation rates for persons with disabilities, including youth and veterans with disabilities.

Departments' Response: The Departments agree that understanding labor force participation rates is important and revised the collection instrument in section II(a)(1)(B)(i) to include labor force participation rates.

Comments: A commenter suggested that States collect information concerning the numbers of individuals with disabilities who are working in segregated work environments (''sheltered workshops'') and who are employed under a 14c waiver (receiving sub-minimum wage).

Departments' Response: The Departments decline to change the WIOA State Plan ICR in response to this comment because the change is not necessary. Section 101(a)(14) of the Rehabilitation Act of 1973, as amended by title IV of WIOA, requires the VR agencies to conduct a semiannual review and re-evaluation of individuals served by the VR program who are employed in sheltered settings or at subminimum wage. The semiannual reviews must be conducted for the first 2 years of the individual's employment and annually thereafter. Furthermore, the VR services portion of the Unified or Combined State Plan contains an assurance that the State VR agency will report information generated under sec. 101(a)(14) to the Administrator of the Wage and Hour Division of DOL.

Comments: Another commenter proposed that knowledge and familiarity with English be included in the analysis of the current workforce and that each Plan include a strategy for addressing the adult education and family literacy needs of the incumbent workforce.

Departments' Response: The Departments agree that such analysis and strategies should be included and expect States to provide a strategy for addressing the needs of individuals with limited English proficiency. Since the WIOA State Plan ICR already requires this as written, no change is needed.

Comments: A commenter cited an increase in State and Federal policies aimed at increasing employment for individuals with disabilities and encouraged States to examine whether or not their particular State is under any of these policies, which would help determine future labor market trends and give further direction on increasing employment for individuals with disabilities.

Departments' Response: The Departments decline to require an examination of State policies as a way to understand their possible impact on employment for individuals with disabilities since it goes beyond what the State is required to do under WIOA for purposes of the State Plan and may be more appropriate for a formal study.

Comments: Another commenter explicitly urged that financial literacy be included as a component of education. Specifically, the commenter said that there should be an assessment of financial literacy skills as part of the assessment of education and skills level.

Departments' Response: The Departments agree that financial literacy plays a significant role in a person's overall success, and that the WIOA State Plan ICR, as written, permits States to identify what skills gaps exist in their State, including a lack of financial literacy. States are encouraged to look at financial literacy as a possible need of their population, but the Departments decline to itemize every kind of skill that could be included in an assessment of education and skill level in the WIOA State Plan ICR.

Comments: Several commenters asked for clarification on what is meant by ''skill gaps.''

Departments' Response: Determining ''current gaps,'' ''projected gaps,'' and ''projected education and skills of the workforce'' is within the State's purview, and each State has flexibility to identify what skills gaps or mismatches exist in the State.

Comments: A commenter said innovative partnerships with entities such as faith- and community-based organizations should be included in the analysis of the State's workforce development, education, and training activities in section II(a)(2)(A) and section III(a)(2)(c).

Departments' Response: The Departments agree and made a change to the WIOA State Plan ICR by adding a footnote clarifying that the phrase ''workforce development activities'' could include a wide variety of programs, including human services, faith- and community-based organizations, and educational institutions.

Comments: A commenter asserted that the requirements for the workforce development, activities should include reporting on, and not only an assessment of, activities offered and to what extent those activities are both physically and programmatically accessible to job seekers with disabilities.

Departments' Response: The Departments decline to change the WIOA State Plan ICR in response to this comment because it is more appropriate to identify the extent to which these activities are accessible during monitoring than through the State Plan. Sections V.7 and V.10 require States to comply with physical and programmatic accessibility requirements of WIOA sec. 188 and the Americans with Disabilities Act of 1990.

Comments: A commenter said the State's strategic goal should be a guiding rather than prescriptive document, providing overall direction and supporting Local WDBs in developing strategies best suited to their local economies.

Departments' Response: The Departments decline to change the WIOA State Plan ICR because it is within the Governor's discretion to decide how broad the vision should be for the State; however, engagement of the Local WDBs is required under sec. 101(d) of WIOA in the development of the State Plan.

Comments: Several commenters took issue with the use of the term ''sector strategies'' in section (II)(c)(1) and suggested that the language be refined.

Departments' Response: The Departments agree and changed the WIOA State Plan ICR to refer to ''industry or sector partnerships'' and to align more closely with the statutory language, including WIOA sec. 101(d)(3)(B) and (D). Also, statutory references were added for the definitions of ''career pathway'' and ''in-demand industry sector or occupation'' to provide additional clarity concerning this requirement.

Comments: Some commenters requested career pathways and sector strategies be addressed in State Plans and requested further definition of career pathways. Another commenter requested that State Plans include descriptions about credentialing and integrating credentialing with sector partnerships.

Departments' Response: The Departments decline to change the WIOA State Plan ICR in response to these comments. The WIOA State Plan ICR already includes requirements for the State to describe both its sector and career pathways strategy in section (II)(c), so it already supports the inclusion of credentialing and its integration with sector and career pathways strategies. Although the Departments did not revise the WIOA State Plan ICR to include definitions of ''career pathways'' and ''sector partnerships,'' the Departments did add statutory citations for the definitions of those terms.

Comments: Commenters said the language of section (II)(c)(2) is more detailed than the requirements under WIOA sec. 102(b)(1)(E), which the commenters said only references the alignment between core programs and ''other resources available to the State.''

Departments' Response: The Departments agree with this comment, and section IV has been revised in the WIOA State Plan ICR to require a description of the joint planning and coordination among the core programs and with other required partners and other programs and activities included in the Unified or Combined State Plan.

Comments: A commenter said the Departments should clarify the intended ''gaps'' mentioned in the final sentence of section II(c)(2).

Departments' Response: The Departments clarify the meaning in the final sentence of section (II)(c)(2) by changing the word ''gaps'' to ''weaknesses'' and by adding a reference to section II(a)(2) to explain what analysis should be taken into account for this requirement. However, the Departments decline to add a reference to section II(a)(1)(B)(iv), since the requirement is specifically regarding the strengthening of workforce development activities.

Comments: A commenter stated that State strategy should unify wrap-around services across programs.

Departments' Response: The Departments decline to change the WIOA State Plan ICR in response to this comment, since section III(a)(2)(C) of the WIOA State Plan ICR already requires coordination of supportive services (wrap-around services) among programs.

Comments: Another commenter recommended amending language, which clarifies that States can and should be coordinating and aligning services across programs in a manner that achieves the goals of industry and sector partnerships. The same commenter recommended strengthening the language to clarify that the description required is not limited to direct employer services, but should also include any other programs and activities that will support service delivery to employers.

Departments' Response: The Departments concur with this suggestion to reinforce the importance of industry and sector partnerships and have amended the requirement. With respect to the comment concerning service delivery to employers, the Departments conclude that the language is sufficient as originally written to include both direct and indirect services to employers.

Comments: A commenter was unclear as to the source of the requirement that the State outline additional strategies for coordinating ''services to employers.''

Departments' Response: The Departments conclude that both the State and local governments are partners in developing strategies for serving employers. Using the authority WIOA grants to the Secretaries to add additional operational planning elements as appropriate, the Departments chose to include a requirement around serving employers since they are a critical customer.

Comments: Several commenters supported extending the requirement to cover a broader range of providers than community colleges and area career and technical education (CTE) schools, but noted that there is no formal definition of the term ''education and training providers'' under WIOA.

Departments' Response: The Departments agree with this comment and revised section III(a)(2) of the WIOA State Plan ICR to include in section III(a)(2)(E) a separate requirement for engagement with community colleges and career and technical education schools as required by sec. 102(b)(2)(B)(iv) of WIOA. The Departments included in section

III(a)(2)(F) a separate element for engagement with other education and training providers because such coordination is necessary to have a successful strategy for the provision of services.

Comments: A commenter requested that the listed examples in section III(a)(2)(E) include community rehabilitation organizations (CROs). The commenter noted that frequently individuals with disabilities enter into CROs after completing high school, and these CROs are tasked with teaching individuals with disabilities job skills with the expectation of acquiring employment in the community.

Departments' Response: The Departments decline to change the WIOA State Plan ICR in response to this comment because CROs are not solely education/training entities. Nevertheless, States may address CROs in their plans.

Comments: A commenter suggested adding a subsection to section III(b) of the WIOA State Plan ICR that includes a description of proposed benchmarks for the negotiated amounts and/or percentages that each one-stop partner that is a unit of State government will contribute to the local one-stop delivery system costs. The commenter said that including this element will provide for better coordination and more transparency in the negotiation of shared costs.

Departments' Response: The Departments concur that the inclusion of information on one-stop partner cost sharing arrangements in the State Plan will provide for better coordination and more transparency in the negotiation of shared costs. However, the Departments anticipate that States will not be ready to provide their guidelines in the initial Unified or Combined State Plans that take effect July 1, 2016. Instead, the Departments revised section III(b)(2) of the WIOA State Plan ICR to require information about the State's process for developing guidelines and benchmarks in the initial Unified or Combined State Plan, and require the guidelines when the State submits a modification to its State Plan in PY 2018.

Comments: Another commenter recommended emphasizing the role of local and regional planning in establishing appropriate assessment standards.

Departments' Response: The Departments concur with the comment with minor modifications and made a change to the WIOA State Plan ICR. The Departments amended the requirement that ''such State assessments should take into account local and regional planning goals,'' and also added ''broken down by State and local area.''

Comments: A commenter agreed with the importance of the assessment of core programs and one-stop partner programs based on accountability measures, but asserted that not all core programs currently collect the same performance information. The commenter requested clarification on what constitutes previous assessment results for the preceding 2 years, noting that there may not be a formal assessment available in States that were previously granted waivers of the requirement to conduct evaluations under WIA. The commenter also requested clarification on what constitutes elements required to be included in the assessments for the other core programs.

Departments' Response: The Departments agree and made a change to the WIOA State Plan ICR as a result of this comment. The previous 2-year period referenced in sec. 116 of WIOA and in section III(b)(4) of the WIOA State Plan ICR should be implemented for the first time at the 2-year plan modification cycle because assessments of WIOA programs will not be available before that time. Therefore, clarifying language has been added.

Comments: Another commenter requested the Departments to require States to provide a description of a clearly defined management reporting structure for State merit staff.

Departments' Response: The Departments decline to change the WIOA State Plan ICR in response to this comment because requiring a reporting structure for merit staff imposes an unnecessary burden on States. However, States may elect to develop such a policy and include it in its State Plan.

Comments: A commenter urged the Departments to require that assessments document how each program will ensure not only physical accessibility but programmatic accessibility, including specific examples of how WIOA sec. 188 regulations are being met.

Departments' Response: The Departments agree that compliance with physical and programmatic accessibility requirements is critical and have required States to provide how this will be achieved in section III(b)(8) of the WIOA State Plan ICR and through the common assurances in section V. Therefore, a change in the WIOA State Plan ICR is not needed.

Comments: Another commenter supported efforts to improve coordination across programs and recognized that integrated data systems are an important step in achieving this goal. However, the commenter was concerned that achieving this goal will be expensive and challenging for States in light of State budget crises and declining Federal resources. This commenter proposed adding language that clarifies that States are not required to make such efforts.

Departments' Response: The Departments decline to revise the WIOA State Plan ICR not to require States to make efforts to integrate data systems. Under WIOA sec. 101(d)(8), the State WDB is required to assist the Governor with ''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 the design and 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)'' and under WIOA sec. 102(b)(2)(C)(v)(I), the State Plan must explain ''how the lead State agencies with responsibility for the administration of the core programs will align and integrate available workforce and education data on core programs, unemployment insurance programs, and education through postsecondary education.'' Due to these statutory requirements, States must develop a plan for aligning and integrating data systems.

Comments: A commenter indicated that moving to true interoperability and integration of data management systems would likely require substantial outlays of time and money that States may not be able to meet, especially in a time of level or declining Federal resources.

Departments' Response: The Departments decline to change the WIOA State Plan ICR in response to this comment since WIOA requires States to have a plan for aligning and integrating data systems.

Comments: Another commenter said that States should establish a reasonable timeline for data alignment and integration.

Departments' Response: The WIOA State Plan ICR, as written, permits States to establish a ''reasonable timeline'' as part of their plans for achieving data system alignment and integration. Therefore, a change to the collection is not needed.

Comments: The same commenter also said the Departments and State Plans should both report a *single score* for each of the six performance indicators,

but only after 4 years of WIOA implementation.

Departments' Response: The Departments decline to change the WIOA State Plan ICR in response to this comment. WIOA requires that each State establish levels of performance for each of the indicators of performance for each of the programs.

Comments: A commenter suggested that Veterans Priority of Service (POS) be addressed in the State Plan and that POS should be required for service-connected and non-service connected disabilities.

Departments' Response: The Departments decline to make the requested change because the WIOA State Plan ICR requires States to describe how they implement Veterans POS in their State (see section III(b)(7)). Moreover, under 38 U.S.C. 4215, all veterans, including disabled veterans with both service and non-service connected disabilities, receive POS for all employment and training programs funded in whole or in part by DOL.

Comments: A few commenters requested clarification on the *Addressing the Accessibility of the One-Stop Delivery System for Individuals with Disabilities* requirement in light of a parenthetical sentence at the end of the section indicating that this requirement applies to core programs, rather than the one-stop delivery system partners referenced earlier in the requirement.

Departments' Response: The Departments make a change to section III(b)(8) of the WIOA State Plan ICR as a result of the comment. The Departments concur with the comment that the parenthetical in the proposed WIOA State Plan ICR could create confusion about the requirements of WIOA sec. 188 and so it was removed. WIOA sec. 102(b)(2)(C)(vii) requires that the Unified State Plan contain a description of how one-stop operators and one-stop partners, in addition to core programs, will comply with sec. 188 of WIOA and the applicable provisions of the Americans with Disabilities Act of 1990. Per WIOA sec. 103(b)(1), this information must also be included in any Combined State Plan.

Comments: Some commenters said States should be required to describe the methods used for joint planning and coordination of the core programs, even where the State opts to submit a Unified State Plan rather than a Combined State Plan.

Departments' Response: The Departments concur that discussion of coordination with core programs and one-stop partners is helpful to ensure successful joint planning and coordination for both Unified and Combined State Plans, rather than just the Combined State Plan as had been proposed. To that end, the Departments added specific reference to the Unified State Plan to section IV of the WIOA State Plan ICR.

Comments: A few commenters said the review and approval requirement should be extended to all agencies or entities with responsibility for Combined State Plan partner programs.

Departments' Response: The Departments maintain that the WIOA State Plan ICR as written, and as required by WIOA, provides all programs the opportunity to review and comment on the State Plan. WIOA does not require Combined State Plan partner programs to approve the Combined State Plan prior to its submission.

Comments: A commenter said the State Plan process should also include the expertise and experience of partner organizations that serve individuals with barriers to employment because they are important partners in the public workforce system.

Departments' Response: The Departments concur that the State Plan process should include the expertise and experience of partner organizations that serve individuals with barriers to employment because they are important partners in the public workforce system. To that end, the Departments have added specific mention of organizations serving individuals with barriers to employment to the common assurances in section V(4)(a) of the WIOA State Plan ICR. As such, these organizations are now specifically listed as being among the stakeholders who should have the opportunity to comment on the Unified or Combined State Plan.

Comments: A commenter requested a specific number of days for public comment on the State Plan.

Departments' Response: The Departments decline to set a number of days for public comment because States may use their own discretion in providing a reasonable period of time for public comment. Many States have State laws or regulations that govern the amount of time that must be provided for public comment.

Comments: Another commenter requested clarification on whether there are cost limitations for contributions and whether such contributions shall be factored into infrastructure costs.

Departments' Response: The Departments conclude that the requested information is not appropriate to the WIOA State Plan ICR so no change was made. Further specifics on infrastructure costs are provided in the preamble for the Joint WIOA Final Rule at part 678 and will be provided in future joint guidance.

Comments: A commenter recommended including explicit reference to other people with barriers to employment, including individuals with disabilities, as well as clarification that priority of service to veterans remains in place.

Departments' Response: Section 3(24) of WIOA defines an ''individual with a barrier to employment,'' which includes many different populations. Individuals with disabilities are specifically identified in sec. 3(24)(D) of WIOA. Given the exclusive list of populations contained in that definition, there is no statutory authority for the Departments to add other populations to that definition or to the WIOA State Plan ICR. Requirements for priority of service for veterans remain in place and are covered in section III(b)(7) of the WIOA State Plan ICR.

Comments: Another commenter recommended adding the following Common Assurance: ''The State will negotiate in good faith with the Local Boards its portion of the shared costs of the one-stop system, in accordance with WIOA sec. 121, on behalf of all one-stop partners that are units of State government.''

Departments' Response: The Departments decline to change the WIOA State Plan ICR in response to this comment. The Departments expect that States will negotiate in good faith with Local WDBs on one-stop cost sharing without requiring an assurance that they will do so.

Comments: A commenter said States should be required to describe how they will meet the statutory requirement to use statewide funds to support local areas by providing information on, and support for, the effective development, convening, and implementation of industry or sector partnerships.

Departments' Response: The Departments decline to change the WIOA State Plan ICR in response to this comment. Other areas of the State Plan requirements provide adequate information on how the State intends to implement sector partnerships, and the Departments have concluded it appropriate to maintain the requirement regarding use of statewide funds broad enough for States to describe a number of uses of those funds, required and allowable.

Comments: Some commenters on 20 CFR 683.130 of the DOL WIOA NPRM were concerned with the Governor's approval of the adult-dislocated worker funds transfer request and whether the Governor would complete the request

timely or would unreasonably deny a request.

Departments' Response: The Departments concur with the comment and added a requirement to include State-developed criteria for transferring adult and dislocated worker funds in the plan in order to provide process transparency to local areas that may request funds transfers.

Comments: A commenter acknowledged the need to differentiate training models enumerated in paragraph (b)(1) from apprenticeships, but said the name ''employer-based'' is more appropriate than the term ''alternative'' in reflecting the widespread use of programs.

Departments' Response: The Departments agree that the language in section VI(b)(1) of the WIOA State Plan ICR, which governs program-specific requirements for the adult and dislocated worker programs, should reflect more specifically the training model, and have amended the requirement to replace ''alternative'' with ''work-based'' since ''work-based'' more accurately captures the variety of training models than ''employer-based.''

Comments: Another commenter suggested requiring a policy on criteria for selecting employers for work-based training.

Departments' Response: The Departments decline to change the WIOA State Plan ICR in response to this comment. Since the Departments require States to address work-based learning approaches, requiring a specific policy on employer criteria is not needed because the description of the State's approach will provide sufficient information and also provide information to stakeholders.

Comments: A commenter said it was unclear whether the description of the Training Provider Eligibility Procedure was for initial eligibility, subsequent eligibility, or both.

Departments' Response: The Departments concur with the commenter that the proposed language was unclear. Therefore, the Departments revised the program-specific requirements in the WIOA State Plan ICR under section VI in subsection (b)(3) for the adult and dislocated worker programs to specify that the State must provide its training provider eligibility procedure for both initial and continued eligibility.

Comments: A commenter asked if it is the intent for the State to describe how the State ensures that all 14 program elements required under the youth program are carried out, or some other objective.

Departments' Response: The Departments agree with the concern and replaced the language in the WIOA State Plan ICR under section VI in subsection (c)(2), thereby offering more clarity.

Comments: Another commenter said WIOA title I, subtitle B should be expanded to include assurance that States have a written publicly available policy that ensures adult program funds provide a priority in the delivery of career and training services to individuals who are basic skills deficient.

Departments' Response: The Departments concur that more information on the implementation of the priority in the use of adult funds for training services and the individualized career services outlined in WIOA sec. 134(c)(2)(A)(xii) would be useful, and have included a new requirement in the WIOA State Plan ICR under section VI in subsection (b)(4) for the adult program to describe how the State will implement and monitor the priority of service provisions for public assistance recipients, other low-income individuals, or individuals who are basic skills deficient in accordance with the requirements of WIOA sec. 134(c)(3)(E), which applies to training services and individualized career services funded by the adult formula program. However, the Departments did not add a requirement that the policy be made publicly available because the State Plan is already required to be made publicly available for comment.

Comments: A commenter submitted a comment related to the priority for use of adult funds stating that DOL should require that State and local planning efforts utilize the most current Census and administrative data available to develop estimates of each priority service population in their planning efforts, and update these data year to year. The commenter stated that these data should be utilized in Federal reviews of State Plans to ensure that system designs and projected investments are equitably targeted to service-priority populations and that they should also be used to benchmark system performance in actual implementation of the priority for the use of adult funds from year to year.

Departments' Response: The Departments decline to change the WIOA State Plan ICR in response to this comment. The Departments maintain that the priority for use of adult funds can be made without the use of Census data, and the approach suggested by the commenter would be overly burdensome for both State and Federal staff.

Comments: Another commenter said use of the term identification of UI eligibility issues does not align with language in WIOA, asserting that there is a fundamental difference between providing assistance in filing for benefits and determining eligibility.

Departments' Response: The Departments made a change to the WIOA State Plan ICR in response to this comment by adding ''and referral to UI staff for adjudication'' to the WIOA State Plan ICR under section VI in subsection (a)(2) for the Wagner-Peyser Act Employment Service program. The Departments' intention with the language referenced by the commenter was not to de-emphasize reemployment services, but rather to emphasize the importance of enhanced connection between UI and ES/WIOA staff, and reemphasize the importance of providing reemployment services to UI claimants and other unemployed individuals. Both WIOA title I and the Wagner-Peyser Act (as amended by WIOA title III) contain new language regarding how these programs may provide services to UI claimants.

Comments: Numerous commenters requested reintroducing the requirement for SWAs to consult the NFJP grantees as was required in the regulations at 20 CFR 653.107(d).

Departments' Response: In response to this comment, the Departments make a change to the WIOA State Plan ICR under section VI in subsection (e)(4) for the Wagner-Peyser Act Employment Service program because it will foster greater collaboration between the SWAs and the NFJP grantees.

Comments: A few commenters said there appears to be no specific element relating to integrated education and training, as required under WIOA sec. 102(b)(2)(D)(ii)(II)(dd), and recommended that the instrument be amended to include a requirement that States describe how they will fund and support such activities.

Departments' Response: Under section VI of the WIOA State Plan ICR for the AEFLA (title II) program, States have an opportunity to describe in subsection (b) how they will fund eligible providers to establish or operate adult education and literacy activities, including integrated education and training. The Departments make a small clarification to the WIOA State Plan ICR.

Comments: A commenter asked for clarification on whether ''eligible agency'' as used in the *Aligning of Content Standards* section refers to State agencies, Local WDBs, and/or adult education providers (WIOA, AEFLA, etc.).

Departments' Response: The definition of ''eligible agency'' for the AEFLA program is located in sec. 203(3) of WIOA.

Comments: A couple of commenters provided input on section (d), *Integrated English Literacy and Civics Education Program.* A commenter expressed concern that the language used in the fourth paragraph of (d) fails to acknowledge the populations enrolled in integrated literacy and civics education courses who are already employed and working towards job advancement and literacy gains. The commenter stated that plans for program design and success should include not only job placement outcomes but also job retention and advancement measures. The other commenter said the Departments should provide flexibility for program operators to determine the appropriate services to meet the needs of individual participants, which may not include workforce preparation and training.

Departments' Response: The Departments delete the paragraph and move it to the AEFLA program certifications and assurances section, where the language outlining the two requirements for design of Integrated English Literacy and Civics Education programs will remain included as part of the assurance. This language expresses the specific requirements for design of these programs in sec. 243(c)(1) and (2) of WIOA.

Comments: A commenter applauded the attention that is given to reporting coordination and collaboration between State VR agencies and relevant entities, specifically inter-agency and inter-department cooperatives.

Departments' Response: No change to the WIOA State Plan ICR is needed as a result of this comment.

Comments: Another commenter suggested that the State should describe the manner in which the designated State agency establishes cooperative agreements with private non-profit VR service providers. The same commenter stated that the instrument should include a reference to employers who are Federal contractors to assist with their compliance with Rehabilitation Act sec. 503 and Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA). The same commenter also stated that the instrument should include a section under (j)(1) for those who are veterans with non-service-connected disabilities on public assistance. Lastly, the same commenter stated that data should be disaggregated by age and disability.

Departments' Response: The Departments decline to change the WIOA State Plan ICR in response to this comment since only those elements described in sec. 101(a) of the Rehabilitation Act are required to be included in the VR services portion of the Unified or Combined State Plan.

Comments: A couple of commenters expressed concern over whether States will be able to meet current State Plan submission deadlines. One commenter expressed concern over limitations for tracking client earnings in the 2nd and 4th quarter due to the lack of data agreements at the Federal level. The other commenter noted that some core partners do not collect the information needed to establish a reasonable baseline of comparison and was uncertain if the requested information needed to complete the table will be available in time to meet the State Plan submission deadline.

Departments' Response: The Departments make a change to the WIOA State Plan ICR in response to these comments by including specific instructions for how to populate the chart for the first 2 years of the plan to account for a lack of data availability.

Comments: A commenter recommended developing crosswalks of substantially similar plan elements and allowing States to respond to program-specific elements through incorporation by reference of responses to the Combined State Plan.

Departments' Response: The Departments decline to change the WIOA State Plan ICR in response to this comment. Although the Departments agree that identical or similar plan provisions relative to required and optional Combined State Plan partner programs may be ''integrated'' or ''synthesized'' together in the Combined State Plan document, the Departments decline to develop crosswalks of those elements at this time. However, in responding to a program-specific requirement that may be duplicative of an element addressed in other parts of a Combined State Plan, a State may clearly identify where it thinks it has responded to the requirement in the plan document. If the provision is not so identified, then the Federal task of reviewing the document and rendering a decision on completeness may become a major challenge and burdensome to the State and Federal staff.

Comments: A joint submission from a couple of commenters requested clarification on the use of the term ''the State'' as it pertains to the inclusion of the Carl D. Perkins Career and Technical Education Act in a Combined State Plan, per the supplemental document entitled, ''Supplement to Workforce Innovation and Opportunity Act-program specific.'' The commenters asserted that the document uses ''the State'' in lieu of the statutorily required term ''the State eligible agency,'' at least as it pertains to what entity is responsible for the Perkins Act's participation in a Combined State Plan.

Departments' Response: The Departments decline to change the WIOA State Plan ICR in response to this comment. The Departments were not seeking comment on the program-specific elements for the Perkins section of the WIOA State Plan ICR since it is a separately approved data collection.

Comments: A commenter referred to the States' total estimated burden, which is $141,708, and noted that the Federal burden is $240,987. The commenter asserted that, unless the $141,708 value of respondent time is for each of the six core program respondents, the estimated burden for States to fulfill the program-specific requirements for all six core programs appears to be significantly underestimated.

Departments' Response: The Departments concur with the commenter that the burden estimated for the Federal review was overstated relative to the State burden. After further analysis of the burden estimate, the Departments corrected a mathematical error in item #14 that failed to annualize State Plan receipt as was done for the State burden estimate.

Comments: Another commenter stated that the WIOA State Plan ICR provides a reasonable synthesis of the required elements and provides States with sufficient guidance, but certain elements could be strengthened to ensure that States and programs are moving towards true alignment across programs.

Departments' Response: The Departments decline to make a change to the WIOA State Plan ICR because the comment did not suggest one.

Comments: A commenter stated that the draft instrument responds to many of its concerns, but expressed continued reservations that certain State Plan elements may not truly reflect the experiences of, or respond to the needs of, individuals with disabilities.

Departments' Response: The Departments decline to make a change to the WIOA State Plan ICR in response to the comment because the comment did not suggest one.

Comments: Another commenter commended the Departments' collaboration on the instrument but also urged the inclusion of entities that serve individuals with barriers to employment, including immigrants, in outreach and technical assistance efforts.

Departments' Response: The Departments decline to make a change to the WIOA State Plan ICR in response to the comment because the comment did not suggest one.

Comments: A commenter appreciated several elements of the WIOA legislation (*e.g.,* adding adult education as a core program, the bill's emphasis on college and career readiness) and asserted that the need for additional funding has never been greater.

Departments' Response: The Departments decline to make a change to the WIOA State Plan ICR in response to the comment because the comment did not suggest one.

Comments: Another commenter opposed ''the program'' in general.

Departments' Response: The Departments decline to make a change to the WIOA State Plan ICR in response to the comment because the comment did not suggest one.

Comments: A commenter recommended that certain pages of the SCSEP component related to SCSEP operations be deleted from the SCSEP Combined State Plan requirements.

Departments' Response: The Departments decline to change the WIOA State Plan ICR in response to this comment. The Departments are not seeking comment on these data elements since they are covered by a separate collection number governing the SCSEP data collection.

Comments: A comment that was submitted through the NPRM stated that the State Plan should require evidence-based strategies as outlined in the Job-Driven Training reports.

Departments' Response: The Departments decline to change the WIOA State Plan ICR in response to this comment since the instrument already reflects the content of the job-driven report.

Comments: Another comment that was submitted through the NPRM recommended requiring States to include in the State Plan how they will use measurable skill gains and a list of the measurable skill gains they will use.

Departments' Response: The Departments decline to change the WIOA State Plan ICR in response to this comment since measurable skill gains are addressed in the WIOA Joint Performance ICR.

Comments: The final comment that was submitted through the NPRM requested guidance on the burden of technology upgrades.

Departments' Response: The Departments decline to change the WIOA State Plan ICR in response to this comment but will take it into account for future guidance or technical assistance.

To see a more detailed view of the responses to public comments, refer to item 8 of the supporting statements of the information collections.

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 Joint WIOA Final Rule in light of these requirements and have concluded that, with the enactment of WIOA and its clear requirement to publish national implementing regulations, E.O. sec. 3(b) has been reviewed and its requirement satisfied.

Accordingly, the Departments have reviewed this WIOA-required Joint Final Rule and have concluded that the rulemaking has no Federalism implications. The Joint WIOA Final 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 concluded that this Final Rule does not have a sufficient Federalism implication to warrant the preparation of a summary impact statement.

F. Unfunded Mandates Reform Act of 1995

Comments: In response to the NPRM, the Departments received some comments that addressed unfunded mandates. A few commenters asserted that the requirements to collect data and to report performance are unfunded mandates. One of the commenters asserted that the cost in terms of time and technology for integrating individual records across multiple data systems at the State level is very high. Another one of the commenters suggested that the rule included other unfunded mandates, such as sub-minimum wage tracking and pre-employment transition services set-asides. One commenter added that although grant funding will be provided by the Federal government, in some States the grant funds provided for implementation are insufficient to reimburse the States.

Departments' Response: The Departments acknowledge the commenters' concerns and detail the cost burden associated with this Joint WIOA Final Rule in Section V.A (Rulemaking Analyses and Notices). Grant funding is provided annually to all programs authorized under WIOA and that funding will be used to cover the costs of implementing this rule.

With respect to the comments pertaining to requirements under the VR program for the VR agencies to report data regarding individuals employed at subminimum wage and for States to reserve at least 15 percent of their VR allotment to provide pre-employment transition services to students with disabilities, ED provides descriptions of these cost burdens in the RIA of the VR program-specific Final Rule published elsewhere in this issue of the **Federal Register**.

The Unfunded Mandates Reform Act of 1995 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 accordingly are not considered unfunded mandates. Similarly, Migrant and Seasonal Farmworker activities are authorized and funded under the WIOA program as was 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 Final Rule.

WIOA contains language-establishing procedures regarding the eligibility of training providers to receive funds under the WIOA program and contains clear State information collection requirements for eligible training providers (*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.

Following consideration of these factors, the Departments concluded that the Joint WIOA Final Rule contained 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

E.O. 12866 and E.O. 13563 require regulations to be written in a manner that is easy to understand.

Comments: An individual had difficulty understanding many of the provisions of the proposal and said that the definitions sounded like the ''fine print'' of a contract.

Departments' Response: The overall format of these WIOA regulations reflects the Departments' commitment to writing regulations that are reader-friendly. The Departments have attempted to make this Final Rule easy to understand. For example, the regulatory text is presented in a ''question and answer'' format and organized consistent with WIOA. In consideration of the foregoing, the Departments have concluded that the Departments have drafted this Joint WIOA Final Rule 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 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 Joint WIOA Final Rule in light of this requirement and concluded that the Joint Final Rule will not have a negative effect on families.

I. Executive Order 13175 (Indian Tribal Governments)

The Departments reviewed the Joint WIOA Final Rule under the terms of E.O. 13175 and DOL's Tribal Consultation Policy and have concluded the final regulation would have tribal implications as the final regulations have substantial direct effects on one or more Indian tribes, the relationship between the Federal government and Indian tribes, or the distribution of power and responsibilities between the Federal government and Indian tribes. Therefore, as described in the preamble to the NPRM, the Departments carried out several consultations with tribal institutions, including tribal officials, which allowed the tribal officials to provide meaningful and timely input into the Departments' proposals. Additionally, through the Notice and Comment rulemaking process, the Departments received comments on the programs and provisions in WIOA that have tribal implications and the Departments have responded to these comments throughout the preamble to the Final Joint and DOL-only regulations.

In addition to the comments received through its Notice and Comment rulemaking process, the Department of Labor received feedback from the INA community and the public prior to the publication of the NPRM. This feedback was summarized in the NPRM at 80 FR 20626–28.

J. Executive Order 12630 (Government Actions and Interference With Constitutionally Protected Property Rights)

The Departments have concluded that this Joint WIOA Final Rule 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 Joint WIOA Final Rule was drafted and reviewed in accordance with E.O. 12988, Civil Justice Reform, and the Departments have concluded that the Joint Final Rule will not unduly burden the Federal court system. The Joint WIOA Final Rule was written to minimize litigation and, to the extent feasible, provide a clear legal standard for affected conduct. In addition, the Joint WIOA Final Rule has been reviewed to eliminate drafting errors and ambiguities.

L. Executive Order 13211 (Energy Supply)

This Joint WIOA Final Rule was drafted and reviewed in accordance with E.O. 13211, Energy Supply. The Departments have concluded the Joint WIOA Final Rule 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 amends 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 are the purposes 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 programs authorized under 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 authorized under Workforce Innovation and Opportunity Act title II?
676.120 What are the program-specific requirements in the Unified State Plan for the Employment Service program authorized under the Wagner-Peyser Act, as amended by Workforce Innovation and Opportunity Act title III?
676.125 What are the program-specific requirements in the Unified State Plan for the State Vocational Rehabilitation program authorized under title I of the Rehabilitation Act of 1973, as amended by Workforce Innovation and Opportunity Act title IV?

676.130 What is the development, 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 development, submission, and approval process of the Combined State Plan?
676.145 What are the requirements for modifications of the Combined State Plan?

Authority: Secs. 102, 103, and 503, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

§ 676.100 What are the purposes 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 the 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 Combined State Plan partner 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 WIOA sec. 102(c), as explained in joint planning guidelines issued by the Secretaries of Labor and Education.

(b) The Governor of each State must submit, at a minimum, in accordance with § 676.130, a Unified 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 (DOL);

(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 (ED);

(3) The Employment Service program authorized under the Wagner-Peyser Act of 1933, as amended by WIOA title III and administered by DOL; and

(4) The Vocational Rehabilitation program authorized under title I of the Rehabilitation Act of 1973, as amended by title IV of WIOA and administered by ED.

(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 guidelines issued by the Secretaries of Labor and 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 Combined State Plan partner programs as described in § 676.140(d), 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 (WDB) 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, including an assurance that the lead State agencies responsible for the administration of the core programs reviewed and commented on the appropriate operational planning of the Unified State Plan and approved the elements as serving the needs of the population served by such programs, and other assurances deemed necessary by the Secretaries of Labor and Education under sec. 102(b)(2)(E)(x) of WIOA;

(v) A description of joint planning and coordination across core programs, required one-stop partner programs, and other programs and activities in the Unified State Plan; and

(vi) 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.

(e) All of the requirements in this part that apply to States also apply to outlying areas.

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

The program-specific requirements for the adult, dislocated worker, and youth programs that must be included in the Unified State Plan are described in sec. 102(b)(2)(D) of WIOA. Additional planning requirements may be explained in joint planning guidelines issued by the Secretaries of Labor and Education.

§ 676.115 What are the program-specific requirements in the Unified State Plan for the Adult Education and Family Literacy Act program authorized under 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)(C) and 102(b)(2)(D)(ii) 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.

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

The Employment Service program authorized under the Wagner-Peyser Act of 1933, as amended by WIOA title III, is subject to requirements in sec. 102(b) of WIOA, including any additional requirements imposed by the Secretary of Labor under secs. 102(b)(2)(C)(viii) and 102(b)(2)(D)(iv) of WIOA, as explained in joint planning guidelines issued by the Secretaries of Labor and Education.

§ 676.125 What are the program-specific requirements in the Unified State Plan for the State Vocational Rehabilitation program authorized under title I of the Rehabilitation Act of 1973, as amended by 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 for 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 sec. 102(b) of WIOA.

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

(a) The Unified State Plan described in § 676.105 must be submitted in accordance with WIOA sec. 102(c), as explained in joint planning guidelines issued jointly by the Secretaries of Labor and Education.

(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) Subsequent Unified State Plans must be submitted no later than 120 days prior to the end of the 4-year period covered by a preceding Unified State Plan.

(3) For purposes of paragraph (b) of this section, ''program year'' means July 1 through June 30 of any year.

(c) The Unified State Plan must be developed with the assistance of the State WDB, as required by § 679.130(a) of this chapter and WIOA sec. 101(d), and must be developed in coordination with administrators with optimum policy-making authority for the core programs and required one-stop partners.

(d) 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 WDBs 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 WDB 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.

(e) 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.

(f) The Unified State Plan is subject to the approval of both the Secretary of Labor and the Secretary of Education.

(g) Before the Secretaries of Labor and Education approve the Unified State Plan, the vocational rehabilitation services 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.

(h) The Secretaries of Labor and Education will review and approve the Unified State Plan within 90 days of receipt by the Secretary of Labor, 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.

(i) If neither the Secretary of Labor nor the Secretary of Education makes the written determination described in paragraph (h) 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 WDB 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 negotiated levels of performance as described in § 677.170(b) of this chapter, the methodology used to determine local allocation of funds, reorganizations that change the working relationship with system employees, changes in organizational responsibilities, changes to the membership structure of the State WDB or alternative entity, and similar substantial changes to the State's workforce development system.

(c) Modifications to the Unified State Plan are subject to the same public review and comment requirements in § 676.130(d) that apply to the development of the original Unified State Plan.

(d) Unified State Plan modifications must be approved by the Secretaries of Labor and 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 through 676.125.

(b) A State that submits a Combined State Plan covering an activity or program described in paragraph (d) of this section that is, in accordance with WIOA sec. 103(c), approved or deemed 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 Combined State Plan partner programs and activities described in sec. 103(a)(2) of WIOA. The Combined State Plan partner 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 1965 (42 U.S.C. 3056 *et seq.*);

(9) Employment and training activities carried out by the Department of Housing and Urban Development (HUD);

(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 through 676.125, as explained in the joint planning guidelines issued by the Secretaries;

(2) For the Combined State Plan partner programs and activities, 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 guidelines issued by the Secretaries;

(3) A description of the methods used for joint planning and coordination among the core programs, and with the required one-stop partner programs and other programs and activities included in the 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 Combined State Plan partner 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.

(i) States that submit employment and training activities carried out by HUD under a Combined State Plan would submit any other required planning documents for HUD programs directly to HUD, according to the requirements of Federal law and regulations.

§ 676.143 What is the development, 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 sec. 103 of WIOA, as explained in the joint planning guidelines issued by the Secretaries of Labor and Education.

(b) The Combined State Plan must be developed with the assistance of the State WDB, as required by § 679.130(a) of this chapter and WIOA sec. 101(d), and must be developed in coordination with administrators with optimum policy-making authority for the core programs and required one-stop partners.

(c) The State must provide an opportunity for public comment on and input into the development of the Combined State Plan prior to its submission.

(1) The opportunity for public comment for the portions of the Combined State Plan that cover the core programs must include an opportunity for comment by representatives of Local WDBs 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 WDB must make information regarding the Combined State Plan available to the public through electronic means and regularly occurring open meetings in accordance with State law. The Combined State Plan must describe the State's process and timeline for ensuring a meaningful opportunity for public comment on the portions of the plan covering core programs.

(3) The portions of the plan that cover the Combined State Plan partner programs are subject to any public comment requirements applicable to those programs.

(d) 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 deeming 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.

(e) 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 Combined State Plan is received by the appropriate Secretary from the State, consistent with paragraph (f) of this section. Before the Secretaries of Labor and Education approve the Combined State Plan, the vocational rehabilitation services portion of the Combined State Plan described in WIOA sec. 102(b)(2)(D)(iii) must be approved by the Commissioner of the Rehabilitation Services Administration.

(2) If an appropriate Secretary other than the Secretary of Labor or the Secretary of Education has authority to approve or deem complete a portion of the Combined State Plan for a program or activity described in § 676.140(d), that portion of the Combined State Plan must be reviewed, and approved, disapproved, or deemed complete, by the appropriate Secretary within 120 days beginning on the day the Combined State Plan is received by the appropriate Secretary from the State consistent with paragraph (f) of this section.

(f) The appropriate Secretaries will review and approve or deem complete the Combined State Plan within 90 or 120 days, as appropriate, as described in paragraph (e) of this section, unless the Secretaries of Labor and Education or appropriate Secretary have determined in writing within that period that:

(1) The Combined State 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 deeming the plan complete, if any, under such law;

(2) The portion of the Combined State 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 Combined State 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.

(g) If the Secretary of Labor, the Secretary of Education, or the appropriate Secretary does not make the written determination described in paragraph (f) of this section within the relevant period of time after submission of the Combined State Plan, that portion of the Combined State Plan over which the Secretary has jurisdiction will be considered approved.

(h) The Secretaries of Labor and Education's written determination of approval or disapproval regarding the portion of the plan for the six core programs may be separate from the written determination of approval, disapproval, or completeness of the program-specific requirements of Combined State Plan partner programs and activities described in § 676.140(d) and included in the Combined State Plan.

(i) *Special rule.* In paragraphs (f)(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 a minimum:

(1) By the end of the first 2-year period of any 4-year State Plan. The State WDB must review the Combined State Plan, and the Governor must submit modifications to the Combined State Plan to reflect changes in labor market and economic conditions or other factors affecting the implementation of the Combined State Plan;

(2) When changes in Federal or State law or policy substantially affect the strategies, goals, and priorities upon which the Combined State Plan is based;

(3) When there are changes in the statewide vision, strategies, policies, State negotiated levels of performance as described in § 677.170(b) of this chapter, the methodology used to determine local allocation of funds, reorganizations that change the working relationship with system employees, changes in organizational responsibilities, changes to the membership structure of the State WDB or alternative entity, and similar substantial changes to the State's workforce development system.

(b) In addition to the required modification review described in paragraph (a)(1) 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 Combined State Plan partner 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 Combined State Plan partner programs, as long as consistent with any other modification requirements for the programs, or may comply with the requirements applicable to only the particular program or activity; and

(2) Must submit, in accordance with the procedure described in § 676.143, any modification, amendment, or revision required by the Federal law authorizing, or applicable to, the Combined State Plan partner program or activity.

(i) If the underlying programmatic requirements change (*e.g.,* the authorizing statute is reauthorized) 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 Combined State Plan partner program or activity and other legal requirements applicable to such program or activity.

(ii) If the modification, amendment, or revision affects the administration of only that particular Combined State Plan partner program and has no impact on the Combined State Plan as a whole or the integration and administration of the core and other Combined State Plan partner programs at the State level, modifications must be submitted for approval to 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 Combined State Plan partner program.

(3) A State also may amend its Combined State Plan to add a Combined State Plan partner 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 § 676.143(c) except that, if the modification, amendment, or revision affects the administration of a particular Combined State Plan partner program and has no impact on the Combined State Plan as a whole or the integration and administration of the core and other Combined State Plan partner programs at the State level, a State may comply instead with the procedures and requirements applicable to the particular Combined State Plan partner program.

(e) Modifications for the core program portions of the Combined State Plan must be approved by the Secretaries of Labor and 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.

■ 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 accountability provisions?

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?
677.160 What information is required for State performance reports?
677.165 May a State establish additional indicators of performance?
677.170 How are State 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

677.180 When is a State subject to a financial sanction under the Workforce Innovation and Opportunity Act?
677.185 When are sanctions applied for a State's failure to submit an annual performance 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

677.205 What performance indicators apply to local areas and what information must be included in local area performance reports?
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

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

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

Subpart F—Performance Reporting Administrative Requirements

677.235 What are the reporting requirements for individual records for core Workforce Innovation and Opportunity Act (WIOA) title I programs; the Wagner-Peyser Act Employment Service program, as amended by WIOA title III; and the Vocational Rehabilitation program authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV?
677.240 What are the requirements for data validation of State annual performance reports?

Authority: Secs. 116, 189, and 503 of Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

§ 677.150 What definitions apply to Workforce Innovation and Opportunity Act performance accountability provisions?

(a) *Participant.* A reportable individual who has received services other than the services described in paragraph (a)(3) of this section, 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 a reportable individual who has an approved and signed Individualized Plan for Employment (IPE) and has begun to receive services.

(2) For the Workforce Innovation and Opportunity Act (WIOA) title I youth program, a participant is a reportable individual who has satisfied all applicable program requirements for the provision of services, including eligibility determination, an objective assessment, and development of an individual service strategy, and received 1 of the 14 WIOA youth program elements identified in sec. 129(c)(2) of WIOA.

(3) The following individuals are not participants:

(i) Individuals in an Adult Education and Family Literacy Act (AEFLA) program who have not completed at least 12 contact hours;

(ii) Individuals who only use the self-service system.

(A) Subject to paragraph (a)(3)(ii)(B) of this section, self-service occurs when individuals independently access any workforce development system program's information and activities in either a physical location, such as a one-stop center resource room or partner agency, or remotely via the use of electronic technologies.

(B) Self-service does not uniformly apply to all virtually accessed services. For example, virtually accessed services that provide a level of support beyond independent job or information seeking on the part of an individual would not qualify as self-service.

(iii) Individuals who receive information-only services or activities, which provide readily available information that does not require an assessment by a staff member of the individual's skills, education, or career objectives.

(4) 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 program, including:

(1) Individuals who provide identifying information;

(2) Individuals who only use the self-service system; or

(3) Individuals who only receive information-only services or activities.

(c) *Exit.* As defined for the purpose of performance calculations, exit is the

point after which a participant who has received services through any program meets the following criteria:

(1) For the adult, dislocated worker, and youth programs authorized under WIOA title I, the AEFLA program authorized under WIOA title II, and the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III, exit date is the last date of service.

(i) The last day of service cannot be determined until at least 90 days have elapsed since the participant last received services; services do not include self-service, information-only services or activities, or follow-up services. This also requires that there are no plans to provide the participant with future services.

(ii) [Reserved].

(2)(i) For the VR program authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV (VR program):

(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 VR program if the participant's service record is closed because the participant has achieved a supported employment outcome in an integrated setting but not in competitive integrated employment.

(3)(i) A State may implement a common exit policy for all or some of the core programs in WIOA title I and the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III, and any additional required partner program(s) listed in sec. 121(b)(1)(B) of WIOA that is under the authority of the U.S. Department of Labor (DOL).

(ii) If a State chooses to implement a common exit policy, the policy must require that a participant is exited only when all of the criteria in paragraph (c)(1) of this section are met for the WIOA title I core programs and the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III, as well as any additional required partner programs listed in sec. 121(b)(1)(B) of WIOA under the authority of DOL to which the common exit policy applies in which the participant is enrolled.

(d) *State.* For purposes of this part, other than in regard to sanctions or the statistical adjustment model, all references to ''State'' include the outlying areas of American Samoa, Guam, Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, and, as applicable, the Republic of Palau.

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?

(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 authorized under WIOA title I; the AEFLA program authorized under WIOA title II; the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III; and the VR program authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV.

(1) *Primary indicators of performance.* The six primary indicators of performance for the adult and dislocated worker programs, the AEFLA program, and the VR program 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)(A) The percentage of those participants enrolled in an education or training program (excluding those in on-the-job training [OJT] and customized training) who attained a recognized postsecondary credential or a secondary school diploma, or its recognized equivalent, during participation in or within 1 year after exit from the program.

(B) A participant who has attained a secondary school diploma or its recognized equivalent is included in the percentage of participants who have attained a secondary school diploma or recognized equivalent only if the participant also is employed or is enrolled in an education or training program leading to a recognized postsecondary credential within 1 year after exit from the program;

(v) The percentage of participants who, during a program year, are in an education or training program that leads to a recognized postsecondary 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. Depending upon the type of education or training program, documented progress is defined as one of the following:

(A) Documented achievement of at least one educational functioning level of a participant who is receiving instruction below the postsecondary education level;

(B) Documented attainment of a secondary school diploma or its recognized equivalent;

(C) Secondary or postsecondary transcript or report card for a sufficient number of credit hours that shows a participant is meeting the State unit's academic standards;

(D) Satisfactory or better progress report, towards established milestones, such as completion of OJT or completion of 1 year of an apprenticeship program or similar milestones, from an employer or training provider who is providing training; or

(E) Successful passage of an exam that is required for a particular occupation or progress in attaining technical or occupational skills as evidenced by trade-related benchmarks such as knowledge-based exams.

(vi) Effectiveness in serving employers.

(2) *Participants.* For purposes of the primary indicators of performance in paragraph (a)(1) of this section, ''participant'' will have the meaning given to it in § 677.150(a), except that—

(i) For purposes of determining program performance levels under indicators set forth in paragraphs (a)(1)(i) through (iv) and (vi) of this section, a ''participant'' does not include a participant who received services under sec. 225 of WIOA and exits such program while still in a correctional institution as defined in sec. 225(e)(1) of WIOA; and

(ii) The Secretaries of Labor and Education may, as needed and consistent with the Paperwork Reduction Act (PRA), make further determinations as to the participants to be included in calculating program performance levels for purposes of any of the performance indicators set forth in paragraph (a)(1) of this section.

(b) The primary indicators in paragraphs (a)(1)(i) through (iii) and (vi) of this section apply to the Employment

Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III.

(c) For the youth program authorized under WIOA title I, the primary 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 those participants enrolled in an education or training program (excluding those in OJT and customized training) who obtained a recognized postsecondary credential or a secondary school diploma, or its recognized equivalent, during participation in or within 1 year after exit from the program, except that a participant who has attained a secondary school diploma or its recognized equivalent is included as having attained a secondary school diploma or recognized equivalent only if the participant is also employed or is enrolled in an education or training program leading to a recognized postsecondary 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 postsecondary 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. Depending upon the type of education or training program, documented progress is defined as one of the following:

(i) Documented achievement of at least one educational functioning level of a participant who is receiving instruction below the postsecondary education level;

(ii) Documented attainment of a secondary school diploma or its recognized equivalent;

(iii) Secondary or postsecondary transcript or report card for a sufficient number of credit hours that shows a participant is achieving the State unit's academic standards;

(iv) Satisfactory or better progress report, towards established milestones, such as completion of OJT or completion of 1 year of an apprenticeship program or similar milestones, from an employer or training provider who is providing training; or

(v) Successful passage of an exam that is required for a particular occupation or progress in attaining technical or occupational skills as evidenced by trade-related benchmarks such as knowledge-based exams.

(6) Effectiveness in serving employers.

§ 677.160 What information is required for State performance reports?

(a) The State performance report required by sec. 116(d)(2) of WIOA must be submitted annually using a template the Departments of Labor and Education 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 of performance 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 who received career services and the total number of participants who exited from career services for the most recent program year and the 3 preceding program years, and the total number of participants who received training services and the total number of participants who exited from training services for the most recent program year and the 3 preceding program years, as applicable to the program;

(4) Information on the performance levels achieved for the primary indicators of performance consistent with § 677.155 for career services 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 attained unsubsidized employment related to the training received (often referred to as training-related employment) through WIOA title I, subtitle B programs;

(6) The amount of funds spent on career services and the amount of funds spent on training services 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 services and training services, respectively, during the most recent program year and the 3 preceding program years, 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 eligible training provider (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 Labor and Education, which may include information on reportable individuals as determined by the Secretaries of Labor and Education.

§ 677.165 May a State establish additional indicators of performance?

States may identify additional indicators of performance for the six core programs. If a State does so, these indicators must be included in the Unified or Combined State Plan.

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

(a) A State must submit in the State Plan expected levels of performance on the primary indicators of performance for each core program as required by sec. 116(b)(3)(A)(iii) of WIOA as explained in joint guidance issued by the Secretaries of Labor and Education.

(1) The initial State Plan submitted under WIOA must contain expected levels of performance for the first 2 years of the State Plan.

(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) States must reach agreement on levels of performance with the Secretaries of Labor and Education for each indicator for each core program. These are the negotiated levels of performance. The negotiated levels must be based on the following factors:

(1) How the negotiated levels of performance compare with State levels of performance established for other States;

(2) The application of an objective statistical model established by the Secretaries of Labor and Education, subject to paragraph (d) of this section;

(3) How the negotiated 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 negotiated levels assist the State in meeting the performance goals established by the Secretaries of Labor and Education for the core programs in accordance with the Government Performance and Results Act of 1993, as amended.

(c) An objective statistical adjustment model will be developed and disseminated by the Secretaries of Labor and Education. The model will be based on:

(1) Differences among States in actual economic conditions, including but not limited to unemployment rates and job losses or gains in particular industries; and

(2) The characteristics of participants, including but not limited to:

(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 are necessary to populate the model and apply the model to the local core programs;

(2) Subject to paragraph (d)(1) of this section, used before the beginning of a program year in order to reach agreement on State negotiated levels for the upcoming program year; and

(3) Subject to paragraph (d)(1) of this section, used to revise negotiated levels at the end of a program year based on actual economic conditions and characteristics of participants served, consistent with sec. 116(b)(3)(A)(vii) of WIOA.

(e) The negotiated levels revised at the end of the program year, based on the statistical adjustment model, are the adjusted levels of performance.

(f) States must comply with these requirements from sec. 116 of WIOA as explained in joint guidance issued by the Departments of Labor and Education.

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

(a)(1) States must, consistent with State laws, use quarterly wage record information in measuring a State's performance on the primary indicators of performance outlined in § 677.155 and a local area's performance on the primary indicators of performance identified in § 677.205.

(2) 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.

(3) To the extent that quarterly wage records are not available for a participant, States may use other information as is necessary to measure the progress of those participants through methods other than quarterly wage record information.

(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 ETPs. The Governor or such agency (or appropriate State entity) is responsible for:

(1) Facilitating data matches;

(2) Data quality reliability; and

(3) Protection against disaggregation that would violate applicable privacy standards.

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

§ 677.180 When is a State subject to a financial sanction under the Workforce Innovation and Opportunity Act?

A State will be subject to financial sanction under WIOA sec. 116(f) if it fails to:

(a) Submit the State annual performance report required under WIOA sec. 116(d)(2); or

(b) 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 a State's failure to submit an annual performance report?

(a) Sanctions will be applied when a State fails to submit the State annual performance report required under sec. 116(d)(2) of WIOA. A State fails 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 applied 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 issues.

(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, but no later than 30 days prior to the established deadline for submission, of a potential impact on the State's ability to submit its State annual performance report in order to not be considered failing to report.

(2) In circumstances where unexpected events occur less than 30 days before the established deadline for submission of the State annual performance reports, the Secretaries of

Labor and Education will review requests for extending the reporting deadline in accordance with the Departments of Labor and Education's procedures that will be established in guidance.

§ 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 economic conditions experienced during a program year and characteristics of participants, annually at the close of each program year.

(b) Any State that fails 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) Whether a State has failed to meet adjusted levels of performance will be determined using the following three criteria:

(1) The overall State program score, which is expressed as the percent achieved, compares the actual results achieved by a core program on the primary indicators of performance to the adjusted levels of performance for that core program. The average of the percentages achieved of the adjusted level of performance for each of the primary indicators by a core program will constitute the overall State program score.

(2) However, until all indicators for the core program have at least 2 years of complete data, the overall State program score will be based on a comparison of the actual results achieved to the adjusted level of performance for each of the primary indicators that have at least 2 years of complete data for that program;

(3) The overall State indicator score, which is expressed as the percent achieved, compares the actual results achieved on a primary indicator of performance by all core programs in a State to the adjusted levels of performance for that primary indicator. The average of the percentages achieved of the adjusted level of performance by all of the core programs on that indicator will constitute the overall State indicator score.

(4) However, until all indicators for the State have at least 2 years of complete data, the overall State indicator score will be based on a comparison of the actual results achieved to the adjusted level of performance for each of the primary indicators that have at least 2 years of complete data in a State.

(5) The individual indicator score, which is expressed as the percent achieved, compares the actual results achieved by each core program on each of the individual primary indicators to the adjusted levels of performance for each of the program's primary indicators of performance.

(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:

(1) 90 percent of the overall State program score for the same core program;

(2) 90 percent of the overall State indicator score for the same primary indicator; or

(3) 50 percent of the same indicator score for the same program.

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

(a) The Secretaries of Labor and Education will reduce the Governor's Reserve Allotment by five 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;

(2) The State fails to meet State adjusted levels of performance for the same primary performance indicator(s) under either § 677.190(d)(1) for the second consecutive year as defined in § 677.190; or

(3) The State's score on the same indicator for the same program falls below 50 percent under § 677.190(d)(2) for the second consecutive year as defined in § 677.190.

(b) If the State fails under paragraphs (a)(1) and either (a)(2) or (3) of this section in the same program year, the Secretaries of Labor and 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, depending on which program is impacted, 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 Secretary of Labor imposes in accordance with the provisions of § 683.800 of this chapter.

§ 677.200 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 State program score and overall State 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 and what information must be included in local area performance reports?

(a) Each local area in a State under WIOA title I is subject to the same primary indicators of performance for the core programs for WIOA title I under § 677.155(a)(1) and (c) 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 of Labor and Education 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 include:

(1) The actual results achieved under § 677.155 and the information required under § 677.160(a);

(2) The percentage of a local area's allotment under WIOA secs. 128(b) and 133(b) that the local area spent on administrative costs; and

(3) 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).

(e) The disaggregation of data for the local area performance report must be done in compliance with WIOA sec. 116(d)(6)(C).

(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 DOL.

§ 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 § 677.170(c) must be:

(1) Applied to the core programs' primary indicators upon availability of data which are necessary to populate the model and apply the model to the local core programs;

(2) Used in order to reach agreement on local negotiated levels of performance for the upcoming program year; and

(3) Used to establish adjusted levels of performance at the end of a program year based on actual conditions, consistent with WIOA sec. 116(c)(3).

(b) Until all indicators for the core program in a local area have at least 2 years of complete data, the comparison of the actual results achieved to the adjusted levels of performance for each of the primary indicators only will be applied where there are at least 2 years of complete data for that program.

(c) The Governor, Local Workforce Development Board (WDB), and chief elected official must reach agreement on local negotiated levels of performance 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 economic conditions and characteristics of the participants served.

(d) The negotiations process described in paragraph (c) of this section must be developed by the Governor and disseminated to all Local WDBs and chief elected officials.

(e) The Local WDBs may apply performance measures to service providers that differ from the performance indicators that apply to the local area. These performance measures must be established after considering:

(1) The established local negotiated 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, but is authorized to provide incentive grants to local areas for performance on the primary indicators of performance consistent with WIOA sec. 134(a)(3)(A)(xi).

(b) The Governor may use non-Federal funds to create incentives for the Local WDBs 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 WDBs. Pay-for-performance contract strategies must be implemented in accordance with part 683, subpart E 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 adjusted 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 to meet adjusted levels of performance for a local area before coming to agreement on the negotiated levels of performance for the local area.

(i) A State must establish the adjusted level of performance for a local area, using the statistical adjustment model described in § 677.170(c).

(ii) At least 2 years of complete data on any indicator for any local core program are required in order to establish adjusted levels of performance for a 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 adjusted levels of performance agreed to under § 677.210 for the same primary indicators of performance for the same core program 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 WDB, 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 WDB 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 WDB 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 WDB and chief elected official to the Secretary of Labor under § 683.650 of this chapter; and

(2) Must be submitted by certified mail, return receipt requested, to the Secretary of Labor, U.S. Department of Labor, 200 Constitution Ave. NW., 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 WDB and chief elected

official, the Secretary of Labor must make a final decision within 30 days. In making this determination the Secretary of Labor may consider any comments submitted by the Governor in response to the appeals.

(d) The decision by the Governor on the appeal 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)(C).

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 of Labor and Education will disseminate including through electronic means, the ETP performance reports for ETPs 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 as defined by § 677.150(a) 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) with respect to all individuals engaging in 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 engaging in a program of study (or the equivalent).

(b) Apprenticeship programs registered under the National Apprenticeship Act are not required to submit ETP performance information. 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 a mechanism of electronic access to the public ETP 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 DOL.

(e) The Governor may designate one or more State agencies such as a State Education Agency or other State Educational Authority to assist in overseeing ETP performance and facilitating the production and dissemination of ETP performance reports. These agencies may be the same agencies that are designated as responsible for administering the ETP 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 unemployment insurance (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 ETP 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 (WIOA) title I programs; the Wagner-Peyser Act Employment Service program, as amended by WIOA title III; and the Vocational Rehabilitation program authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV?

(a) On a quarterly basis, each State must submit to the Secretary of Labor or the 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 either of the following programs administered by the Secretary of Labor or Secretary of Education: A WIOA title I core program; the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III; or the VR program authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV.

(b) For individual records submitted to the Secretary of Labor, those records may be required to be integrated across all programs administered by the Secretary of Labor in one single file.

(c) States must comply with the requirements of sec. 116(d)(2) of WIOA as explained in guidance issued by the Departments of Labor and Education.

§ 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 Labor or the Secretary of Education, to ensure that they submit complete annual performance reports that contain information that is valid and reliable, as required by WIOA sec. 116(d)(5).

(b) If a State fails to meet standards in paragraph (a) of this section as determined by the Secretary of Labor or the 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 Secretaries of Labor and Education will provide training and technical assistance to States in order to implement this section. States must comply with the requirements of sec. 116(d)(5) of WIOA as explained in guidance.

■ 3. Add part 678 to read as follows:

PART 678—DESCRIPTION OF THE ONE-STOP DELIVERY 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 Act 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

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

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 different Memoranda of Understanding between the Local Workforce Development Board and each partner?
678.510 How must the Memorandum of Understanding be negotiated?

Subpart D—One-Stop Operators

678.600 Who may operate one-stop centers?
678.605 How is the one-stop operator selected?
678.610 When is the sole-source selection of one-stop operators appropriate, and how is it conducted?
678.615 May an entity currently 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 center where the operator is not a governmental entity?
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Subpart E—One-Stop Operating Costs

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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 Workforce Development Board, chief elected officials, and one-stop partners?
678.730 What is the State one-stop infrastructure funding mechanism?
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678.737 How are one-stop partner programs' proportionate shares of infrastructure costs determined under the State one-stop infrastructure funding mechanism?
678.738 How are statewide caps on the contributions for one-stop infrastructure funding determined in the State one-stop infrastructure funding mechanism?
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678.745 What factors does the State Workforce Development Board use to develop the formula described in Workforce Innovation and Opportunity Act, which is used by the Governor to determine the appropriate one-stop infrastructure budget for each local area operating under the State infrastructure funding mechanism, if no reasonably implementable locally negotiated budget exists?
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

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

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 employers 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 public 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 sec. 188 and its implementing regulations at 29 CFR part 38.

(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 job seeker 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 the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III (Wagner-Peyser Act Employment Service program); 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 Workforce Development Board (WDB) may establish other service hours at other times to accommodate the schedules of individuals who work on regular business days. The State WDB 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 each partner program and its services means:

(1) Having a program staff member physically present at the one-stop center;

(2) Having a staff member from a different partner program physically present at the one-stop center appropriately trained to provide information to customers about the programs, services, and activities available through partner programs; or

(3) Making available a direct linkage through technology to program staff who can provide meaningful information or services.

(i) A ''direct linkage'' means providing direct connection at the one-stop center, 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.

(ii) A ''direct linkage'' cannot exclusively be providing a phone number or computer Web site or providing information, pamphlets, or materials.

(e) All comprehensive one-stop centers must be physically and programmatically accessible to individuals with disabilities, as described in 29 CFR part 38, the implementing regulations of WIOA sec. 188.

§ 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 job seeker 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 must be implemented in a manner that supplements and enhances customer access to services.

(b) As described in § 678.315, Wagner-Peyser Act employment services cannot be a stand-alone affiliated site.

(c) States, in conjunction with the Local WDBs, 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 WDBs must take expeditious steps to align lease expiration dates with efforts to consolidate one-stop operations into service points where Wagner-Peyser Act employment services are colocated 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 29 CFR part 38, the implementing regulations of WIOA sec. 188.

§ 678.315 Can a stand-alone Wagner-Peyser Act Employment Service office be designated as an affiliated one-stop site?

(a) Separate stand-alone Wagner-Peyser Act Employment Service offices are not permitted under WIOA, as also described in § 652.202 of this chapter.

(b) If Wagner-Peyser Act employment services are provided at an affiliated site, there must be at least one or more other partners in the affiliated site with a physical presence of combined staff 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 Act employment services and any of these 3 programs are provided at an affiliated site, an additional partner or partners must have a presence of combined staff in the center more than 50 percent of the time the center is open.

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

Any network of one-stop partners or specialized centers, as described in § 678.300(d)(3), must be connected to the comprehensive one-stop center and any appropriate affiliate one-stop centers, for example, by having processes in place to make referrals to these centers and the partner programs located in them. Wagner-Peyser Act 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 Act 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 delivery 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) The Wagner-Peyser Act Employment Service program authorized under the Wagner-Peyser Act (29 U.S.C. 49 *et seq.*), as amended by WIOA title III;

(3) The Adult Education and Family Literacy Act (AEFLA) program authorized under title II of WIOA;

(4) The Vocational Rehabilitation (VR) program authorized under title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 *et seq.*), as amended by WIOA title IV;

(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 postsecondary 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.

(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 work in collaboration or partnership with the local one-stop centers to deliver employment and training services to the TANF population unless inconsistent with the Governor's direction.

§ 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 delivery system if the Local WDB and chief elected official(s) approve the entity's participation.

(b) Additional partners may include, but are not limited to:

(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, but not limited to, 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 § 678.410, 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 must be the partner. Specific entities for particular programs are identified in paragraphs (b) through (e) 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 delivery system.

(b) For title II of WIOA, the entity or agency 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 or agency may delegate its responsibilities under paragraph (a) of this section to one or more eligible providers or consortium of eligible providers.

(c) For the VR program, authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV, 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 title I, 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, YouthBuild, 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 eligible recipient or recipients at the postsecondary level, or a consortium of eligible recipients at the postsecondary level in the local area. The eligible recipient at the postsecondary level may also request assistance from the State eligible agency in completing its responsibilities under paragraph (a) of this section.

§ 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;

(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 WDBs 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 based on proportionate use and relative benefit received;

(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.)

(c) Enter into an MOU with the Local WDB relating to the operation of the one-stop delivery system that meets the requirements of § 678.500(b);

(d) Participate in the operation of the one-stop delivery system consistent with the terms of the MOU, requirements of authorizing laws, the Federal cost principles, and all other applicable legal requirements; and

(e) Provide representation on the State and Local WDBs as required and participate in Board committees as needed.

§ 678.425 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 § 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.

§ 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. For the TANF program, States must provide individuals with the opportunity to initiate an application for TANF assistance and non-assistance benefits and services, which could be implemented through the provision of paper application forms or links to the application Web site;

(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 education, training, and workforce 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 TANF, and other supportive services and transportation provided through that program;

(10) Provision of information and 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.
(d) In addition to the requirements in paragraph (a)(2) of this section, TANF agencies must identify employment services and related support being provided by the TANF program (within the local area) that qualify as career services and ensure access to them via the local one-stop delivery system.

§ 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 employers, specifically labor exchange activities and labor market information described in § 678.430(a)(4)(ii) and (a)(6). Local areas must establish and develop relationships and networks with large and small employers and their intermediaries. Local areas also must develop, convene, or implement industry or sector partnerships.
(b) Customized business services may be provided to employers, employer associations, or other such organizations. 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;
(vi) Creating job accommodations and using assistive technologies; or
(vii) Explaining labor and employment laws to help employers comply with discrimination, 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 WDB, or through the use of economic development, philanthropic, and other public and private resources in a manner determined appropriate by the Local WDB 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 postsecondary 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.

§ 678.440 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 § 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 WDB 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 WDB. The Local WDB 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.
(d) Any fees earned are recognized as program income and must be expended by the partner in accordance with the partner program's authorizing statute, implementing regulations, and Federal cost principles identified in Uniform Guidance.

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 WDB and the one-stop partners, 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) Agreement on funding the costs of the services and the operating costs of the system, 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.

(d) When fully executed, the MOU must contain the signatures of the Local WDB, 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 different Memoranda of Understanding between the Local Workforce Development 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 WDB, chief elected official and all partners. Alternatively, the Local WDB (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 WDB 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 must the Memorandum of Understanding be negotiated?

(a) WIOA emphasizes full and effective partnerships between Local WDBs, chief elected officials, and one-stop partners. Local WDBs and partners must enter into good-faith negotiations. Local WDBs, chief elected officials, and one-stop partners may also request assistance from a State agency responsible for administering the partner program, the Governor, State WDB, or other appropriate parties on other aspects of the MOU.

(b) Local WDBs and one-stop partners must establish, in the MOU, how they will fund the infrastructure costs and other shared costs of the one-stop centers. If agreement regarding infrastructure costs is not reached when other sections of the MOU are ready, an interim infrastructure funding agreement may be included instead, as described in § 678.715(c). Once agreement on infrastructure funding is reached, the Local WDB and one-stop partners must amend the MOU to include the infrastructure funding of the one-stop centers. Infrastructure funding is described in detail in subpart E of this part.

(c) The Local WDB must report to the State WDB, Governor, and relevant State agency when MOU negotiations with one-stop partners have reached an impasse.

(1) The Local WDB and partners must document the negotiations and efforts that have taken place in the MOU. The State WDB, 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 WDB must report failure to execute an MOU with a required partner to the Governor, State WDB, and the State agency responsible for administering the partner's program. Additionally, if the State cannot assist the Local WDB in resolving the impasse, the Governor or the State WDB 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 WDB, with the approval of the chief 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 WDBs 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 part 200, 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 WDB 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 WDB 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 local procurement policies and procedures and the principles of competitive procurement in the Uniform Guidance set out at 2 CFR 200.318 through 200.326. All references to ''noncompetitive proposals'' in the Uniform Guidance at 2 CFR 200.320(f) will be read as ''sole source procurement'' for the purposes of implementing this section.

(d) Entities must prepare written documentation explaining the determination concerning the nature of the competitive process to be followed in selecting a one-stop operator.

§ 678.610 When is the sole-source selection of one-stop operators appropriate, and how is it conducted?

(a) States may select a one-stop operator through sole source selection when allowed under the same policies and procedures used for competitive procurement with non-Federal funds, while other non-Federal entities including subrecipients of a State (such as local areas) may select a one-stop operator through sole selection when consistent with local procurement policies and procedures and the Uniform Guidance set out at 2 CFR 200.320.

(b) In the event that sole source procurement is determined necessary and reasonable, in accordance with § 678.605(c), 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 WDB may 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 WDB must establish sufficient conflict of interest policies and procedures and these policies and procedures must be approved by the Governor.

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

(a) Local WDBs may 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 may compete for and be selected as one-stop operators by the Local WDB, 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-area States where the State WDB serves as the Local WDB, 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 conflicts 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 WDBs may establish additional roles of one-stop operator, including, but not limited to: Coordinating service providers across the one-stop delivery 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, which may include affiliated sites. The competition for a one-stop operator must clearly articulate the role of the one-stop operator.

(b)(1) Subject to paragraph (b)(2) of this section, 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; or develop and submit budget for activities of the Local WDB in the local area.

(2) An entity serving as a one-stop operator, that also serves a different role within the one-stop delivery system, may perform some or all of these functions when it is acting in its other role, if it has established sufficient firewalls and conflict of interest policies and procedures. The policies and procedures 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 WDB 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 conflicts of interest.

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

Yes. State merit staff can continue to perform functions and activities in the one-stop center. The Local WDB 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 for the provision of Wagner-Peyser Act services or services from other programs with merit staffing requirements must be included in the competition for and final contract with the one-stop operator when Wagner-Peyser Act services or services from

other programs with merit staffing requirements are being provided.

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

(a) No later than July 1, 2017, one-stop operators selected under the competitive process described in this subpart must be in place and operating the one-stop center.

(b) By November 17, 2016, every Local WDB 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 the 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 WDBs 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 WDB, and Local WDBs, and consistent with guidance and policies provided by the State WDB, 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, and relative benefit received, consistent with Office of Management and Budget (OMB) 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 WDBs, 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 use and relative benefit received, and consistent with Federal cost principles contained in the Uniform Guidance at 2 CFR part 200.

(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 based on its proportionate use of the one-stop centers and relative benefit received, consistent with Federal cost principles at 2 CFR part 200; and

(3) The timelines regarding notification to the Governor for not reaching local agreement and triggering the State funding mechanism described in § 678.730, and timelines for a one-stop partner to submit an appeal in the State funding 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 WDB, 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 funding mechanism must meet all of the following requirements:

(1) The infrastructure costs are funded through cash and fairly evaluated non-cash and third-party 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 WDB 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 its use of the one-stop center, relative to benefits received. Such costs must also 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 to the use of the one-stop center and relative 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 described in § 678.755, the Local WDB 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 WDB 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 funding agreement must be finalized within 6 months of when the MOU is signed. If the interim infrastructure funding agreement is not finalized within that timeframe, the Local WDB 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 funding mechanism, one-stop partner programs may determine what funds they will use to pay for 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 programs authorized by title I of WIOA, these infrastructure costs may be considered program costs. In the case of partners administering adult education and literacy programs authorized by title II of WIOA, these funds must include Federal funds made available for the local administration of adult education and literacy programs authorized by title II of WIOA. These funds may also include non-Federal resources that are cash, in-kind or third-party contributions. In the case of partners administering the Carl D. Perkins Career and Technical Education Act of 2006, funds used to pay for infrastructure costs may include funds available for local administrative expenses, non-Federal resources that are cash, in-kind or third-party contributions, and may include other funds made available by the State.

(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 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 of the one-stop centers and relative benefit received by 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 part 200, including the Federal cost principles.

(c) Cash, non-cash, and third-party in-kind contributions may be provided by one-stop partners to cover their proportionate share of infrastructure costs.

(1) Cash contributions are cash funds provided to the Local WDB or its designee by one-stop partners, either directly or by an interagency transfer.

(2) Non-cash contributions are comprised of—

(i) Expenditures incurred by one-stop partners on behalf of the one-stop center; and

(ii) Non-cash contributions or goods or services contributed by a partner program and used by the one-stop center.

(3) Non-cash contributions, especially those set forth in paragraph (c)(2)(ii) of this section, must be valued consistent with 2 CFR 200.306 to ensure they are fairly evaluated and meet the partners' proportionate share.

(4) Third-party in-kind contributions are:

(i) Contributions of space, equipment, technology, non-personnel services, or other like items to support the infrastructure costs associated with one-stop operations, by a non-one-stop partner to support the one-stop center in general, not a specific partner; or

(ii) Contributions by a non-one-stop partner of space, equipment, technology, non-personnel services, or other like items to support the infrastructure costs associated with one-stop operations, to a one-stop partner to support its proportionate share of one-stop infrastructure costs.

(iii) In-kind contributions described in paragraphs (c)(4)(i) and (ii) of this section must be valued consistent with 2 CFR 200.306 and reconciled on a regular basis to ensure they are fairly evaluated and meet the proportionate share of the partner.

(5) All partner contributions, regardless of the type, must be reconciled on a regular basis (*i.e.,* monthly or quarterly), comparing actual expenses incurred to relative benefits received, to ensure each partner program is contributing its proportionate share in accordance with the terms of the MOU.

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

With regard to negotiations for infrastructure funding for Program Year (PY) 2017 and for each subsequent program year thereafter, if the Local WDB, chief elected officials, and one-stop partners do not reach consensus on methods of sufficiently funding local infrastructure through the local funding mechanism in accordance with the Governor's guidance issued under § 678.705 and consistent with the regulations in §§ 678.715 and 678.720, and include that consensus agreement in the signed MOU, then the Local WDB must notify the Governor by the deadline established by the Governor under § 678.705(b)(3). Once notified, the Governor must administer funding through the State funding mechanism, as described in §§ 678.730 through 678.738, for the program year impacted by the local area's failure to reach consensus.

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

(a) Consistent with sec. 121(h)(1)(A)(i)(II) of WIOA, if the Local WDB, chief elected official, and one-stop partners in a local area do not reach consensus agreement on methods of sufficiently funding the costs of infrastructure of one-stop centers for a program year, the State funding mechanism is applicable to the local area for that program year.

(b) In the State funding mechanism, the Governor, subject to the limitations in paragraph (c) of this section, determines one-stop partner contributions after consultation with the chief elected officials, Local WDBs, and the State WDB. This determination involves:

(1) The application of a budget for one-stop infrastructure costs as described in § 678.735, based on either agreement reached in the local area negotiations or the State WDB formula outlined in § 678.745;

(2) The determination of each local one-stop partner program's proportionate use of the one-stop delivery system and relative benefit received, consistent with the Uniform Guidance at 2 CFR part 200, including the Federal cost principles, the partner programs' authorizing laws and regulations, and other applicable legal requirements described in § 678.736; and

(3) The calculation of required statewide program caps on contributions to infrastructure costs from one-stop partner programs in areas operating under the State funding mechanism as described in § 678.738.

(c) In certain situations, the Governor does not determine the infrastructure cost contributions for some one-stop partner programs under the State funding mechanism.

(1) The Governor will not determine the contribution amounts for infrastructure funds for Native American program grantees described in part 684 of this chapter. The appropriate portion of funds to be provided by Native American program 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 States in which the policy-making authority is placed in an entity or official that is independent of the

authority of the Governor with respect to the funds provided for adult education and literacy activities authorized under title II of WIOA, postsecondary career and technical education activities authorized under the Carl D. Perkins Career and Technical Education Act of 2006, or VR services authorized under title I of the Rehabilitation Act of 1973 (other than sec. 112 or part C), as amended by WIOA title IV, the determination of the amount each of the applicable partners must contribute to assist in paying the infrastructure costs of one-stop centers must be made by the official or chief officer of the entity with such authority, in consultation with the Governor.

(d) Any duty, ability, choice, responsibility, or other action otherwise related to the determination of infrastructure costs contributions that is assigned to the Governor in §§ 678.730 through 678.745 also applies to this decision-making process performed by the official or chief officer described in paragraph (c)(2) of this section.

§ 678.731 What are the steps to determine the amount to be paid under the State one-stop infrastructure funding mechanism?

(a) To initiate the State funding mechanism, a Local WDB that has not reached consensus on methods of sufficiently funding local infrastructure through the local funding mechanism as provided in § 678.725 must notify the Governor by the deadline established by the Governor under § 678.705(b)(3).

(b) Once a Local WDB has informed the Governor that no consensus has been reached:

(1) The Local WDB must provide the Governor with local negotiation materials in accordance with § 678.735(a).

(2) The Governor must determine the one-stop center budget by either:

(i) Accepting a budget previously agreed upon by partner programs in the local negotiations, in accordance with § 678.735(b)(1); or

(ii) Creating a budget for the one-stop center using the State WDB formula (described in § 678.745) in accordance with § 678.735(b)(3).

(3) The Governor then must establish a cost allocation methodology to determine the one-stop partner programs' proportionate shares of infrastructure costs, in accordance with § 678.736.

(4)(i) Using the methodology established under paragraph (b)(2)(ii) of this section, and taking into consideration the factors concerning individual partner programs listed in § 678.737(b)(2), the Governor must determine each partner's proportionate share of the infrastructure costs, in accordance with § 678.737(b)(1), and

(ii) In accordance with § 678.730(c), in some instances, the Governor does not determine a partner program's proportionate share of infrastructure funding costs, in which case it must be determined by the entities named in § 678.730(c)(1) and (2).

(5) The Governor must then calculate the statewide caps on the amounts that partner programs may be required to contribute toward infrastructure funding, according to the steps found at § 678.738(a)(1) through (4).

(6) The Governor must ensure that the aggregate total of the infrastructure contributions according to proportionate share required of all local partner programs in local areas under the State funding mechanism do not exceed the cap for that particular program, in accordance with § 678.738(b)(1). If the total does not exceed the cap, the Governor must direct each one-stop partner program to pay the amount determined under § 678.737(a) toward the infrastructure funding costs of the one-stop center. If the total does exceed the cap, then to determine the amount to direct each one-stop program to pay, the Governor may:

(i) Ascertain, in accordance with § 678.738(b)(2)(i), whether the local partner or partners whose proportionate shares are calculated above the individual program caps are willing to voluntarily contribute above the capped amount to equal that program's proportionate share; or

(ii) Choose from the options provided in § 678.738(b)(2)(ii), including having the local area re-enter negotiations to reassess each one-stop partner's proportionate share and make adjustments or identify alternate sources of funding to make up the difference between the capped amount and the proportionate share of infrastructure funding of the one-stop partner.

(7) If none of the solutions given in paragraphs (b)(6)(i) and (ii) of this section prove to be viable, the Governor must reassess the proportionate shares of each one-stop partner so that the aggregate amount attributable to the local partners for each program is less than that program's cap amount. Upon such reassessment, the Governor must direct each one-stop partner program to pay the reassessed amount toward the infrastructure funding costs of the one-stop center.

§ 678.735 How are infrastructure cost budgets for the one-stop centers in a local area determined in the State one-stop infrastructure funding mechanism?

(a) Local WDBs must provide to the Governor appropriate and relevant materials and documents used in the negotiations under the local funding mechanism, including but not limited to: The local WIOA plan, the cost allocation method or methods proposed by the partners to be used in determining proportionate share, the proposed amounts or budget to fund infrastructure, the amount of total partner funds included, the type of funds or non-cash contributions, proposed one-stop center budgets, and any agreed upon or proposed MOUs.

(b)(1) If a local area has reached agreement as to the infrastructure budget for the one-stop centers in the local area, it must provide this budget to the Governor as required by paragraph (a) of this section. If, as a result of the agreed upon infrastructure budget, only the individual programmatic contributions to infrastructure funding based upon proportionate use of the one-stop centers and relative benefit received are at issue, the Governor may accept the budget, from which the Governor must calculate each partner's contribution consistent with the cost allocation methodologies contained in the Uniform Guidance found in 2 CFR part 200, as described in § 678.736.

(2) The Governor may also take into consideration the extent to which the partners in the local area have agreed in determining the proportionate shares, including any agreements reached at the local level by one or more partners, as well as any other element or product of the negotiating process provided to the Governor as required by paragraph (a) of this section.

(3) If a local area has not reached agreement as to the infrastructure budget for the one-stop centers in the local area, or if the Governor determines that the agreed upon budget does not adequately meet the needs of the local area or does not reasonably work within the confines of the local area's resources in accordance with the Governor's one-stop budget guidance (which is required to be issued by WIOA sec. 121(h)(1)(B) and under § 678.705), then, in accordance with § 678.745, the Governor must use the formula developed by the State WDB based on at least the factors required under § 678.745, and any associated weights to determine the local area budget.

§ 678.736 How does the Governor establish a cost allocation methodology used to determine the one-stop partner programs' proportionate shares of infrastructure costs under the State one-stop infrastructure funding mechanism?

Once the appropriate budget is determined for a local area through either method described in § 678.735 (by acceptance of a budget agreed upon in local negotiation or by the Governor applying the formula detailed in § 678.745), the Governor must determine the appropriate cost allocation methodology to be applied to the one-stop partners in such local area, consistent with the Federal cost principles permitted under 2 CFR part 200, to fund the infrastructure budget.

§ 678.737 How are one-stop partner programs' proportionate shares of infrastructure costs determined under the State one-stop infrastructure funding mechanism?

(a) The Governor must direct the one-stop partners in each local area that have not reached agreement under the local funding mechanism to pay what the Governor determines is each partner program's proportionate share of infrastructure funds for that area, subject to the application of the caps described in § 678.738.

(b)(1) The Governor must use the cost allocation methodology—as determined under § 678.736—to determine each partner's proportionate share of the infrastructure costs under the State funding mechanism, subject to considering the factors described in paragraph (b)(2) of this section.

(2) In determining each partner program's proportionate share of infrastructure costs, the Governor must take 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 WDB or information technology systems), as well as the statutory requirements for each partner program, the partner program's ability to fulfill such requirements, and all other applicable legal requirements. The Governor may also take into consideration the extent to which the partners in the local area have agreed in determining the proportionate shares, including any agreements reached at the local level by one or more partners, as well as any other materials or documents of the negotiating process, which must be provided to the Governor by the Local WDB and described in § 678.735(a).

§ 678.738 How are statewide caps on the contributions for one-stop infrastructure funding determined in the State one-stop infrastructure funding mechanism?

(a) The Governor must calculate the statewide cap on the contributions for one-stop infrastructure funding required to be provided by each one-stop partner program for those local areas that have not reached agreement. The cap is the amount determined under paragraph (a)(4) of this section, which the Governor derives by:

(1) First, determining the amount resulting from applying the percentage for the corresponding one-stop partner program provided in paragraph (d) of this section to the amount of Federal funds provided to carry out the one-stop partner program in the State for the applicable fiscal year;

(2) Second, selecting a factor (or factors) that reasonably indicates the use of one-stop centers in the State, applying such factor(s) to all local areas in the State, and determining the percentage of such factor(s) applicable to the local areas that reached agreement under the local funding mechanism in the State;

(3) Third, determining the amount resulting from applying the percentage determined in paragraph (a)(2) of this section to the amount determined under paragraph (a)(1) of this section for the one-stop partner program; and

(4) Fourth, determining the amount that results from subtracting the amount determined under paragraph (a)(3) of this section from the amount determined under paragraph (a)(1) of this section. The outcome of this final calculation results in the partner program's cap.

(b)(1) The Governor must ensure that the funds required to be contributed by each partner program in the local areas in the State under the State funding mechanism, in aggregate, do not exceed the statewide cap for each program as determined under paragraph (a) of this section.

(2) If the contributions initially determined under § 678.737 would exceed the applicable cap determined under paragraph (a) of this section, the Governor may:

(i) Ascertain if the one-stop partner whose contribution would otherwise exceed the cap determined under paragraph (a) of this section will voluntarily contribute above the capped amount, so that the total contributions equal that partner's proportionate share. The one-stop partner's contribution must still be consistent with the program's authorizing laws and regulations, the Federal cost principles in 2 CFR part 200, and other applicable legal requirements; or

(ii) Direct or allow the Local WDB, chief elected officials, and one-stop partners to: Re-enter negotiations, as necessary; reduce the infrastructure costs to reflect the amount of funds that are available for such costs without exceeding the cap levels; reassess the proportionate share of each one-stop partner; or identify alternative sources of financing for one-stop infrastructure funding, consistent with the requirement that each one-stop partner pay an amount that is consistent with the proportionate use of the one-stop center and relative benefit received by the partner, the program's authorizing laws and regulations, the Federal cost principles in 2 CFR part 200, and other applicable legal requirements.

(3) If applicable under paragraph (b)(2)(ii) of this section, the Local WDB, chief elected officials, and one-stop partners, after renegotiation, may come to agreement, sign an MOU, and proceed under the local funding mechanism. Such actions do not require the redetermination of the applicable caps under paragraph (a) of this section.

(4) If, after renegotiation, agreement among partners still cannot be reached or alternate financing cannot be identified, the Governor may adjust the specified allocation, in accordance with the amounts available and the limitations described in paragraph (d) of this section. In determining these adjustments, the Governor may take into account information relating to the renegotiation as well as the information described in § 678.735(a).

(c) *Limitations.* Subject to paragraph (a) of this section and in accordance with WIOA sec. 121(h)(2)(D), the following limitations apply to the Governor's calculations of the amount that one-stop partners in local areas that have not reached agreement under the local funding mechanism may be required under § 678.736 to contribute to one-stop infrastructure funding:

(1) *WIOA formula programs and Wagner-Peyser Act 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 three percent of the amount of the program in the State for a program year.

(2) *Other one-stop partners.* For required one-stop partners other than those specified in paragraphs (c)(1), (3), (5), and (6) of this section, 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 program in the State for a fiscal year.

For purposes of the Carl D. Perkins Career and Technical Education Act of 2006, the cap on contributions is determined based on the funds made available by the State for postsecondary level programs and activities under sec. 132 of the Carl D. Perkins Career and Technical Education Act and the amount of funds used by the State under sec. 112(a)(3) of the Perkins Act during the prior year to administer postsecondary level programs and activities, as applicable.

(3) *Vocational rehabilitation.* (i) Within a State, for the entity or entities administering the programs described in WIOA sec. 121(b)(1)(B)(iv) and § 678.400, the allotment is based on the one State Federal fiscal year allotment, even in instances where that allotment is shared between two State agencies, and the cumulative portion of funds required to be contributed must not exceed—

(A) 0.75 percent of the amount of Federal funds provided to carry out such program in the State for Fiscal Year 2016 for purposes of applicability of the State funding mechanism for PY 2017;

(B) 1.0 percent of the amount provided to carry out such program in the State for Fiscal Year 2017 for purposes of applicability of the State funding mechanism for PY 2018;

(C) 1.25 percent of the amount provided to carry out such program in the State for Fiscal Year 2018 for purposes of applicability of the State funding mechanism for PY 2019;

(D) 1.5 percent of the amount provided to carry out such program in the State for Fiscal Year 2019 and following years for purposes of applicability of the State funding mechanism for PY 2020 and subsequent years.

(ii) The limitations set forth in paragraph (d)(3)(i) of this section for any given fiscal year must be based on the final VR allotment to the State in the applicable Federal fiscal year.

(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 Federal 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 § 678.737).

(5) *TANF programs.* For purposes of TANF, the cap on contributions is determined based on the total Federal TANF funds expended by the State for work, education, and training activities during the prior Federal fiscal year (as reported to the Department of Health and Human Services (HHS) on the quarterly TANF Financial Report form), plus any additional amount of Federal TANF funds that the State TANF agency reasonably determines was expended for administrative costs in connection with these activities but that was separately reported to HHS as an administrative cost. The State's contribution to the one-stop infrastructure must not exceed 1.5 percent of these combined expenditures.

(6) *Community Services Block Grant (CSBG) programs.* For purposes of CSBG, the cap on contributions will be based on the total amount of CSBG funds determined by the State to have been expended by local CSBG-eligible entities for the provision of employment and training activities during the prior Federal fiscal year for which information is available (as reported to HHS on the CSBG Annual Report) and any additional amount that the State CSBG agency reasonably determines was expended for administrative purposes in connection with these activities and was separately reported to HHS as an administrative cost. The State's contribution must not exceed 1.5 percent of these combined expenditures.

(d) For programs for which it is not otherwise feasible to determine the amount of Federal funding used by the program until the end of that program's operational year—because, for example, the funding available for education, employment, and training activities is included within funding for the program that may also be used for other unrelated activities—the determination of the Federal funds provided to carry out the program for a fiscal year under paragraph (a)(1) of this section may be determined by:

(1) The percentage of Federal funds available to the one-stop partner program that were used by the one-stop partner program for education, employment, and training activities in the previous fiscal year for which data are available; and

(2) Applying the percentage determined under paragraph (d)(1) of this section to the total amount of Federal funds available to the one-stop partner program for the fiscal year for which the determination under paragraph (a)(1) of this section applies.

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

(a) In the State funding mechanism, infrastructure costs for WIOA title I programs, including Native American Programs described in part 684 of this chapter, may 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.*) may also be paid using program funds, administrative funds, or both.

(b) In the State 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.

(c) In the State 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 local administration and may be paid from funds made available by the State or non-Federal resources that are cash, in-kind, or third-party contributions.

(d) In the State funding mechanism, infrastructure costs for the Carl D. Perkins Career and Technical Education Act of 2006 must be paid from funds available for local administration of postsecondary level programs and activities to eligible recipients or consortia of eligible recipients and may be paid from funds made available by the State or non-Federal resources that are cash, in-kind, or third-party contributions.

§ 678.745 What factors does the State Workforce Development Board use to develop the formula described in Workforce Innovation and Opportunity Act, which is used by the Governor to determine the appropriate one-stop infrastructure budget for each local area operating under the State infrastructure funding mechanism, if no reasonably implementable locally negotiated budget exists?

The State WDB must develop a formula, as described in WIOA sec. 121(h)(3)(B), to be used by the Governor under § 678.735(b)(3) in determining the appropriate budget for the infrastructure costs of one-stop centers in the local areas that do not reach agreement under the local funding mechanism and are, therefore, subject to the State funding mechanism. The formula identifies the factors and corresponding weights for each factor that the Governor must use, which must include: The number of one-stop centers in a local area; the population served by such centers; the services provided by such centers; and any factors relating to the operations of such centers in the local area that the State WDB determines are appropriate. As indicated in § 678.735(b)(1), if the local area has agreed on such a budget,

the Governor may accept that budget in lieu of applying the formula factors.

§ 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?

(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.

(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), the cost contribution caps in § 678.738, consistent with the process described in the State Plan.

(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 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 its use of the one-stop center and relative benefit received, and that complies with 2 CFR part 200 (or any corresponding similar regulation or ruling).

(c) Identification of all one-stop partners, chief elected officials, and Local WDB participating in the infrastructure funding arrangement.

(d) Steps the Local WDB, chief elected officials, and one-stop partners used to reach consensus or an assurance that the local area followed the guidance for the State funding process.

(e) Description of the process to be used among 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. These other costs must include applicable career services and may include other costs, including shared services.

(b) For the purposes of paragraph (a) of this section, 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 WDB's functions.

(c) Contributions to the additional costs related to operation of the one-stop delivery system may be cash, non-cash, or third-party in-kind contributions, consistent with how these are described in § 678.720(c).

(d) The shared costs described in paragraph (a) of this section 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 2 CFR part 200 (or any corresponding similar regulation or ruling) requiring that costs are allowable, reasonable, necessary, and allocable.

(e) 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 WDB, in consultation with chief elected officials and Local WDBs, must establish objective criteria and procedures for Local WDBs to use when certifying one-stop centers.

(1) The State WDB, in consultation with chief elected officials and Local WDBs, 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 WDB'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 WDB is the one-stop operator as described in § 679.410 of this chapter, the State WDB 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 access to partner program services to the maximum extent practicable, including providing services outside of regular business hours where there is a workforce need, as identified by the Local WDB. 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 38. 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;

(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; and

(6) Providing for the physical accessibility of the one-stop center to individuals with disabilities.

(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 part 677 of this chapter. 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 WDBs 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 WDB. The Local WDB may establish additional criteria, or set higher standards for service coordination, than those set by the State criteria. Local WDBs 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 WDBs must certify one-stop centers in order to be eligible to use infrastructure funds in the State funding mechanism described in § 678.730.

(e) All one-stop centers must comply with applicable physical and programmatic accessibility requirements, as set forth in 29 CFR part 38, the implementing regulations of WIOA sec. 188.

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 November 17, 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 primary electronic resources used by the one-stop delivery system, and on any newly printed, purchased, or created materials.

(c) As of July 1, 2017, 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, electronic resources, facilities, and related property and new materials used in the one-stop delivery system.

(d) 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 amends 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 to 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 are the purposes 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 programs authorized under 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 authorized under Workforce Innovation and Opportunity Act title II?
361.120 What are the program-specific requirements in the Unified State Plan for the Employment Service program authorized under the Wagner-Peyser Act, as amended by Workforce Innovation and Opportunity Act title III?
361.125 What are the program-specific requirements in the Unified State Plan for the State Vocational Rehabilitation program authorized under title I of the Rehabilitation Act of 1973, as amended by Workforce Innovation and Opportunity Act title IV?
361.130 What is the development, 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 development, submission, and approval process of the Combined State Plan?
361.145 What are the requirements for modifications of the Combined State Plan?

Authority: Secs. 102, 103, and 503, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

Subpart D—Unified and Combined State Plans Under Title I of the Workforce Innovation and Opportunity Act

§ 361.100 What are the purposes 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 the 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 Combined State Plan partner 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 WIOA sec. 102(c), as explained in joint planning guidelines issued by the Secretaries of Labor and Education.

(b) The Governor of each State must submit, at a minimum, in accordance with § 361.130, a Unified 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 (DOL);

(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 (ED);

(3) The Employment Service program authorized under the Wagner-Peyser Act of 1933, as amended by WIOA title III and administered by DOL; and

(4) The Vocational Rehabilitation program authorized under title I of the Rehabilitation Act of 1973, as amended by title IV of WIOA and administered by ED.

(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 guidelines issued by the Secretaries of Labor and 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 Combined State Plan partner programs as described in § 361.140(d), 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 (WDB) 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, including an assurance that the lead State agencies responsible for the administration of the core programs reviewed and commented on the appropriate operational planning of the Unified State Plan and approved the elements as serving the needs of the population served by such programs, and other assurances deemed necessary by the Secretaries of Labor and Education under sec. 102(b)(2)(E)(x) of WIOA;

(v) A description of joint planning and coordination across core programs, required one-stop partner programs, and other programs and activities in the Unified State Plan; and

(vi) 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.

(e) All of the requirements in this subpart that apply to States also apply to outlying areas.

§ 361.110 What are the program-specific requirements in the Unified State Plan for the adult, dislocated worker, and youth programs authorized under Workforce Innovation and Opportunity Act title I?

The program-specific requirements for the adult, dislocated worker, and youth programs that must be included in the Unified State Plan are described in sec. 102(b)(2)(D) of WIOA. Additional planning requirements may be explained in joint planning guidelines issued by the Secretaries of Labor and Education.

§ 361.115 What are the program-specific requirements in the Unified State Plan for the Adult Education and Family Literacy Act program authorized under 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)(C) and 102(b)(2)(D)(ii) 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.

§ 361.120 What are the program-specific requirements in the Unified State Plan for the Employment Service program authorized under the Wagner-Peyser Act, as amended by Workforce Innovation and Opportunity Act title III?

The Employment Service program authorized under the Wagner-Peyser Act of 1933, as amended by WIOA title III, is subject to requirements in sec. 102(b) of WIOA, including any additional requirements imposed by the Secretary of Labor under secs. 102(b)(2)(C)(viii) and 102(b)(2)(D)(iv) of WIOA, as explained in joint planning guidelines issued by the Secretaries of Labor and Education.

§ 361.125 What are the program-specific requirements in the Unified State Plan for the State Vocational Rehabilitation program authorized under title I of the Rehabilitation Act of 1973, as amended by 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 for 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 sec. 102(b) of WIOA.

§ 361.130 What is the development, submission, and approval process of the Unified State Plan?

(a) The Unified State Plan described in § 361.105 must be submitted in accordance with WIOA sec. 102(c), as explained in joint planning guidelines issued jointly by the Secretaries of Labor and Education.

(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) Subsequent Unified State Plans must be submitted no later than 120

days prior to the end of the 4-year period covered by a preceding Unified State Plan.

(3) For purposes of paragraph (b) of this section, ''program year'' means July 1 through June 30 of any year.

(c) The Unified State Plan must be developed with the assistance of the State WDB, as required by 20 CFR 679.130(a) and WIOA sec. 101(d), and must be developed in coordination with administrators with optimum policy-making authority for the core programs and required one-stop partners.

(d) 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 WDBs 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 WDB 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.

(e) 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.

(f) The Unified State Plan is subject to the approval of both the Secretary of Labor and the Secretary of Education.

(g) Before the Secretaries of Labor and Education approve the Unified State Plan, the vocational rehabilitation services 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.

(h) The Secretaries of Labor and Education will review and approve the Unified State Plan within 90 days of receipt by the Secretary of Labor, 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.

(i) If neither the Secretary of Labor nor the Secretary of Education makes the written determination described in paragraph (h) 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 WDB 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 negotiated levels of performance as described in § 361.170(b), the methodology used to determine local allocation of funds, reorganizations that change the working relationship with system employees, changes in organizational responsibilities, changes to the membership structure of the State WDB or alternative entity, and similar substantial changes to the State's workforce development system.

(c) Modifications to the Unified State Plan are subject to the same public review and comment requirements in § 361.130(d) that apply to the development of the original Unified State Plan.

(d) Unified State Plan modifications must be approved by the Secretaries of Labor and 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 through 361.125.

(b) A State that submits a Combined State Plan covering an activity or program described in paragraph (d) of this section that is, in accordance with WIOA sec. 103(c), approved or deemed 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 Combined State Plan partner programs and activities described in sec. 103(a)(2) of WIOA. The Combined State Plan partner 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 1965 (42 U.S.C. 3056 *et seq.*);

(9) Employment and training activities carried out by the Department of Housing and Urban Development (HUD);

(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 through 361.125, as explained in the joint planning guidelines issued by the Secretaries;

(2) For the Combined State Plan partner programs and activities, 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 guidelines issued by the Secretaries;

(3) A description of the methods used for joint planning and coordination among the core programs, and with the required one-stop partner programs and other programs and activities included in the 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 Combined State Plan partner 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.

(i) States that submit employment and training activities carried out by HUD under a Combined State Plan would submit any other required planning documents for HUD programs directly to HUD, according to the requirements of Federal law and regulations.

§ 361.143 What is the development, 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 sec. 103 of WIOA, as explained in the joint planning guidelines issued by the Secretaries of Labor and Education.

(b) The Combined State Plan must be developed with the assistance of the State WDB, as required by 20 CFR 679.130(a) and WIOA sec. 101(d), and must be developed in coordination with administrators with optimum policy-making authority for the core programs and required one-stop partners.

(c) The State must provide an opportunity for public comment on and input into the development of the Combined State Plan prior to its submission.

(1) The opportunity for public comment for the portions of the Combined State Plan that cover the core programs must include an opportunity for comment by representatives of Local WDBs 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 WDB must make information regarding the Combined State Plan available to the public through electronic means and regularly occurring open meetings in accordance with State law. The Combined State Plan must describe the State's process and timeline for ensuring a meaningful opportunity for public comment on the portions of the plan covering core programs.

(3) The portions of the plan that cover the Combined State Plan partner programs are subject to any public comment requirements applicable to those programs.

(d) 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 deeming 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.

(e) 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 Combined State Plan is received by the appropriate Secretary from the State, consistent with paragraph (f) of this section. Before the Secretaries of Labor and Education approve the Combined State Plan, the vocational rehabilitation services portion of the Combined State Plan described in WIOA sec. 102(b)(2)(D)(iii) must be approved by the Commissioner of the Rehabilitation Services Administration.

(2) If an appropriate Secretary other than the Secretary of Labor or the Secretary of Education has authority to approve or deem complete a portion of the Combined State Plan for a program or activity described in § 361.140(d), that portion of the Combined State Plan must be reviewed, and approved, disapproved, or deemed complete, by the appropriate Secretary within 120 days beginning on the day the Combined State Plan is received by the appropriate Secretary from the State consistent with paragraph (f) of this section.

(f) The appropriate Secretaries will review and approve or deem complete the Combined State Plan within 90 or 120 days, as appropriate, as described in paragraph (e) of this section, unless the Secretaries of Labor and Education or appropriate Secretary have determined in writing within that period that:

(1) The Combined State 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 deeming the plan complete, if any, under such law;

(2) The portion of the Combined State 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 Combined State 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.

(g) If the Secretary of Labor, the Secretary of Education, or the appropriate Secretary does not make the written determination described in paragraph (f) of this section within the relevant period of time after submission of the Combined State Plan, that portion of the Combined State Plan over which the Secretary has jurisdiction will be considered approved.

(h) The Secretaries of Labor and Education's written determination of approval or disapproval regarding the portion of the plan for the six core programs may be separate from the written determination of approval, disapproval, or completeness of the program-specific requirements of Combined State Plan partner programs and activities described in § 361.140(d) and included in the Combined State Plan.

(i) *Special rule.* In paragraphs (f)(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 a minimum:

(1) By the end of the first 2-year period of any 4-year State Plan. The State WDB must review the Combined State Plan, and the Governor must submit modifications to the Combined State Plan to reflect changes in labor market and economic conditions or other factors affecting the implementation of the Combined State Plan;

(2) When changes in Federal or State law or policy substantially affect the strategies, goals, and priorities upon which the Combined State Plan is based;

(3) When there are changes in the statewide vision, strategies, policies, State negotiated levels of performance as described in § 361.170(b), the methodology used to determine local allocation of funds, reorganizations that change the working relationship with system employees, changes in organizational responsibilities, changes to the membership structure of the State WDB or alternative entity, and similar substantial changes to the State's workforce development system.

(b) In addition to the required modification review described in paragraph (a)(1) 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 Combined State Plan partner 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 Combined State Plan partner programs, as long as consistent with any other modification requirements for the programs, or may comply with the requirements applicable to only the particular program or activity; and

(2) Must submit, in accordance with the procedure described in § 361.143, any modification, amendment, or revision required by the Federal law authorizing, or applicable to, the Combined State Plan partner program or activity.

(i) If the underlying programmatic requirements change (*e.g.,* the authorizing statute is reauthorized) 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 Combined State Plan partner program or activity and other legal requirements applicable to such program or activity.

(ii) If the modification, amendment, or revision affects the administration of only that particular Combined State Plan partner program and has no impact on the Combined State Plan as a whole or the integration and administration of the core and other Combined State Plan partner programs at the State level, modifications must be submitted for approval to 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 Combined State Plan partner program.

(3) A State also may amend its Combined State Plan to add a Combined State Plan partner 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 § 361.143(c) except that, if the modification, amendment, or revision affects the administration of a particular Combined State Plan partner program and has no impact on the Combined State Plan as a whole or the integration and administration of the core and other Combined State Plan partner programs at the State level, a State may comply instead with the procedures and requirements applicable to the particular Combined State Plan partner program.

(e) Modifications for the core program portions of the Combined State Plan must be approved by the Secretaries of Labor and 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.

■ 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 accountability provisions?
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 establish additional indicators of performance?
361.170 How are State 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 When is a State subject to a financial sanction under the Workforce Innovation and Opportunity Act?
361.185 When are sanctions applied for a State's failure to submit an annual performance 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 and what information must be included in local area performance reports?
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 (WIOA) title I programs; the Wagner-Peyser Act Employment Service program, as amended by WIOA title III; and the Vocational Rehabilitation program authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV?
361.240 What are the requirements for data validation of State annual performance reports?

Authority: Secs. 116, 189, and 503 of Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

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 accountability provisions?

(a) *Participant.* A reportable individual who has received services other than the services described in paragraph (a)(3) of this section, 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 a reportable individual who has an approved and signed Individualized Plan for Employment (IPE) and has begun to receive services.

(2) For the Workforce Innovation and Opportunity Act (WIOA) title I youth program, a participant is a reportable individual who has satisfied all applicable program requirements for the provision of services, including eligibility determination, an objective assessment, and development of an individual service strategy, and received 1 of the 14 WIOA youth program elements identified in sec. 129(c)(2) of WIOA.

(3) The following individuals are not participants:

(i) Individuals in an Adult Education and Family Literacy Act (AEFLA) program who have not completed at least 12 contact hours;

(ii) Individuals who only use the self-service system.

(A) Subject to paragraph (a)(3)(ii)(B) of this section, self-service occurs when individuals independently access any workforce development system program's information and activities in either a physical location, such as a one-stop center resource room or partner agency, or remotely via the use of electronic technologies.

(B) Self-service does not uniformly apply to all virtually accessed services. For example, virtually accessed services that provide a level of support beyond independent job or information seeking on the part of an individual would not qualify as self-service.

(iii) Individuals who receive information-only services or activities, which provide readily available information that does not require an assessment by a staff member of the individual's skills, education, or career objectives.

(4) 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 program, including:

(1) Individuals who provide identifying information;

(2) Individuals who only use the self-service system; or

(3) Individuals who only receive information-only services or activities.

(c) *Exit.* As defined for the purpose of performance calculations, exit is the point after which a participant who has received services through any program meets the following criteria:

(1) For the adult, dislocated worker, and youth programs authorized under WIOA title I, the AEFLA program authorized under WIOA title II, and the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III, exit date is the last date of service.

(i) The last day of service cannot be determined until at least 90 days have elapsed since the participant last received services; services do not include self-service, information-only services or activities, or follow-up services. This also requires that there are no plans to provide the participant with future services.

(ii) [Reserved].

(2)(i) For the VR program authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV (VR program):

(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 VR program if the participant's service record is closed because the participant has achieved a supported employment outcome in an integrated setting but not in competitive integrated employment.

(3)(i) A State may implement a common exit policy for all or some of the core programs in WIOA title I and the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III, and any additional required partner program(s) listed in sec. 121(b)(1)(B) of WIOA that is under the authority of the U.S. Department of Labor (DOL).

(ii) If a State chooses to implement a common exit policy, the policy must require that a participant is exited only when all of the criteria in paragraph (c)(1) of this section are met for the WIOA title I core programs and the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III, as well as any additional required partner programs listed in sec. 121(b)(1)(B) of WIOA under the authority of DOL to which the common exit policy applies in which the participant is enrolled.

(d) *State.* For purposes of this part, other than in regard to sanctions or the statistical adjustment model, all references to ''State'' include the outlying areas of American Samoa, Guam, Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, and, as applicable, the Republic of Palau.

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

(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 authorized under WIOA title I; the AEFLA program authorized under WIOA title II; the Employment

Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III; and the VR program authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV.

(1) *Primary indicators of performance.* The six primary indicators of performance for the adult and dislocated worker programs, the AEFLA program, and the VR program 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)(A) The percentage of those participants enrolled in an education or training program (excluding those in on-the-job training [OJT] and customized training) who attained a recognized postsecondary credential or a secondary school diploma, or its recognized equivalent, during participation in or within 1 year after exit from the program.

(B) A participant who has attained a secondary school diploma or its recognized equivalent is included in the percentage of participants who have attained a secondary school diploma or recognized equivalent only if the participant also is employed or is enrolled in an education or training program leading to a recognized postsecondary credential within 1 year after exit from the program;

(v) The percentage of participants who, during a program year, are in an education or training program that leads to a recognized postsecondary 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. Depending upon the type of education or training program, documented progress is defined as one of the following:

(A) Documented achievement of at least one educational functioning level of a participant who is receiving instruction below the postsecondary education level;

(B) Documented attainment of a secondary school diploma or its recognized equivalent;

(C) Secondary or postsecondary transcript or report card for a sufficient number of credit hours that shows a participant is meeting the State unit's academic standards;

(D) Satisfactory or better progress report, towards established milestones, such as completion of OJT or completion of 1 year of an apprenticeship program or similar milestones, from an employer or training provider who is providing training; or

(E) Successful passage of an exam that is required for a particular occupation or progress in attaining technical or occupational skills as evidenced by trade-related benchmarks such as knowledge-based exams.

(vi) Effectiveness in serving employers.

(2) *Participants.* For purposes of the primary indicators of performance in paragraph (a)(1) of this section, ''participant'' will have the meaning given to it in § 361.150(a), except that—

(i) For purposes of determining program performance levels under indicators set forth in paragraphs (a)(1)(i) through (iv) and (vi) of this section, a ''participant'' does not include a participant who received services under sec. 225 of WIOA and exits such program while still in a correctional institution as defined in sec. 225(e)(1) of WIOA; and

(ii) The Secretaries of Labor and Education may, as needed and consistent with the Paperwork Reduction Act (PRA), make further determinations as to the participants to be included in calculating program performance levels for purposes of any of the performance indicators set forth in paragraph (a)(1) of this section.

(b) The primary indicators in paragraphs (a)(1)(i) through (iii) and (vi) of this section apply to the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III.

(c) For the youth program authorized under WIOA title I, the primary 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 those participants enrolled in an education or training program (excluding those in OJT and customized training) who obtained a recognized postsecondary credential or a secondary school diploma, or its recognized equivalent, during participation in or within 1 year after exit from the program, except that a participant who has attained a secondary school diploma or its recognized equivalent is included as having attained a secondary school diploma or recognized equivalent only if the participant is also employed or is enrolled in an education or training program leading to a recognized postsecondary 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 postsecondary 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. Depending upon the type of education or training program, documented progress is defined as one of the following:

(i) Documented achievement of at least one educational functioning level of a participant who is receiving instruction below the postsecondary education level;

(ii) Documented attainment of a secondary school diploma or its recognized equivalent;

(iii) Secondary or postsecondary transcript or report card for a sufficient number of credit hours that shows a participant is achieving the State unit's academic standards;

(iv) Satisfactory or better progress report, towards established milestones, such as completion of OJT or completion of 1 year of an apprenticeship program or similar milestones, from an employer or training provider who is providing training; or

(v) Successful passage of an exam that is required for a particular occupation or progress in attaining technical or occupational skills as evidenced by trade-related benchmarks such as knowledge-based exams.

(6) Effectiveness in serving employers.

§ 361.160 What information is required for State performance reports?

(a) The State performance report required by sec. 116(d)(2) of WIOA must be submitted annually using a template the Departments of Labor and Education 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 of performance 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 who received career services and the total number of participants who exited from career services for the most recent program year and the 3 preceding program years, and the total number of participants who received training services and the total number of participants who exited from training services for the most recent program year and the 3 preceding program years, as applicable to the program;

(4) Information on the performance levels achieved for the primary indicators of performance consistent with § 361.155 for career services 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 attained unsubsidized employment related to the training received (often referred to as training-related employment) through WIOA title I, subtitle B programs;

(6) The amount of funds spent on career services and the amount of funds spent on training services 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 services and training services, respectively, during the most recent program year and the 3 preceding program years, 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 eligible training provider (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 Labor and Education, which may include information on reportable individuals as determined by the Secretaries of Labor and Education.

§ 361.165 May a State establish additional indicators of performance?

States may identify additional indicators of performance for the six core programs. If a State does so, these indicators must be included in the Unified or Combined State Plan.

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

(a) A State must submit in the State Plan expected levels of performance on the primary indicators of performance for each core program as required by sec. 116(b)(3)(A)(iii) of WIOA as explained in joint guidance issued by the Secretaries of Labor and Education.

(1) The initial State Plan submitted under WIOA must contain expected levels of performance for the first 2 years of the State Plan.

(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) States must reach agreement on levels of performance with the Secretaries of Labor and Education for each indicator for each core program. These are the negotiated levels of performance. The negotiated levels must be based on the following factors:

(1) How the negotiated levels of performance compare with State levels of performance established for other States;

(2) The application of an objective statistical model established by the Secretaries of Labor and Education, subject to paragraph (d) of this section;

(3) How the negotiated 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 negotiated levels assist the State in meeting the performance goals established by the Secretaries of Labor and Education for the core programs in accordance with the Government Performance and Results Act of 1993, as amended.

(c) An objective statistical adjustment model will be developed and disseminated by the Secretaries of Labor and Education. The model will be based on:

(1) Differences among States in actual economic conditions, including but not limited to unemployment rates and job losses or gains in particular industries; and

(2) The characteristics of participants, including but not limited to:

(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 are necessary to populate the model and apply the model to the local core programs;

(2) Subject to paragraph (d)(1) of this section, used before the beginning of a program year in order to reach agreement on State negotiated levels for the upcoming program year; and

(3) Subject to paragraph (d)(1) of this section, used to revise negotiated levels at the end of a program year based on actual economic conditions and characteristics of participants served, consistent with sec. 116(b)(3)(A)(vii) of WIOA.

(e) The negotiated levels revised at the end of the program year, based on the statistical adjustment model, are the adjusted levels of performance.

(f) States must comply with these requirements from sec. 116 of WIOA as

explained in joint guidance issued by the Departments of Labor and Education.

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

(a)(1) States must, consistent with State laws, use quarterly wage record information in measuring a State's performance on the primary indicators of performance outlined in § 361.155 and a local area's performance on the primary indicators of performance identified in § 361.205.

(2) 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.

(3) To the extent that quarterly wage records are not available for a participant, States may use other information as is necessary to measure the progress of those participants through methods other than quarterly wage record information.

(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 ETPs. The Governor or such agency (or appropriate State entity) is responsible for:

(1) Facilitating data matches;

(2) Data quality reliability; and

(3) Protection against disaggregation that would violate applicable privacy standards.

§ 361.180 When is a State subject to a financial sanction under the Workforce Innovation and Opportunity Act?

A State will be subject to financial sanction under WIOA sec. 116(f) if it fails to:

(a) Submit the State annual performance report required under WIOA sec. 116(d)(2); or

(b) 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 a State's failure to submit an annual performance report?

(a) Sanctions will be applied when a State fails to submit the State annual performance report required under sec. 116(d)(2) of WIOA. A State fails 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 applied 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 issues.

(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, but no later than 30 days prior to the established deadline for submission, of a potential impact on the State's ability to submit its State annual performance report in order to not be considered failing to report.

(2) In circumstances where unexpected events occur less than 30 days before the established deadline for submission of the State annual performance reports, the Secretaries of Labor and Education will review requests for extending the reporting deadline in accordance with the Departments of Labor and Education's procedures that will be established in guidance.

§ 361.190 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 § 361.170 to account for actual economic conditions experienced during a program year and characteristics of participants, annually at the close of each program year.

(b) Any State that fails 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) Whether a State has failed to meet adjusted levels of performance will be determined using the following three criteria:

(1) The overall State program score, which is expressed as the percent achieved, compares the actual results achieved by a core program on the primary indicators of performance to the adjusted levels of performance for that core program. The average of the percentages achieved of the adjusted level of performance for each of the primary indicators by a core program will constitute the overall State program score.

(2) However, until all indicators for the core program have at least 2 years of complete data, the overall State program score will be based on a comparison of the actual results achieved to the adjusted level of performance for each of the primary indicators that have at least 2 years of complete data for that program;

(3) The overall State indicator score, which is expressed as the percent achieved, compares the actual results achieved on a primary indicator of performance by all core programs in a State to the adjusted levels of performance for that primary indicator. The average of the percentages achieved of the adjusted level of performance by all of the core programs on that indicator will constitute the overall State indicator score.

(4) However, until all indicators for the State have at least 2 years of complete data, the overall State indicator score will be based on a comparison of the actual results achieved to the adjusted level of performance for each of the primary indicators that have at least 2 years of complete data in a State.

(5) The individual indicator score, which is expressed as the percent achieved, compares the actual results achieved by each core program on each of the individual primary indicators to the adjusted levels of performance for each of the program's primary indicators of performance.

(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:

(1) 90 percent of the overall State program score for the same core program;

(2) 90 percent of the overall State indicator score for the same primary indicator; or

(3) 50 percent of the same indicator score for the same program.

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

(a) The Secretaries of Labor and Education will reduce the Governor's Reserve Allotment by five 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;

(2) The State fails to meet State adjusted levels of performance for the same primary performance indicator(s) under either § 361.190(d)(1) for the second consecutive year as defined in § 361.190; or

(3) The State's score on the same indicator for the same program falls below 50 percent under § 361.190(d)(2) for the second consecutive year as defined in § 361.190.

(b) If the State fails under paragraphs (a)(1) and either (a)(2) or (3) of this section in the same program year, the Secretaries of Labor and 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, depending on which program is impacted, 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 Secretary of Labor imposes in accordance with the provisions of 20 CFR 683.800.

§ 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 State program score and overall State 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 and what information must be included in local area performance reports?

(a) Each local area in a State under WIOA title I is subject to the same primary indicators of performance for the core programs for WIOA title I under § 361.155(a)(1) and (c) 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 of Labor and Education 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 include:

(1) The actual results achieved under § 361.155 and the information required under § 361.160(a);

(2) The percentage of a local area's allotment under WIOA secs. 128(b) and 133(b) that the local area spent on administrative costs; and

(3) 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).

(e) The disaggregation of data for the local area performance report must be done in compliance with WIOA sec. 116(d)(6)(C).

(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 DOL.

§ 361.210 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 § 361.170(c) must be:

(1) Applied to the core programs' primary indicators upon availability of data which are necessary to populate the model and apply the model to the local core programs;

(2) Used in order to reach agreement on local negotiated levels of performance for the upcoming program year; and

(3) Used to establish adjusted levels of performance at the end of a program year based on actual conditions, consistent with WIOA sec. 116(c)(3).

(b) Until all indicators for the core program in a local area have at least 2 years of complete data, the comparison of the actual results achieved to the adjusted levels of performance for each of the primary indicators only will be applied where there are at least 2 years of complete data for that program.

(c) The Governor, Local Workforce Development Board (WDB), and chief elected official must reach agreement on local negotiated levels of performance 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 economic conditions and characteristics of the participants served.

(d) The negotiations process described in paragraph (c) of this section must be developed by the Governor and disseminated to all Local WDBs and chief elected officials.

(e) The Local WDBs may apply performance measures to service providers that differ from the performance indicators that apply to the local area. These performance measures must be established after considering:

(1) The established local negotiated 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, but is authorized to provide incentive grants to local areas for performance on the primary indicators of performance consistent with WIOA sec. 134(a)(3)(A)(xi).

(b) The Governor may use non-Federal funds to create incentives for the Local WDBs 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 WDBs. Pay-for-performance contract strategies must be implemented in accordance with 20 CFR part 683, subpart E and § 361.160.

§ 361.220 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 adjusted 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 to meet adjusted levels of performance for a local area before coming to agreement on the negotiated levels of performance for the local area.

(i) A State must establish the adjusted level of performance for a local area, using the statistical adjustment model described in § 361.170(c).

(ii) At least 2 years of complete data on any indicator for any local core program are required in order to establish adjusted levels of performance for a 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 adjusted levels of performance agreed to under § 361.210 for the same primary indicators of performance for the same core program 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 WDB, consistent with the criteria established under 20 CFR 679.350;

(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 WDB 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 WDB 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 WDB and chief elected official to the Secretary of Labor under 20 CFR 683.650; and

(2) Must be submitted by certified mail, return receipt requested, to the Secretary of Labor, U.S. Department of Labor, 200 Constitution Ave. NW., 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 WDB and chief elected official, the Secretary of Labor must make a final decision within 30 days. In making this determination the Secretary of Labor may consider any comments submitted by the Governor in response to the appeals.

(d) The decision by the Governor on the appeal 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)(C).

§ 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 of Labor and Education will disseminate including through electronic means, the ETP performance reports for ETPs who provide services under sec. 122 of WIOA that are described in 20 CFR 680.400 through 680.530. 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 as defined by § 361.150(a) 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) with respect to all individuals engaging in 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 engaging in a program of study (or the equivalent).

(b) Apprenticeship programs registered under the National Apprenticeship Act are not required to submit ETP performance information. 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 a mechanism of electronic access to the public ETP 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 DOL.

(e) The Governor may designate one or more State agencies such as a State Education Agency or other State Educational Authority to assist in overseeing ETP performance and facilitating the production and dissemination of ETP performance reports. These agencies may be the same agencies that are designated as responsible for administering the ETP list as provided under 20 CFR 680.500. The Governor or such agencies, or authorities, is responsible for:

(1) Facilitating data matches between ETP records and unemployment insurance (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 ETP list and the information required to accompany the list, as provided in 20 CFR 680.500.

§ 361.235 What are the reporting requirements for individual records for core Workforce Innovation and Opportunity Act (WIOA) title I programs; the Wagner-Peyser Act Employment Service program, as amended by WIOA title III; and the Vocational Rehabilitation program authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV?

(a) On a quarterly basis, each State must submit to the Secretary of Labor or the 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 either of the following programs administered by the Secretary of Labor or Secretary of Education: A WIOA title I core program; the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III; or the VR program authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV.

(b) For individual records submitted to the Secretary of Labor, those records may be required to be integrated across all programs administered by the Secretary of Labor in one single file.

(c) States must comply with the requirements of sec. 116(d)(2) of WIOA as explained in guidance issued by the Departments of Labor and Education.

§ 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 Labor or the Secretary of Education, to ensure that they submit complete annual performance reports that contain information that is valid and reliable, as required by WIOA sec. 116(d)(5).

(b) If a State fails to meet standards in paragraph (a) of this section as determined by the Secretary of Labor or the 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 Secretaries of Labor and Education will provide training and technical assistance to States in order to implement this section. States must comply with the requirements of sec. 116(d)(5) of WIOA as explained in guidance.

■ 7. Add subpart F to part 361 to read as follows:

Subpart F—Description of the One-Stop Delivery 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 Act 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 different Memoranda of Understanding between the Local Workforce Development Board and each partner?
361.510 How must 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 When is the sole-source selection of one-stop operators appropriate, and how is it conducted?
361.615 May an entity currently 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 center where the operator is not a governmental entity?
361.635 What is the compliance date of the provisions of this subpart?
361.700 What are the 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 Workforce Development Board, chief elected officials, and one-stop partners?
361.730 What is the State one-stop infrastructure funding mechanism?
361.731 What are the steps to determine the amount to be paid under the State one-stop infrastructure funding mechanism?
361.735 How are infrastructure cost budgets for the one-stop centers in a local area determined in the State one-stop infrastructure funding mechanism?
361.736 How does the Governor establish a cost allocation methodology used to determine the one-stop partner programs' proportionate shares of infrastructure costs under the State one-stop infrastructure funding mechanism?
361.737 How are one-stop partner programs' proportionate shares of infrastructure costs determined under the State one-stop infrastructure funding mechanism?
361.738 How are statewide caps on the contributions for one-stop infrastructure funding determined in the State one-stop infrastructure funding mechanism?
361.740 What funds are used to pay for infrastructure costs in the State one-stop infrastructure funding mechanism?
361.745 What factors does the State Workforce Development Board use to develop the formula described in Workforce Innovation and Opportunity Act, which is used by the Governor to determine the appropriate one-stop infrastructure budget for each local area operating under the State infrastructure funding mechanism, if no reasonably implementable locally negotiated budget exists?
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?

Authority: Secs. 503, 107, 121, 134, 189, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

Subpart F—Description of the One-Stop Delivery 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 employers 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 public 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 sec. 188 and its implementing regulations at 29 CFR part 38.

(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 job seeker 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 20 CFR 680.200;

(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 the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III (Wagner-Peyser Act Employment Service program); 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 Workforce Development Board (WDB) may establish other service hours at other times to accommodate the schedules of individuals who work on regular business days. The State WDB 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 each partner program and its services means:

(1) Having a program staff member physically present at the one-stop center;

(2) Having a staff member from a different partner program physically present at the one-stop center appropriately trained to provide information to customers about the programs, services, and activities available through partner programs; or

(3) Making available a direct linkage through technology to program staff who can provide meaningful information or services.

(i) A ''direct linkage'' means providing direct connection at the one-stop center, 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.

(ii) A ''direct linkage'' cannot exclusively be providing a phone number or computer Web site or providing information, pamphlets, or materials.

(e) All comprehensive one-stop centers must be physically and programmatically accessible to individuals with disabilities, as described in 29 CFR part 38, the implementing regulations of WIOA sec. 188.

§ 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 job seeker 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 must be implemented in a manner that supplements and enhances customer access to services.

(b) As described in § 361.315, Wagner-Peyser Act employment services cannot be a stand-alone affiliated site.

(c) States, in conjunction with the Local WDBs, 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 WDBs must take expeditious steps to align lease expiration dates with efforts to consolidate one-stop operations into service points where Wagner-Peyser Act employment services are colocated 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 29 CFR part 38, the implementing regulations of WIOA sec. 188.

§ 361.315 Can a stand-alone Wagner-Peyser Act Employment Service office be designated as an affiliated one-stop site?

(a) Separate stand-alone Wagner-Peyser Act Employment Service offices are not permitted under WIOA, as also described in 20 CFR 652.202.

(b) If Wagner-Peyser Act employment services are provided at an affiliated site, there must be at least one or more other partners in the affiliated site with a physical presence of combined staff 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 Act employment services and any of these 3 programs are provided at an affiliated site, an additional partner or partners must have a presence of combined staff 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, as described in § 361.300(d)(3), must be connected to the comprehensive one-stop center and any appropriate affiliate one-stop centers, for example, by having processes in place to make referrals to these centers and the partner programs located in them. Wagner-Peyser Act 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 Act 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 delivery 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) The Wagner-Peyser Act Employment Service program authorized under the Wagner-Peyser Act (29 U.S.C. 49 *et seq.*), as amended by WIOA title III;

(3) The Adult Education and Family Literacy Act (AEFLA) program authorized under title II of WIOA;

(4) The Vocational Rehabilitation (VR) program authorized under title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 *et seq.*), as amended by WIOA title IV;

(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 postsecondary 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.

(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 work in collaboration or partnership with the local one-stop centers to deliver employment and training services to the TANF population unless inconsistent with the Governor's direction.

§ 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 delivery system if the Local WDB and chief elected official(s) approve the entity's participation.

(b) Additional partners may include, but are not limited to:

(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, but not limited to, 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 § 361.410, 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

must be the partner. Specific entities for particular programs are identified in paragraphs (b) through (e) 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 delivery system.

(b) For title II of WIOA, the entity or agency 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 or agency may delegate its responsibilities under paragraph (a) of this section to one or more eligible providers or consortium of eligible providers.

(c) For the VR program, authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV, 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 title I, 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, YouthBuild, 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 eligible recipient or recipients at the postsecondary level, or a consortium of eligible recipients at the postsecondary level in the local area. The eligible recipient at the postsecondary level may also request assistance from the State eligible agency in completing its responsibilities under paragraph (a) of this section.

§ 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;

(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 WDBs 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 based on proportionate use and relative benefit received;

(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.)

(c) Enter into an MOU with the Local WDB relating to the operation of the one-stop delivery system that meets the requirements of § 361.500(b);

(d) Participate in the operation of the one-stop delivery system consistent with the terms of the MOU, requirements of authorizing laws, the Federal cost principles, and all other applicable legal requirements; and

(e) Provide representation on the State and Local WDBs as required and participate in Board committees as needed.

§ 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.

§ 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. For the TANF program, States must provide individuals with the opportunity to initiate an application for TANF assistance and non-assistance benefits and services, which could be implemented through the provision of paper application forms or links to the application Web site;

(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 education, training, and workforce 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 TANF, and other supportive services and transportation provided through that program;

(10) Provision of information and 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 20 CFR 680.180);

(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 20 CFR 680.170);

(8) Workforce preparation activities;

(9) Financial literacy services as described in sec. 129(b)(2)(D) of WIOA and 20 CFR 681.500;

(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.

(d) In addition to the requirements in paragraph (a)(2) of this section, TANF agencies must identify employment services and related support being provided by the TANF program (within the local area) that qualify as career services and ensure access to them via the local one-stop delivery system.

§ 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 employers, 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. Local areas also must develop, convene, or implement industry or sector partnerships.

(b) Customized business services may be provided to employers, employer associations, or other such organizations. 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;

(vi) Creating job accommodations and using assistive technologies; or

(vii) Explaining labor and employment laws to help employers comply with discrimination, 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 WDB, or through the use of economic development, philanthropic, and other public and private resources in a manner determined appropriate by the Local WDB 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 postsecondary 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 20 CFR 679.560(b)(3).

§ 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 WDB 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 WDB. The Local WDB 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.

(d) Any fees earned are recognized as program income and must be expended by the partner in accordance with the partner program's authorizing statute, implementing regulations, and Federal cost principles identified in Uniform Guidance.

§ 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 WDB and the one-stop partners, 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) Agreement on funding the costs of the services and the operating costs of the system, 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.

(d) When fully executed, the MOU must contain the signatures of the Local WDB, 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 different Memoranda of Understanding between the Local Workforce Development 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 WDB, chief elected official and all partners. Alternatively, the Local WDB (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 WDB 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 must the Memorandum of Understanding be negotiated?

(a) WIOA emphasizes full and effective partnerships between Local WDBs, chief elected officials, and one-stop partners. Local WDBs and partners must enter into good-faith negotiations. Local WDBs, chief elected officials, and one-stop partners may also request assistance from a State agency responsible for administering the partner program, the Governor, State WDB, or other appropriate parties on other aspects of the MOU.

(b) Local WDBs and one-stop partners must establish, in the MOU, how they will fund the infrastructure costs and other shared costs of the one-stop centers. If agreement regarding infrastructure costs is not reached when other sections of the MOU are ready, an interim infrastructure funding agreement may be included instead, as described in § 361.715(c). Once agreement on infrastructure funding is reached, the Local WDB and one-stop partners must amend the MOU to include the infrastructure funding of the one-stop centers. Infrastructure funding is described in detail in §§ 361.700 through 361.760.

(c) The Local WDB must report to the State WDB, Governor, and relevant State agency when MOU negotiations with one-stop partners have reached an impasse.

(1) The Local WDB and partners must document the negotiations and efforts that have taken place in the MOU. The State WDB, 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 WDB must report failure to execute an MOU with a required partner to the Governor, State WDB, and the State agency responsible for administering the partner's program. Additionally, if the State cannot assist the Local WDB in resolving the impasse,

the Governor or the State WDB 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 WDB, with the approval of the chief 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 WDBs 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 20 CFR 679.430);

(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 20 CFR 683.295, the Uniform Guidance at 2 CFR part 200, 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 WDB 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 WDB 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 local procurement policies and procedures and the principles of competitive procurement in the Uniform Guidance set out at 2 CFR 200.318 through 200.326. All references to ''noncompetitive proposals'' in the Uniform Guidance at 2 CFR 200.320(f) will be read as ''sole source procurement'' for the purposes of implementing this section.

(d) Entities must prepare written documentation explaining the determination concerning the nature of the competitive process to be followed in selecting a one-stop operator.

§ 361.610 When is the sole-source selection of one-stop operators appropriate, and how is it conducted?

(a) States may select a one-stop operator through sole source selection when allowed under the same policies and procedures used for competitive procurement with non-Federal funds, while other non-Federal entities including subrecipients of a State (such as local areas) may select a one-stop operator through sole selection when consistent with local procurement policies and procedures and the Uniform Guidance set out at 2 CFR 200.320.

(b) In the event that sole source procurement is determined necessary and reasonable, in accordance with § 361.605(c), 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 20 CFR 679.430 for demonstrating internal controls and preventing conflict of interest.

(d) A Local WDB may 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 WDB must establish sufficient conflict of interest policies and procedures and these policies and procedures must be approved by the Governor.

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

(a) Local WDBs may 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 20 CFR 679.430 for demonstrating internal controls and preventing conflict of interest.

(b) State and local agencies may compete for and be selected as one-stop operators by the Local WDB, 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 20 CFR 679.430 for demonstrating internal controls and preventing conflict of interest.

(c) In the case of single-area States where the State WDB serves as the Local WDB, 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 20 CFR 679.430 for demonstrating internal controls and preventing conflicts 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 WDBs may establish additional roles of one-stop operator, including, but not limited to: Coordinating service providers across the one-stop delivery 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, which may include affiliated sites. The competition for a one-stop operator must clearly articulate the role of the one-stop operator.

(b)(1) Subject to paragraph (b)(2) of this section, 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; or develop and submit budget for activities of the Local WDB in the local area.

(2) An entity serving as a one-stop operator, that also serves a different role within the one-stop delivery system, may perform some or all of these functions when it is acting in its other role, if it has established sufficient firewalls and conflict of interest policies and procedures. The policies and procedures must conform to the specifications in 20 CFR 679.430 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 WDB level regarding oversight, monitoring, and evaluation of performance of the service provider. The firewalls must conform to the specifications in 20 CFR 679.430 for demonstrating internal controls and preventing conflicts of interest.

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

Yes. State merit staff can continue to perform functions and activities in the one-stop center. The Local WDB 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 for the provision of Wagner-Peyser Act services or services from other programs with merit staffing requirements must be included in the competition for and final contract with the one-stop operator when Wagner-Peyser Act services or services from other programs with merit staffing requirements are being provided.

§ 361.635 What is the compliance date of the provisions of this subpart?

(a) No later than July 1, 2017, one-stop operators selected under the competitive process described in this subpart must be in place and operating the one-stop center.

(b) By November 17, 2016, every Local WDB 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 the 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 WDBs 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 WDB, and Local WDBs, and consistent with guidance and policies provided by the State WDB, 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, and relative benefit received, consistent with Office of Management and Budget (OMB) 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 WDBs, 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 use and relative benefit received, and consistent with Federal cost principles contained in the Uniform Guidance at 2 CFR part 200.

(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 based on its proportionate use of the one-stop centers and relative benefit received, consistent with Federal cost principles at 2 CFR part 200; and

(3) The timelines regarding notification to the Governor for not reaching local agreement and triggering the State funding mechanism described in § 361.730, and timelines for a one-stop partner to submit an appeal in the State funding 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 WDB, 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 funding mechanism must meet all of the following requirements:

(1) The infrastructure costs are funded through cash and fairly evaluated non-cash and third-party 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 WDB 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 its use of the one-stop center, relative to benefits received. Such costs must also 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 to the use of the one-stop center and relative 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 described in § 361.755, the Local WDB 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 WDB 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 funding agreement must be finalized within 6 months of when the MOU is signed. If the interim infrastructure funding agreement is not finalized within that timeframe, the Local WDB 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 funding mechanism, one-stop partner programs may determine what funds they will use to pay for 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 programs authorized by title I of WIOA, these infrastructure costs may be considered program costs. In the case of partners administering adult education and literacy programs authorized by title II of WIOA, these funds must include Federal funds made available for the local administration of adult education and literacy programs authorized by title II of WIOA. These funds may also include non-Federal resources that are cash, in-kind or third-party contributions. In the case of partners administering the Carl D. Perkins Career and Technical Education Act of 2006, funds used to pay for infrastructure costs may include funds available for local administrative expenses, non-Federal resources that are cash, in-kind or third-party contributions, and may include other funds made available by the State.

(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 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 of the one-stop centers and relative benefit received by 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 part 200, including the Federal cost principles.

(c) Cash, non-cash, and third-party in-kind contributions may be provided by one-stop partners to cover their proportionate share of infrastructure costs.

(1) Cash contributions are cash funds provided to the Local WDB or its designee by one-stop partners, either directly or by an interagency transfer.

(2) Non-cash contributions are comprised of—

(i) Expenditures incurred by one-stop partners on behalf of the one-stop center; and

(ii) Non-cash contributions or goods or services contributed by a partner program and used by the one-stop center.

(3) Non-cash contributions, especially those set forth in paragraph (c)(2)(ii) of this section, must be valued consistent with 2 CFR 200.306 to ensure they are fairly evaluated and meet the partners' proportionate share.

(4) Third-party in-kind contributions are:

(i) Contributions of space, equipment, technology, non-personnel services, or other like items to support the infrastructure costs associated with one-stop operations, by a non-one-stop partner to support the one-stop center in general, not a specific partner; or

(ii) Contributions by a non-one-stop partner of space, equipment, technology, non-personnel services, or other like items to support the infrastructure costs associated with one-stop operations, to a one-stop partner to support its proportionate share of one-stop infrastructure costs.

(iii) In-kind contributions described in paragraphs (c)(4)(i) and (ii) of this section must be valued consistent with 2 CFR 200.306 and reconciled on a regular basis to ensure they are fairly evaluated and meet the proportionate share of the partner.

(5) All partner contributions, regardless of the type, must be reconciled on a regular basis (*i.e.,* monthly or quarterly), comparing actual expenses incurred to relative benefits received, to ensure each partner program is contributing its proportionate share in accordance with the terms of the MOU.

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

With regard to negotiations for infrastructure funding for Program Year (PY) 2017 and for each subsequent program year thereafter, if the Local WDB, chief elected officials, and one-stop partners do not reach consensus on methods of sufficiently funding local infrastructure through the local funding mechanism in accordance with the Governor's guidance issued under § 361.705 and consistent with the regulations in §§ 361.715 and 361.720, and include that consensus agreement in the signed MOU, then the Local WDB must notify the Governor by the deadline established by the Governor under § 361.705(b)(3). Once notified, the Governor must administer funding through the State funding mechanism, as described in §§ 361.730 through 361.738, for the program year impacted by the local area's failure to reach consensus.

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

(a) Consistent with sec. 121(h)(1)(A)(i)(II) of WIOA, if the Local WDB, chief elected official, and one-stop partners in a local area do not reach consensus agreement on methods of sufficiently funding the costs of infrastructure of one-stop centers for a

program year, the State funding mechanism is applicable to the local area for that program year.

(b) In the State funding mechanism, the Governor, subject to the limitations in paragraph (c) of this section, determines one-stop partner contributions after consultation with the chief elected officials, Local WDBs, and the State WDB. This determination involves:

(1) The application of a budget for one-stop infrastructure costs as described in § 361.735, based on either agreement reached in the local area negotiations or the State WDB formula outlined in § 361.745;

(2) The determination of each local one-stop partner program's proportionate use of the one-stop delivery system and relative benefit received, consistent with the Uniform Guidance at 2 CFR part 200, including the Federal cost principles, the partner programs' authorizing laws and regulations, and other applicable legal requirements described in § 361.736; and

(3) The calculation of required statewide program caps on contributions to infrastructure costs from one-stop partner programs in areas operating under the State funding mechanism as described in § 361.738.

(c) In certain situations, the Governor does not determine the infrastructure cost contributions for some one-stop partner programs under the State funding mechanism.

(1) The Governor will not determine the contribution amounts for infrastructure funds for Native American program grantees described in 20 CFR part 684. The appropriate portion of funds to be provided by Native American program 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 States in which the policy-making authority is placed in an entity or official that is independent of the authority of the Governor with respect to the funds provided for adult education and literacy activities authorized under title II of WIOA, postsecondary career and technical education activities authorized under the Carl D. Perkins Career and Technical Education Act of 2006, or VR services authorized under title I of the Rehabilitation Act of 1973 (other than sec. 112 or part C), as amended by WIOA title IV, the determination of the amount each of the applicable partners must contribute to assist in paying the infrastructure costs of one-stop centers must be made by the official or chief officer of the entity with such authority, in consultation with the Governor.

(d) Any duty, ability, choice, responsibility, or other action otherwise related to the determination of infrastructure costs contributions that is assigned to the Governor in §§ 361.730 through 361.745 also applies to this decision-making process performed by the official or chief officer described in paragraph (c)(2) of this section.

§ 361.731 What are the steps to determine the amount to be paid under the State one-stop infrastructure funding mechanism?

(a) To initiate the State funding mechanism, a Local WDB that has not reached consensus on methods of sufficiently funding local infrastructure through the local funding mechanism as provided in § 361.725 must notify the Governor by the deadline established by the Governor under § 361.705(b)(3).

(b) Once a Local WDB has informed the Governor that no consensus has been reached:

(1) The Local WDB must provide the Governor with local negotiation materials in accordance with § 361.735(a).

(2) The Governor must determine the one-stop center budget by either:

(i) Accepting a budget previously agreed upon by partner programs in the local negotiations, in accordance with § 361.735(b)(1); or

(ii) Creating a budget for the one-stop center using the State WDB formula (described in § 361.745) in accordance with § 361.735(b)(3).

(3) The Governor then must establish a cost allocation methodology to determine the one-stop partner programs' proportionate shares of infrastructure costs, in accordance with § 361.736.

(4)(i) Using the methodology established under paragraph (b)(2)(ii) of this section, and taking into consideration the factors concerning individual partner programs listed in § 361.737(b)(2), the Governor must determine each partner's proportionate share of the infrastructure costs, in accordance with § 361.737(b)(1), and

(ii) In accordance with § 361.730(c), in some instances, the Governor does not determine a partner program's proportionate share of infrastructure funding costs, in which case it must be determined by the entities named in § 361.730(c)(1) and (2).

(5) The Governor must then calculate the statewide caps on the amounts that partner programs may be required to contribute toward infrastructure funding, according to the steps found at § 361.738(a)(1) through (4).

(6) The Governor must ensure that the aggregate total of the infrastructure contributions according to proportionate share required of all local partner programs in local areas under the State funding mechanism do not exceed the cap for that particular program, in accordance with § 361.738(b)(1). If the total does not exceed the cap, the Governor must direct each one-stop partner program to pay the amount determined under § 361.737(a) toward the infrastructure funding costs of the one-stop center. If the total does exceed the cap, then to determine the amount to direct each one-stop program to pay, the Governor may:

(i) Ascertain, in accordance with § 361.738(b)(2)(i), whether the local partner or partners whose proportionate shares are calculated above the individual program caps are willing to voluntarily contribute above the capped amount to equal that program's proportionate share; or

(ii) Choose from the options provided in § 361.738(b)(2)(ii), including having the local area re-enter negotiations to reassess each one-stop partner's proportionate share and make adjustments or identify alternate sources of funding to make up the difference between the capped amount and the proportionate share of infrastructure funding of the one-stop partner.

(7) If none of the solutions given in paragraphs (b)(6)(i) and (ii) of this section prove to be viable, the Governor must reassess the proportionate shares of each one-stop partner so that the aggregate amount attributable to the local partners for each program is less than that program's cap amount. Upon such reassessment, the Governor must direct each one-stop partner program to pay the reassessed amount toward the infrastructure funding costs of the one-stop center.

§ 361.735 How are infrastructure cost budgets for the one-stop centers in a local area determined in the State one-stop infrastructure funding mechanism?

(a) Local WDBs must provide to the Governor appropriate and relevant materials and documents used in the negotiations under the local funding mechanism, including but not limited to: the local WIOA plan, the cost allocation method or methods proposed by the partners to be used in determining proportionate share, the proposed amounts or budget to fund infrastructure, the amount of total partner funds included, the type of funds or non-cash contributions, proposed one-stop center budgets, and any agreed upon or proposed MOUs.

(b)(1) If a local area has reached agreement as to the infrastructure budget for the one-stop centers in the

local area, it must provide this budget to the Governor as required by paragraph (a) of this section. If, as a result of the agreed upon infrastructure budget, only the individual programmatic contributions to infrastructure funding based upon proportionate use of the one-stop centers and relative benefit received are at issue, the Governor may accept the budget, from which the Governor must calculate each partner's contribution consistent with the cost allocation methodologies contained in the Uniform Guidance found in 2 CFR part 200, as described in § 361.736.

(2) The Governor may also take into consideration the extent to which the partners in the local area have agreed in determining the proportionate shares, including any agreements reached at the local level by one or more partners, as well as any other element or product of the negotiating process provided to the Governor as required by paragraph (a) of this section.

(3) If a local area has not reached agreement as to the infrastructure budget for the one-stop centers in the local area, or if the Governor determines that the agreed upon budget does not adequately meet the needs of the local area or does not reasonably work within the confines of the local area's resources in accordance with the Governor's one-stop budget guidance (which is required to be issued by WIOA sec. 121(h)(1)(B) and under § 361.705), then, in accordance with § 361.745, the Governor must use the formula developed by the State WDB based on at least the factors required under § 361.745, and any associated weights to determine the local area budget.

§ 361.736 How does the Governor establish a cost allocation methodology used to determine the one-stop partner programs' proportionate shares of infrastructure costs under the State one-stop infrastructure funding mechanism?

Once the appropriate budget is determined for a local area through either method described in § 361.735 (by acceptance of a budget agreed upon in local negotiation or by the Governor applying the formula detailed in § 361.745), the Governor must determine the appropriate cost allocation methodology to be applied to the one-stop partners in such local area, consistent with the Federal cost principles permitted under 2 CFR part 200, to fund the infrastructure budget.

§ 361.737 How are one-stop partner programs' proportionate shares of infrastructure costs determined under the State one-stop infrastructure funding mechanism?

(a) The Governor must direct the one-stop partners in each local area that have not reached agreement under the local funding mechanism to pay what the Governor determines is each partner program's proportionate share of infrastructure funds for that area, subject to the application of the caps described in § 361.738.

(b)(1) The Governor must use the cost allocation methodology—as determined under § 361.736—to determine each partner's proportionate share of the infrastructure costs under the State funding mechanism, subject to considering the factors described in paragraph (b)(2) of this section.

(2) In determining each partner program's proportionate share of infrastructure costs, the Governor must take 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 WDB or information technology systems), as well as the statutory requirements for each partner program, the partner program's ability to fulfill such requirements, and all other applicable legal requirements. The Governor may also take into consideration the extent to which the partners in the local area have agreed in determining the proportionate shares, including any agreements reached at the local level by one or more partners, as well as any other materials or documents of the negotiating process, which must be provided to the Governor by the Local WDB and described in § 361.735(a).

§ 361.738 How are statewide caps on the contributions for one-stop infrastructure funding determined in the State one-stop infrastructure funding mechanism?

(a) The Governor must calculate the statewide cap on the contributions for one-stop infrastructure funding required to be provided by each one-stop partner program for those local areas that have not reached agreement. The cap is the amount determined under paragraph (a)(4) of this section, which the Governor derives by:

(1) First, determining the amount resulting from applying the percentage for the corresponding one-stop partner program provided in paragraph (d) of this section to the amount of Federal funds provided to carry out the one-stop partner program in the State for the applicable fiscal year;

(2) Second, selecting a factor (or factors) that reasonably indicates the use of one-stop centers in the State, applying such factor(s) to all local areas in the State, and determining the percentage of such factor(s) applicable to the local areas that reached agreement under the local funding mechanism in the State;

(3) Third, determining the amount resulting from applying the percentage determined in paragraph (a)(2) of this section to the amount determined under paragraph (a)(1) of this section for the one-stop partner program; and

(4) Fourth, determining the amount that results from subtracting the amount determined under paragraph (a)(3) of this section from the amount determined under paragraph (a)(1) of this section. The outcome of this final calculation results in the partner program's cap.

(b)(1) The Governor must ensure that the funds required to be contributed by each partner program in the local areas in the State under the State funding mechanism, in aggregate, do not exceed the statewide cap for each program as determined under paragraph (a) of this section.

(2) If the contributions initially determined under § 361.737 would exceed the applicable cap determined under paragraph (a) of this section, the Governor may:

(i) Ascertain if the one-stop partner whose contribution would otherwise exceed the cap determined under paragraph (a) of this section will voluntarily contribute above the capped amount, so that the total contributions equal that partner's proportionate share. The one-stop partner's contribution must still be consistent with the program's authorizing laws and regulations, the Federal cost principles in 2 CFR part 200, and other applicable legal requirements; or

(ii) Direct or allow the Local WDB, chief elected officials, and one-stop partners to: Re-enter negotiations, as necessary; reduce the infrastructure costs to reflect the amount of funds that are available for such costs without exceeding the cap levels; reassess the proportionate share of each one-stop partner; or identify alternative sources of financing for one-stop infrastructure funding, consistent with the requirement that each one-stop partner pay an amount that is consistent with the proportionate use of the one-stop center and relative benefit received by the partner, the program's authorizing laws and regulations, the Federal cost principles in 2 CFR part 200, and other applicable legal requirements.

(3) If applicable under paragraph (b)(2)(ii) of this section, the Local WDB, chief elected officials, and one-stop partners, after renegotiation, may come to agreement, sign an MOU, and proceed under the local funding mechanism. Such actions do not require the redetermination of the applicable caps under paragraph (a) of this section.

(4) If, after renegotiation, agreement among partners still cannot be reached or alternate financing cannot be identified, the Governor may adjust the specified allocation, in accordance with the amounts available and the limitations described in paragraph (d) of this section. In determining these adjustments, the Governor may take into account information relating to the renegotiation as well as the information described in § 361.735(a).

(c) *Limitations.* Subject to paragraph (a) of this section and in accordance with WIOA sec. 121(h)(2)(D), the following limitations apply to the Governor's calculations of the amount that one-stop partners in local areas that have not reached agreement under the local funding mechanism may be required under § 361.736 to contribute to one-stop infrastructure funding:

(1) *WIOA formula programs and Wagner-Peyser Act 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 three percent of the amount of the program in the State for a program year.

(2) *Other one-stop partners.* For required one-stop partners other than those specified in paragraphs (c)(1), (3), (5), and (6) of this section, 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 program in the State for a fiscal year. For purposes of the Carl D. Perkins Career and Technical Education Act of 2006, the cap on contributions is determined based on the funds made available by the State for postsecondary level programs and activities under sec. 132 of the Carl D. Perkins Career and Technical Education Act and the amount of funds used by the State under sec. 112(a)(3) of the Perkins Act during the prior year to administer postsecondary level programs and activities, as applicable.

(3) *Vocational rehabilitation.* (i) Within a State, for the entity or entities administering the programs described in WIOA sec. 121(b)(1)(B)(iv) and § 361.400, the allotment is based on the one State Federal fiscal year allotment, even in instances where that allotment is shared between two State agencies, and the cumulative portion of funds required to be contributed must not exceed—

(A) 0.75 percent of the amount of Federal funds provided to carry out such program in the State for Fiscal Year 2016 for purposes of applicability of the State funding mechanism for PY 2017;

(B) 1.0 percent of the amount provided to carry out such program in the State for Fiscal Year 2017 for purposes of applicability of the State funding mechanism for PY 2018;

(C) 1.25 percent of the amount provided to carry out such program in the State for Fiscal Year 2018 for purposes of applicability of the State funding mechanism for PY 2019;

(D) 1.5 percent of the amount provided to carry out such program in the State for Fiscal Year 2019 and following years for purposes of applicability of the State funding mechanism for PY 2020 and subsequent years.

(ii) The limitations set forth in paragraph (d)(3)(i) of this section for any given fiscal year must be based on the final VR allotment to the State in the applicable Federal fiscal year.

(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 Federal 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 § 361.737).

(5) *TANF programs.* For purposes of TANF, the cap on contributions is determined based on the total Federal TANF funds expended by the State for work, education, and training activities during the prior Federal fiscal year (as reported to the Department of Health and Human Services (HHS) on the quarterly TANF Financial Report form), plus any additional amount of Federal TANF funds that the State TANF agency reasonably determines was expended for administrative costs in connection with these activities but that was separately reported to HHS as an administrative cost. The State's contribution to the one-stop infrastructure must not exceed 1.5 percent of these combined expenditures.

(6) *Community Services Block Grant (CSBG) programs.* For purposes of CSBG, the cap on contributions will be based on the total amount of CSBG funds determined by the State to have been expended by local CSBG-eligible entities for the provision of employment and training activities during the prior Federal fiscal year for which information is available (as reported to HHS on the CSBG Annual Report) and any additional amount that the State CSBG agency reasonably determines was expended for administrative purposes in connection with these activities and was separately reported to HHS as an administrative cost. The State's contribution must not exceed 1.5 percent of these combined expenditures.

(d) For programs for which it is not otherwise feasible to determine the amount of Federal funding used by the program until the end of that program's operational year—because, for example, the funding available for education, employment, and training activities is included within funding for the program that may also be used for other unrelated activities—the determination of the Federal funds provided to carry out the program for a fiscal year under paragraph (a)(1) of this section may be determined by:

(1) The percentage of Federal funds available to the one-stop partner program that were used by the one-stop partner program for education, employment, and training activities in the previous fiscal year for which data are available; and

(2) Applying the percentage determined under paragraph (d)(1) of this section to the total amount of Federal funds available to the one-stop partner program for the fiscal year for which the determination under paragraph (a)(1) of this section applies.

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

(a) In the State funding mechanism, infrastructure costs for WIOA title I programs, including Native American Programs described in 20 CFR part 684, may 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.*) may also be paid using program funds, administrative funds, or both.

(b) In the State 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.

(c) In the State 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 local

administration and may be paid from funds made available by the State or non-Federal resources that are cash, in-kind, or third-party contributions.

(d) In the State funding mechanism, infrastructure costs for the Carl D. Perkins Career and Technical Education Act of 2006 must be paid from funds available for local administration of postsecondary level programs and activities to eligible recipients or consortia of eligible recipients and may be paid from funds made available by the State or non-Federal resources that are cash, in-kind, or third-party contributions.

§ 361.745 What factors does the State Workforce Development Board use to develop the formula described in Workforce Innovation and Opportunity Act, which is used by the Governor to determine the appropriate one-stop infrastructure budget for each local area operating under the State infrastructure funding mechanism, if no reasonably implementable locally negotiated budget exists?

The State WDB must develop a formula, as described in WIOA sec. 121(h)(3)(B), to be used by the Governor under § 361.735(b)(3) in determining the appropriate budget for the infrastructure costs of one-stop centers in the local areas that do not reach agreement under the local funding mechanism and are, therefore, subject to the State funding mechanism. The formula identifies the factors and corresponding weights for each factor that the Governor must use, which must include: The number of one-stop centers in a local area; the population served by such centers; the services provided by such centers; and any factors relating to the operations of such centers in the local area that the State WDB determines are appropriate. As indicated in § 361.735(b)(1), if the local area has agreed on such a budget, the Governor may accept that budget in lieu of applying the formula factors.

§ 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.

(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), the cost contribution caps in § 361.738, consistent with the process described in the State Plan.

(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 20 CFR 683.630.

(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 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 its use of the one-stop center and relative benefit received, and that complies with 2 CFR part 200 (or any corresponding similar regulation or ruling).

(c) Identification of all one-stop partners, chief elected officials, and Local WDB participating in the infrastructure funding arrangement.

(d) Steps the Local WDB, chief elected officials, and one-stop partners used to reach consensus or an assurance that the local area followed the guidance for the State funding process.

(e) Description of the process to be used among 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.

§ 361.760 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 §§ 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. These other costs must include applicable career services and may include other costs, including shared services.

(b) For the purposes of paragraph (a) of this section, 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 WDB's functions.

(c) Contributions to the additional costs related to operation of the one-stop delivery system may be cash, non-cash, or third-party in-kind contributions, consistent with how these are described in § 361.720(c).

(d) The shared costs described in paragraph (a) of this section 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 2 CFR part 200 (or any corresponding similar regulation or ruling) requiring that costs are allowable, reasonable, necessary, and allocable.

(e) Any shared costs agreed upon by the one-stop partners must be included in the MOU.

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

(a) The State WDB, in consultation with chief elected officials and Local WDBs, must establish objective criteria and procedures for Local WDBs to use when certifying one-stop centers.

(1) The State WDB, in consultation with chief elected officials and Local WDBs, 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 WDB'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 WDB is the one-stop operator as described in 20 CFR 679.410, the State WDB 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 access to partner program services to the maximum extent practicable, including providing services outside of regular business hours where there is a workforce need, as identified by the Local WDB. 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 38. 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;

(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; and

(6) Providing for the physical accessibility of the one-stop center to individuals with disabilities.

(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 part 361. 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 WDBs 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 WDB. The Local WDB may establish additional criteria, or set higher standards for service coordination, than those set by the State criteria. Local WDBs must review and update the criteria every 2 years as part of the Local Plan update process described in § 361.580. Local WDBs must certify one-stop centers in order to be eligible to use infrastructure funds in the State funding mechanism described in § 361.730.

(e) All one-stop centers must comply with applicable physical and programmatic accessibility requirements, as set forth in 29 CFR part 38, the implementing regulations of WIOA sec. 188.

§ 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 November 17, 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 primary electronic resources used by the one-stop delivery system, and on any newly printed, purchased, or created materials.

(c) As of July 1, 2017, 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, electronic resources, facilities, and related property and new materials used in the one-stop delivery system.

(d) 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 are the purposes 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 programs authorized under 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 authorized under Workforce Innovation and Opportunity Act title II?
463.120 What are the program-specific requirements in the Unified State Plan for the Employment Service program authorized under the Wagner-Peyser Act, as amended by Workforce Innovation and Opportunity Act title III?
463.125 What are the program-specific requirements in the Unified State Plan for the State Vocational Rehabilitation program authorized under title I of the Rehabilitation Act of 1973, as amended by Workforce Innovation and Opportunity Act title IV?
463.130 What is the development, 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 development, submission, and approval process of the Combined State Plan?
463.145 What are the requirements for modifications of the Combined State Plan?

Authority: Secs. 102, 103, and 503, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

Subpart H—Unified and Combined State Plans Under Title I of the Workforce Innovation and Opportunity Act

§ 463.100 What are the purposes 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 the 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 Combined State Plan partner 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 WIOA sec. 102(c), as explained in joint planning guidelines issued by the Secretaries of Labor and Education.

(b) The Governor of each State must submit, at a minimum, in accordance with § 463.130, a Unified 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 (DOL);

(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 (ED);

(3) The Employment Service program authorized under the Wagner-Peyser Act of 1933, as amended by WIOA title III and administered by DOL; and

(4) The Vocational Rehabilitation program authorized under title I of the Rehabilitation Act of 1973, as amended by title IV of WIOA and administered by ED.

(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 guidelines issued by the Secretaries of Labor and 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 Combined State Plan partner programs as described in § 463.140(d), 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 (WDB) 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, including an assurance that the lead State agencies responsible for the administration of the core programs reviewed and commented on the appropriate operational planning of the Unified State Plan and approved the elements as serving the needs of the population served by such programs, and other assurances deemed necessary by the Secretaries of Labor and Education under sec. 102(b)(2)(E)(x) of WIOA;

(v) A description of joint planning and coordination across core programs, required one-stop partner programs, and other programs and activities in the Unified State Plan; and

(vi) 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.

(e) All of the requirements in this subpart that apply to States also apply to outlying areas.

§ 463.110 What are the program-specific requirements in the Unified State Plan for the adult, dislocated worker, and youth programs authorized under Workforce Innovation and Opportunity Act title I?

The program-specific requirements for the adult, dislocated worker, and youth programs that must be included in the Unified State Plan are described in sec. 102(b)(2)(D) of WIOA. Additional planning requirements may be explained in joint planning guidelines issued by the Secretaries of Labor and Education.

§ 463.115 What are the program-specific requirements in the Unified State Plan for the Adult Education and Family Literacy Act program authorized under 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)(C) and 102(b)(2)(D)(ii) 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.

§ 463.120 What are the program-specific requirements in the Unified State Plan for the Employment Service program authorized under the Wagner-Peyser Act, as amended by Workforce Innovation and Opportunity Act title III?

The Employment Service program authorized under the Wagner-Peyser Act of 1933, as amended by WIOA title III, is subject to requirements in sec. 102(b) of WIOA, including any additional requirements imposed by the Secretary of Labor under secs. 102(b)(2)(C)(viii) and 102(b)(2)(D)(iv) of WIOA, as explained in joint planning guidelines issued by the Secretaries of Labor and Education.

§ 463.125 What are the program-specific requirements in the Unified State Plan for the State Vocational Rehabilitation program authorized under title I of the Rehabilitation Act of 1973, as amended by 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 for 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 sec. 102(b) of WIOA.

§ 463.130 What is the development, submission, and approval process of the Unified State Plan?

(a) The Unified State Plan described in § 463.105 must be submitted in accordance with WIOA sec. 102(c), as explained in joint planning guidelines issued jointly by the Secretaries of Labor and Education.

(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) Subsequent Unified State Plans must be submitted no later than 120 days prior to the end of the 4-year period covered by a preceding Unified State Plan.

(3) For purposes of paragraph (b) of this section, ''program year'' means July 1 through June 30 of any year.

(c) The Unified State Plan must be developed with the assistance of the State WDB, as required by 20 CFR 679.130(a) and WIOA sec. 101(d), and must be developed in coordination with administrators with optimum policy-making authority for the core programs and required one-stop partners.

(d) 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 WDBs 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 WDB 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.

(e) 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.

(f) The Unified State Plan is subject to the approval of both the Secretary of Labor and the Secretary of Education.

(g) Before the Secretaries of Labor and Education approve the Unified State Plan, the vocational rehabilitation services 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.

(h) The Secretaries of Labor and Education will review and approve the Unified State Plan within 90 days of receipt by the Secretary of Labor, 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.

(i) If neither the Secretary of Labor nor the Secretary of Education makes the written determination described in paragraph (h) 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 WDB 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 negotiated levels of performance as described in § 463.170(b), the methodology used to determine local allocation of funds, reorganizations that change the working relationship with system employees, changes in organizational responsibilities, changes to the membership structure of the State WDB or alternative entity, and similar substantial changes to the State's workforce development system.

(c) Modifications to the Unified State Plan are subject to the same public review and comment requirements in § 463.130(d) that apply to the development of the original Unified State Plan.

(d) Unified State Plan modifications must be approved by the Secretaries of Labor and 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 through 463.125.

(b) A State that submits a Combined State Plan covering an activity or program described in paragraph (d) of this section that is, in accordance with WIOA sec. 103(c), approved or deemed 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 Combined State Plan partner programs and activities described in sec. 103(a)(2) of WIOA. The Combined State Plan partner 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 1965 (42 U.S.C. 3056 *et seq.*);

(9) Employment and training activities carried out by the Department of Housing and Urban Development (HUD);

(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 through 463.125, as explained in the joint planning guidelines issued by the Secretaries;

(2) For the Combined State Plan partner programs and activities, 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 guidelines issued by the Secretaries;

(3) A description of the methods used for joint planning and coordination among the core programs, and with the required one-stop partner programs and other programs and activities included in the 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 Combined State Plan partner 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.

(i) States that submit employment and training activities carried out by HUD under a Combined State Plan would submit any other required planning documents for HUD programs directly to HUD, according to the requirements of Federal law and regulations.

§ 463.143 What is the development, 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 sec. 103 of WIOA, as explained in the joint planning guidelines issued by the Secretaries of Labor and Education.

(b) The Combined State Plan must be developed with the assistance of the State WDB, as required by 20 CFR 679.130(a) and WIOA sec. 101(d), and must be developed in coordination with administrators with optimum policy-making authority for the core programs and required one-stop partners.

(c) The State must provide an opportunity for public comment on and input into the development of the Combined State Plan prior to its submission.

(1) The opportunity for public comment for the portions of the Combined State Plan that cover the core programs must include an opportunity for comment by representatives of Local WDBs 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 WDB must make information regarding the Combined State Plan available to the public through electronic means and regularly occurring open meetings in accordance with State law. The Combined State Plan must describe the State's process and timeline for ensuring a meaningful opportunity for public comment on the portions of the plan covering core programs.

(3) The portions of the plan that cover the Combined State Plan partner programs are subject to any public comment requirements applicable to those programs.

(d) 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 deeming 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.

(e) 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 Combined State Plan is received by the appropriate Secretary from the State, consistent with paragraph (f) of this section. Before the Secretaries of Labor and Education approve the Combined State Plan, the vocational rehabilitation services portion of the Combined State Plan described in WIOA sec. 102(b)(2)(D)(iii) must be approved by the Commissioner

of the Rehabilitation Services Administration.

(2) If an appropriate Secretary other than the Secretary of Labor or the Secretary of Education has authority to approve or deem complete a portion of the Combined State Plan for a program or activity described in § 463.140(d), that portion of the Combined State Plan must be reviewed, and approved, disapproved, or deemed complete, by the appropriate Secretary within 120 days beginning on the day the Combined State Plan is received by the appropriate Secretary from the State consistent with paragraph (f) of this section.

(f) The appropriate Secretaries will review and approve or deem complete the Combined State Plan within 90 or 120 days, as appropriate, as described in paragraph (e) of this section, unless the Secretaries of Labor and Education or appropriate Secretary have determined in writing within that period that:

(1) The Combined State 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 deeming the plan complete, if any, under such law;

(2) The portion of the Combined State 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 Combined State 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.

(g) If the Secretary of Labor, the Secretary of Education, or the appropriate Secretary does not make the written determination described in paragraph (f) of this section within the relevant period of time after submission of the Combined State Plan, that portion of the Combined State Plan over which the Secretary has jurisdiction will be considered approved.

(h) The Secretaries of Labor and Education's written determination of approval or disapproval regarding the portion of the plan for the six core programs may be separate from the written determination of approval, disapproval, or completeness of the program-specific requirements of Combined State Plan partner programs and activities described in § 463.140(d) and included in the Combined State Plan.

(i) *Special rule.* In paragraphs (f)(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 a minimum:

(1) By the end of the first 2-year period of any 4-year State Plan. The State WDB must review the Combined State Plan, and the Governor must submit modifications to the Combined State Plan to reflect changes in labor market and economic conditions or other factors affecting the implementation of the Combined State Plan;

(2) When changes in Federal or State law or policy substantially affect the strategies, goals, and priorities upon which the Combined State Plan is based;

(3) When there are changes in the statewide vision, strategies, policies, State negotiated levels of performance as described in § 463.170(b), the methodology used to determine local allocation of funds, reorganizations that change the working relationship with system employees, changes in organizational responsibilities, changes to the membership structure of the State WDB or alternative entity, and similar substantial changes to the State's workforce development system.

(b) In addition to the required modification review described in paragraph (a)(1) 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 Combined State Plan partner 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 Combined State Plan partner programs, as long as consistent with any other modification requirements for the programs, or may comply with the requirements applicable to only the particular program or activity; and

(2) Must submit, in accordance with the procedure described in § 463.143, any modification, amendment, or revision required by the Federal law authorizing, or applicable to, the Combined State Plan partner program or activity.

(i) If the underlying programmatic requirements change (*e.g.,* the authorizing statute is reauthorized) 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 Combined State Plan partner program or activity and other legal requirements applicable to such program or activity.

(ii) If the modification, amendment, or revision affects the administration of only that particular Combined State Plan partner program and has no impact on the Combined State Plan as a whole or the integration and administration of the core and other Combined State Plan partner programs at the State level, modifications must be submitted for approval to 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 Combined State Plan partner program.

(3) A State also may amend its Combined State Plan to add a Combined State Plan partner 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 § 463.143(c) except that, if the modification, amendment, or revision affects the administration of a particular Combined State Plan partner program and has no impact on the Combined State Plan as a whole or the integration and administration of the core and other Combined State Plan partner programs at the State level, a State may comply instead with the procedures and requirements applicable to the particular Combined State Plan partner program.

(e) Modifications for the core program portions of the Combined State Plan must be approved by the Secretaries of Labor and 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.

■ 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 accountability provisions?
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 establish additional indicators of performance?
463.170 How are State 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 When is a State subject to a financial sanction under the Workforce Innovation and Opportunity Act?
463.185 When are sanctions applied for a State's failure to submit an annual performance 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 and what information must be included in local area performance reports?
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 (WIOA) title I programs; the Wagner-Peyser Act Employment Service program, as amended by WIOA title III; and the Vocational Rehabilitation program authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV?
463.240 What are the requirements for data validation of State annual performance reports?

Authority: Secs. 116, 189, and 503 of Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

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 accountability provisions?

(a) *Participant.* A reportable individual who has received services other than the services described in paragraph (a)(3) of this section, 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 a reportable individual who has an approved and signed Individualized Plan for Employment (IPE) and has begun to receive services.

(2) For the Workforce Innovation and Opportunity Act (WIOA) title I youth program, a participant is a reportable individual who has satisfied all applicable program requirements for the provision of services, including eligibility determination, an objective assessment, and development of an individual service strategy, and received 1 of the 14 WIOA youth program elements identified in sec. 129(c)(2) of WIOA.

(3) The following individuals are not participants:

(i) Individuals in an Adult Education and Family Literacy Act (AEFLA) program who have not completed at least 12 contact hours;

(ii) Individuals who only use the self-service system.

(A) Subject to paragraph (a)(3)(ii)(B) of this section, self-service occurs when individuals independently access any workforce development system program's information and activities in either a physical location, such as a one-stop center resource room or partner agency, or remotely via the use of electronic technologies.

(B) Self-service does not uniformly apply to all virtually accessed services. For example, virtually accessed services that provide a level of support beyond independent job or information seeking on the part of an individual would not qualify as self-service.

(iii) Individuals who receive information-only services or activities, which provide readily available information that does not require an assessment by a staff member of the individual's skills, education, or career objectives.

(4) 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 program, including:

(1) Individuals who provide identifying information;

(2) Individuals who only use the self-service system; or

(3) Individuals who only receive information-only services or activities.

(c) *Exit.* As defined for the purpose of performance calculations, exit is the point after which a participant who has received services through any program meets the following criteria:

(1) For the adult, dislocated worker, and youth programs authorized under WIOA title I, the AEFLA program authorized under WIOA title II, and the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III, exit date is the last date of service.

(i) The last day of service cannot be determined until at least 90 days have elapsed since the participant last received services; services do not include self-service, information-only services or activities, or follow-up services. This also requires that there are no plans to provide the participant with future services.

(ii) [Reserved].

(2)(i) For the VR program authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV (VR program):

(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 VR program if the participant's service record is closed because the participant has achieved a supported employment outcome in an integrated setting but not in competitive integrated employment.

(3)(i) A State may implement a common exit policy for all or some of the core programs in WIOA title I and the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III, and any additional required partner program(s) listed in sec. 121(b)(1)(B) of WIOA that is under the authority of the U.S. Department of Labor (DOL).

(ii) If a State chooses to implement a common exit policy, the policy must require that a participant is exited only

when all of the criteria in paragraph (c)(1) of this section are met for the WIOA title I core programs and the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III, as well as any additional required partner programs listed in sec. 121(b)(1)(B) of WIOA under the authority of DOL to which the common exit policy applies in which the participant is enrolled.

(d) *State.* For purposes of this part, other than in regard to sanctions or the statistical adjustment model, all references to ''State'' include the outlying areas of American Samoa, Guam, Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, and, as applicable, the Republic of Palau.

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

(a) All States submitting either a Unified or Combined State Plan under §§ 463.130 and 463.143, must propose expected levels of performance for each of the primary indicators of performance for the adult, dislocated worker, and youth programs authorized under WIOA title I; the AEFLA program authorized under WIOA title II; the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III; and the VR program authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV.

(1) *Primary indicators of performance.* The six primary indicators of performance for the adult and dislocated worker programs, the AEFLA program, and the VR program 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)(A) The percentage of those participants enrolled in an education or training program (excluding those in on-the-job training [OJT] and customized training) who attained a recognized postsecondary credential or a secondary school diploma, or its recognized equivalent, during participation in or within 1 year after exit from the program.

(B) A participant who has attained a secondary school diploma or its recognized equivalent is included in the percentage of participants who have attained a secondary school diploma or recognized equivalent only if the participant also is employed or is enrolled in an education or training program leading to a recognized postsecondary credential within 1 year after exit from the program;

(v) The percentage of participants who, during a program year, are in an education or training program that leads to a recognized postsecondary 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. Depending upon the type of education or training program, documented progress is defined as one of the following:

(A) Documented achievement of at least one educational functioning level of a participant who is receiving instruction below the postsecondary education level;

(B) Documented attainment of a secondary school diploma or its recognized equivalent;

(C) Secondary or postsecondary transcript or report card for a sufficient number of credit hours that shows a participant is meeting the State unit's academic standards;

(D) Satisfactory or better progress report, towards established milestones, such as completion of OJT or completion of 1 year of an apprenticeship program or similar milestones, from an employer or training provider who is providing training; or

(E) Successful passage of an exam that is required for a particular occupation or progress in attaining technical or occupational skills as evidenced by trade-related benchmarks such as knowledge-based exams.

(vi) Effectiveness in serving employers.

(2) *Participants.* For purposes of the primary indicators of performance in paragraph (a)(1) of this section, ''participant'' will have the meaning given to it in § 463.150(a), except that—

(i) For purposes of determining program performance levels under indicators set forth in paragraphs (a)(1)(i) through (iv) and (vi) of this section, a ''participant'' does not include a participant who received services under sec. 225 of WIOA and exits such program while still in a correctional institution as defined in sec. 225(e)(1) of WIOA; and

(ii) The Secretaries of Labor and Education may, as needed and consistent with the Paperwork Reduction Act (PRA), make further determinations as to the participants to be included in calculating program performance levels for purposes of any of the performance indicators set forth in paragraph (a)(1) of this section.

(b) The primary indicators in paragraphs (a)(1)(i) through (iii) and (vi) of this section apply to the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III.

(c) For the youth program authorized under WIOA title I, the primary 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 those participants enrolled in an education or training program (excluding those in OJT and customized training) who obtained a recognized postsecondary credential or a secondary school diploma, or its recognized equivalent, during participation in or within 1 year after exit from the program, except that a participant who has attained a secondary school diploma or its recognized equivalent is included as having attained a secondary school diploma or recognized equivalent only if the participant is also employed or is enrolled in an education or training program leading to a recognized postsecondary 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 postsecondary 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. Depending upon the type of education or training program, documented progress is defined as one of the following:

(i) Documented achievement of at least one educational functioning level of a participant who is receiving instruction below the postsecondary education level;

(ii) Documented attainment of a secondary school diploma or its recognized equivalent;

(iii) Secondary or postsecondary transcript or report card for a sufficient number of credit hours that shows a participant is achieving the State unit's academic standards;

(iv) Satisfactory or better progress report, towards established milestones, such as completion of OJT or completion of 1 year of an apprenticeship program or similar milestones, from an employer or training provider who is providing training; or

(v) Successful passage of an exam that is required for a particular occupation or progress in attaining technical or occupational skills as evidenced by trade-related benchmarks such as knowledge-based exams.

(6) Effectiveness in serving employers.

§ 463.160 What information is required for State performance reports?

(a) The State performance report required by sec. 116(d)(2) of WIOA must be submitted annually using a template the Departments of Labor and Education 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 of performance 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 who received career services and the total number of participants who exited from career services for the most recent program year and the 3 preceding program years, and the total number of participants who received training services and the total number of participants who exited from training services for the most recent program year and the 3 preceding program years, as applicable to the program;

(4) Information on the performance levels achieved for the primary indicators of performance consistent with § 463.155 for career services 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 attained unsubsidized employment related to the training received (often referred to as training-related employment) through WIOA title I, subtitle B programs;

(6) The amount of funds spent on career services and the amount of funds spent on training services 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 services and training services, respectively, during the most recent program year and the 3 preceding program years, 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 eligible training provider (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 Labor and Education, which may include information on reportable individuals as determined by the Secretaries of Labor and Education.

§ 463.165 May a State establish additional indicators of performance?

States may identify additional indicators of performance for the six core programs. If a State does so, these indicators must be included in the Unified or Combined State Plan.

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

(a) A State must submit in the State Plan expected levels of performance on the primary indicators of performance for each core program as required by sec. 116(b)(3)(A)(iii) of WIOA as explained in joint guidance issued by the Secretaries of Labor and Education.

(1) The initial State Plan submitted under WIOA must contain expected levels of performance for the first 2 years of the State Plan.

(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) States must reach agreement on levels of performance with the Secretaries of Labor and Education for each indicator for each core program. These are the negotiated levels of performance. The negotiated levels must be based on the following factors:

(1) How the negotiated levels of performance compare with State levels of performance established for other States;

(2) The application of an objective statistical model established by the Secretaries of Labor and Education, subject to paragraph (d) of this section;

(3) How the negotiated 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 negotiated levels assist the State in meeting the performance goals established by the Secretaries of Labor and Education for the core programs in accordance with the Government Performance and Results Act of 1993, as amended.

(c) An objective statistical adjustment model will be developed and disseminated by the Secretaries of Labor and Education. The model will be based on:

(1) Differences among States in actual economic conditions, including but not limited to unemployment rates and job losses or gains in particular industries; and

(2) The characteristics of participants, including but not limited to:

(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 are necessary to populate the model and apply the model to the local core programs;

(2) Subject to paragraph (d)(1) of this section, used before the beginning of a program year in order to reach agreement on State negotiated levels for the upcoming program year; and

(3) Subject to paragraph (d)(1) of this section, used to revise negotiated levels at the end of a program year based on actual economic conditions and characteristics of participants served, consistent with sec. 116(b)(3)(A)(vii) of WIOA.

(e) The negotiated levels revised at the end of the program year, based on the statistical adjustment model, are the adjusted levels of performance.

(f) States must comply with these requirements from sec. 116 of WIOA as explained in joint guidance issued by the Departments of Labor and Education.

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

(a)(1) States must, consistent with State laws, use quarterly wage record information in measuring a State's performance on the primary indicators of performance outlined in § 463.155 and a local area's performance on the primary indicators of performance identified in § 463.205.

(2) 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.

(3) To the extent that quarterly wage records are not available for a participant, States may use other information as is necessary to measure the progress of those participants through methods other than quarterly wage record information.

(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 ETPs. The Governor or such agency (or appropriate State entity) is responsible for:

(1) Facilitating data matches;
(2) Data quality reliability; and
(3) Protection against disaggregation that would violate applicable privacy standards.

§ 463.180 When is a State subject to a financial sanction under the Workforce Innovation and Opportunity Act?

A State will be subject to financial sanction under WIOA sec. 116(f) if it fails to:

(a) Submit the State annual performance report required under WIOA sec. 116(d)(2); or

(b) 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 a State's failure to submit an annual performance report?

(a) Sanctions will be applied when a State fails to submit the State annual performance report required under sec. 116(d)(2) of WIOA. A State fails 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 applied 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 issues.

(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, but no later than 30 days prior to the established deadline for submission, of a potential impact on the State's ability to submit its State annual performance report in order to not be considered failing to report.

(2) In circumstances where unexpected events occur less than 30 days before the established deadline for submission of the State annual performance reports, the Secretaries of Labor and Education will review requests for extending the reporting deadline in accordance with the Departments of Labor and Education's procedures that will be established in guidance.

§ 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 economic conditions experienced during a program year and characteristics of participants, annually at the close of each program year.

(b) Any State that fails 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) Whether a State has failed to meet adjusted levels of performance will be determined using the following three criteria:

(1) The overall State program score, which is expressed as the percent achieved, compares the actual results achieved by a core program on the primary indicators of performance to the adjusted levels of performance for that core program. The average of the percentages achieved of the adjusted level of performance for each of the primary indicators by a core program will constitute the overall State program score.

(2) However, until all indicators for the core program have at least 2 years of complete data, the overall State program score will be based on a comparison of the actual results achieved to the adjusted level of performance for each of the primary indicators that have at least 2 years of complete data for that program;

(3) The overall State indicator score, which is expressed as the percent achieved, compares the actual results achieved on a primary indicator of performance by all core programs in a State to the adjusted levels of performance for that primary indicator. The average of the percentages achieved of the adjusted level of performance by all of the core programs on that indicator will constitute the overall State indicator score.

(4) However, until all indicators for the State have at least 2 years of complete data, the overall State indicator score will be based on a comparison of the actual results achieved to the adjusted level of performance for each of the primary indicators that have at least 2 years of complete data in a State.

(5) The individual indicator score, which is expressed as the percent achieved, compares the actual results achieved by each core program on each of the individual primary indicators to the adjusted levels of performance for each of the program's primary indicators of performance.

(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:

(1) 90 percent of the overall State program score for the same core program;

(2) 90 percent of the overall State indicator score for the same primary indicator; or

(3) 50 percent of the same indicator score for the same program.

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

(a) The Secretaries of Labor and Education will reduce the Governor's Reserve Allotment by five 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;

(2) The State fails to meet State adjusted levels of performance for the same primary performance indicator(s) under either § 463.190(d)(1) for the second consecutive year as defined in § 463.190; or

(3) The State's score on the same indicator for the same program falls below 50 percent under § 463.190(d)(2) for the second consecutive year as defined in § 463.190.

(b) If the State fails under paragraphs (a)(1) and either (a)(2) or (3) of this section in the same program year, the Secretaries of Labor and 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, depending on which program is impacted, 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 Secretary of Labor imposes in accordance with the provisions of 20 CFR 683.800.

§ 463.200 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 State program score and overall State 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 and what information must be included in local area performance reports?

(a) Each local area in a State under WIOA title I is subject to the same primary indicators of performance for the core programs for WIOA title I under § 463.155(a)(1) and (c) 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 of Labor and Education 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 include:

(1) The actual results achieved under § 463.155 and the information required under § 463.160(a);

(2) The percentage of a local area's allotment under WIOA secs. 128(b) and 133(b) that the local area spent on administrative costs; and

(3) 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).

(e) The disaggregation of data for the local area performance report must be done in compliance with WIOA sec. 116(d)(6)(C).

(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 DOL.

§ 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 § 463.170(c) must be:

(1) Applied to the core programs' primary indicators upon availability of data which are necessary to populate the model and apply the model to the local core programs;

(2) Used in order to reach agreement on local negotiated levels of performance for the upcoming program year; and

(3) Used to establish adjusted levels of performance at the end of a program year based on actual conditions, consistent with WIOA sec. 116(c)(3).

(b) Until all indicators for the core program in a local area have at least 2 years of complete data, the comparison of the actual results achieved to the adjusted levels of performance for each of the primary indicators only will be applied where there are at least 2 years of complete data for that program.

(c) The Governor, Local Workforce Development Board (WDB), and chief elected official must reach agreement on local negotiated levels of performance 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 economic conditions and characteristics of the participants served.

(d) The negotiations process described in paragraph (c) of this section must be developed by the Governor and disseminated to all Local WDBs and chief elected officials.

(e) The Local WDBs may apply performance measures to service providers that differ from the performance indicators that apply to the local area. These performance measures must be established after considering:

(1) The established local negotiated levels;

(2) The services provided by each provider; and

(3) The populations the service providers are intended to serve.

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

(a) The Governor is not required to award local incentive funds, but is authorized to provide incentive grants to local areas for performance on the primary indicators of performance consistent with WIOA sec. 134(a)(3)(A)(xi).

(b) The Governor may use non-Federal funds to create incentives for the Local WDBs 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 WDBs. Pay-for-performance contract strategies must be implemented in accordance with 20 CFR part 683, subpart E and § 463.160.

§ 463.220 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 adjusted 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 to meet adjusted levels of performance for a local area before coming to agreement on the negotiated levels of performance for the local area.

(i) A State must establish the adjusted level of performance for a local area, using the statistical adjustment model described in § 463.170(c).

(ii) At least 2 years of complete data on any indicator for any local core program are required in order to establish adjusted levels of performance for a 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 adjusted levels of performance agreed to under § 463.210 for the same primary indicators of performance for the same core program 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 WDB, consistent with the criteria established under 20 CFR 679.350;

(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.

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

(a) The Local WDB 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 WDB 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 WDB and chief elected official to the Secretary of Labor under 20 CFR 683.650; and

(2) Must be submitted by certified mail, return receipt requested, to the Secretary of Labor, U.S. Department of Labor, 200 Constitution Ave. NW., 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 WDB and chief elected official, the Secretary of Labor must make a final decision within 30 days. In making this determination the Secretary of Labor may consider any comments submitted by the Governor in response to the appeals.

(d) The decision by the Governor on the appeal 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)(C).

§ 463.230 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 of Labor and Education will disseminate including through electronic means, the ETP performance reports for ETPs who provide services under sec. 122 of WIOA that are described in 20 CFR 680.400 through 680.530. 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 as defined by § 463.150(a) 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) with respect to all individuals engaging in 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 engaging in a program of study (or the equivalent).

(b) Apprenticeship programs registered under the National Apprenticeship Act are not required to

submit ETP performance information. 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 a mechanism of electronic access to the public ETP 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 DOL.

(e) The Governor may designate one or more State agencies such as a State Education Agency or other State Educational Authority to assist in overseeing ETP performance and facilitating the production and dissemination of ETP performance reports. These agencies may be the same agencies that are designated as responsible for administering the ETP list as provided under 20 CFR 680.500. The Governor or such agencies, or authorities, is responsible for:

(1) Facilitating data matches between ETP records and unemployment insurance (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 ETP list and the information required to accompany the list, as provided in 20 CFR 680.500.

§ 463.235 What are the reporting requirements for individual records for core Workforce Innovation and Opportunity Act (WIOA) title I programs; the Wagner-Peyser Act Employment Service program, as amended by WIOA title III; and the Vocational Rehabilitation program authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV?

(a) On a quarterly basis, each State must submit to the Secretary of Labor or the 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 either of the following programs administered by the Secretary of Labor or Secretary of Education: A WIOA title I core program; the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III; or the VR program authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV.

(b) For individual records submitted to the Secretary of Labor, those records may be required to be integrated across all programs administered by the Secretary of Labor in one single file.

(c) States must comply with the requirements of sec. 116(d)(2) of WIOA as explained in guidance issued by the Departments of Labor and Education.

§ 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 Labor or the Secretary of Education, to ensure that they submit complete annual performance reports that contain information that is valid and reliable, as required by WIOA sec. 116(d)(5).

(b) If a State fails to meet standards in paragraph (a) of this section as determined by the Secretary of Labor or the 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 Secretaries of Labor and Education will provide training and technical assistance to States in order to implement this section. States must comply with the requirements of sec. 116(d)(5) of WIOA as explained in guidance.

■ 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 Delivery 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 Act 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 different Memoranda of Understanding between the Local Workforce Development Board and each partner?
463.510 How must 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 When is the sole-source selection of one-stop operators appropriate, and how is it conducted?
463.615 May an entity currently 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 center where the operator is not a governmental entity?
463.635 What is the compliance date of the provisions of this subpart?
463.700 What are the 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 Workforce Development Board, chief elected officials, and one-stop partners?
463.730 What is the State one-stop infrastructure funding mechanism?
463.731 What are the steps to determine the amount to be paid under the State one-stop infrastructure funding mechanism?
463.735 How are infrastructure cost budgets for the one-stop centers in a local area determined in the State one-stop infrastructure funding mechanism?
463.736 How does the Governor establish a cost allocation methodology used to determine the one-stop partner programs' proportionate shares of infrastructure costs under the State one-stop infrastructure funding mechanism?
463.737 How are one-stop partner programs' proportionate shares of infrastructure costs determined under the State one-stop infrastructure funding mechanism?
463.738 How are statewide caps on the contributions for one-stop infrastructure

funding determined in the State one-stop infrastructure funding mechanism?
463.740 What funds are used to pay for infrastructure costs in the State one-stop infrastructure funding mechanism?
463.745 What factors does the State Workforce Development Board use to develop the formula described in Workforce Innovation and Opportunity Act, which is used by the Governor to determine the appropriate one-stop infrastructure budget for each local area operating under the State infrastructure funding mechanism, if no reasonably implementable locally negotiated budget exists?
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?
463.760 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?

Authority: Secs. 503, 107, 121, 134, 189, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

Subpart J—Description of the One-Stop Delivery 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 employers 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 public 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 sec. 188 and its implementing regulations at 29 CFR part 38.

(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.

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

(a) A comprehensive one-stop center is a physical location where job seeker 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 20 CFR 680.200;

(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 the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III (Wagner-Peyser Act Employment Service program); 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 Workforce Development Board (WDB) may establish other service hours at other times to accommodate the schedules of individuals who work on regular business days. The State WDB 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 each partner program and its services means:

(1) Having a program staff member physically present at the one-stop center;

(2) Having a staff member from a different partner program physically present at the one-stop center appropriately trained to provide information to customers about the programs, services, and activities available through partner programs; or

(3) Making available a direct linkage through technology to program staff who can provide meaningful information or services.

(i) A ''direct linkage'' means providing direct connection at the one-stop center, 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.

(ii) A ''direct linkage'' cannot exclusively be providing a phone number or computer Web site or providing information, pamphlets, or materials.

(e) All comprehensive one-stop centers must be physically and programmatically accessible to individuals with disabilities, as described in 29 CFR part 38, the implementing regulations of WIOA sec. 188.

§ 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 job seeker 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 must be implemented in a manner that supplements and enhances customer access to services.

(b) As described in § 463.315, Wagner-Peyser Act employment services cannot be a stand-alone affiliated site.

(c) States, in conjunction with the Local WDBs, 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 WDBs must take expeditious steps to align lease expiration dates with efforts to consolidate one-stop operations into service points where Wagner-Peyser Act employment services are colocated 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 29 CFR part 38, the implementing regulations of WIOA sec. 188.

§ 463.315 Can a stand-alone Wagner-Peyser Act Employment Service office be designated as an affiliated one-stop site?

(a) Separate stand-alone Wagner-Peyser Act Employment Service offices are not permitted under WIOA, as also described in 20 CFR 652.202.

(b) If Wagner-Peyser Act employment services are provided at an affiliated site, there must be at least one or more other partners in the affiliated site with a physical presence of combined staff 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 Act employment services and any of these 3 programs are provided at an affiliated site, an additional partner or partners must have a presence of combined staff 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, as described in § 463.300(d)(3), must be connected to the comprehensive one-stop center and any appropriate affiliate one-stop centers, for example, by having processes in place to make referrals to these centers and the partner programs located in them. Wagner-Peyser Act 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 Act 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 delivery 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) The Wagner-Peyser Act Employment Service program authorized under the Wagner-Peyser Act (29 U.S.C. 49 *et seq.*), as amended by WIOA title III;

(3) The Adult Education and Family Literacy Act (AEFLA) program authorized under title II of WIOA;

(4) The Vocational Rehabilitation (VR) program authorized under title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 *et seq.*), as amended by WIOA title IV;

(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 postsecondary 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.

(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 work in collaboration or partnership with the local one-stop centers to deliver employment and training services to the TANF population unless inconsistent with the Governor's direction.

§ 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 delivery system if the Local WDB and chief elected official(s) approve the entity's participation.

(b) Additional partners may include, but are not limited to:

(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, but not limited to, 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 § 463.410, 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 must be the partner. Specific entities for particular programs are identified in paragraphs (b) through (e) 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 delivery system.

(b) For title II of WIOA, the entity or agency 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 or agency may delegate its responsibilities under paragraph (a) of this section to one or more eligible providers or consortium of eligible providers.

(c) For the VR program, authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV, 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 title I, 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, YouthBuild, 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 eligible recipient or recipients at the postsecondary level, or a consortium of eligible recipients at the postsecondary level in the local area. The eligible recipient at the postsecondary level may also request assistance from the State eligible agency in completing its responsibilities under paragraph (a) of this section.

§ 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;

(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 WDBs 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 based on proportionate use and relative benefit received;

(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.)

(c) Enter into an MOU with the Local WDB relating to the operation of the one-stop delivery system that meets the requirements of § 463.500(b);

(d) Participate in the operation of the one-stop delivery system consistent with the terms of the MOU, requirements of authorizing laws, the Federal cost principles, and all other applicable legal requirements; and

(e) Provide representation on the State and Local WDBs as required and participate in Board committees as needed.

§ 463.425 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 § 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.

§ 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. For the TANF program, States must provide individuals with the opportunity to initiate an application for TANF assistance and non-assistance benefits and services, which could be implemented through the provision of paper application forms or links to the application Web site;

(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 education, training, and workforce 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 TANF, and other supportive services and transportation provided through that program;

(10) Provision of information and 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 20 CFR 680.180);

(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 20 CFR 680.170);

(8) Workforce preparation activities;

(9) Financial literacy services as described in sec. 129(b)(2)(D) of WIOA and 20 CFR 681.500;

(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.

(d) In addition to the requirements in paragraph (a)(2) of this section, TANF agencies must identify employment services and related support being provided by the TANF program (within the local area) that qualify as career services and ensure access to them via the local one-stop delivery system.

§ 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 employers, 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. Local areas also must develop, convene, or implement industry or sector partnerships.

(b) Customized business services may be provided to employers, employer associations, or other such organizations. 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;

(vi) Creating job accommodations and using assistive technologies; or

(vii) Explaining labor and employment laws to help employers comply with discrimination, 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 WDB, or through the use of economic development, philanthropic, and other public and private resources in a manner determined appropriate by the Local WDB 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 postsecondary 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 20 CFR 679.560(b)(3).

§ 463.440 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 § 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 WDB 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 WDB. The Local WDB 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.

(d) Any fees earned are recognized as program income and must be expended by the partner in accordance with the partner program's authorizing statute, implementing regulations, and Federal cost principles identified in Uniform Guidance.

§ 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 WDB and the one-stop partners, 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) Agreement on funding the costs of the services and the operating costs of the system, 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.

(d) When fully executed, the MOU must contain the signatures of the Local WDB, 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 different Memoranda of Understanding between the Local Workforce Development 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 WDB, chief elected official and all partners. Alternatively, the Local WDB (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 WDB 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 must the Memorandum of Understanding be negotiated?

(a) WIOA emphasizes full and effective partnerships between Local WDBs, chief elected officials, and one-stop partners. Local WDBs and partners must enter into good-faith negotiations. Local WDBs, chief elected officials, and one-stop partners may also request assistance from a State agency responsible for administering the partner program, the Governor, State WDB, or other appropriate parties on other aspects of the MOU.

(b) Local WDBs and one-stop partners must establish, in the MOU, how they will fund the infrastructure costs and other shared costs of the one-stop centers. If agreement regarding infrastructure costs is not reached when

other sections of the MOU are ready, an interim infrastructure funding agreement may be included instead, as described in § 463.715(c). Once agreement on infrastructure funding is reached, the Local WDB and one-stop partners must amend the MOU to include the infrastructure funding of the one-stop centers. Infrastructure funding is described in detail in §§ 463.700 through 463.760.

(c) The Local WDB must report to the State WDB, Governor, and relevant State agency when MOU negotiations with one-stop partners have reached an impasse.

(1) The Local WDB and partners must document the negotiations and efforts that have taken place in the MOU. The State WDB, 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 WDB must report failure to execute an MOU with a required partner to the Governor, State WDB, and the State agency responsible for administering the partner's program. Additionally, if the State cannot assist the Local WDB in resolving the impasse, the Governor or the State WDB 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.

§ 463.600 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 § 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 WDB, with the approval of the chief 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 WDBs 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 20 CFR 679.430);

(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 20 CFR 683.295, the Uniform Guidance at 2 CFR part 200, 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 WDB 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 WDB 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 local procurement policies and procedures and the principles of competitive procurement in the Uniform Guidance set out at 2 CFR 200.318 through 200.326. All references to ''noncompetitive proposals'' in the Uniform Guidance at 2 CFR 200.320(f) will be read as ''sole source procurement'' for the purposes of implementing this section.

(d) Entities must prepare written documentation explaining the determination concerning the nature of the competitive process to be followed in selecting a one-stop operator.

§ 463.610 When is the sole-source selection of one-stop operators appropriate, and how is it conducted?

(a) States may select a one-stop operator through sole source selection when allowed under the same policies and procedures used for competitive procurement with non-Federal funds, while other non-Federal entities including subrecipients of a State (such as local areas) may select a one-stop operator through sole selection when consistent with local procurement policies and procedures and the Uniform Guidance set out at 2 CFR 200.320.

(b) In the event that sole source procurement is determined necessary and reasonable, in accordance with § 463.605(c), 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 20 CFR 679.430 for demonstrating internal controls and preventing conflict of interest.

(d) A Local WDB may 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 WDB must establish sufficient conflict of interest policies and procedures and these policies and procedures must be approved by the Governor.

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

(a) Local WDBs may 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 20 CFR 679.430 for demonstrating internal controls and preventing conflict of interest.

(b) State and local agencies may compete for and be selected as one-stop operators by the Local WDB, 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 20 CFR 679.430 for demonstrating internal controls and preventing conflict of interest.

(c) In the case of single-area States where the State WDB serves as the Local WDB, 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 20 CFR 679.430 for demonstrating internal controls and preventing conflicts 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 WDBs may establish additional roles of one-stop operator, including, but not limited to: Coordinating service providers across the one-stop delivery 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, which may include affiliated sites. The competition for a one-stop operator must clearly articulate the role of the one-stop operator.

(b)(1) Subject to paragraph (b)(2) of this section, 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; or develop and submit budget for activities of the Local WDB in the local area.

(2) An entity serving as a one-stop operator, that also serves a different role within the one-stop delivery system, may perform some or all of these functions when it is acting in its other role, if it has established sufficient firewalls and conflict of interest policies and procedures. The policies and procedures must conform to the specifications in 20 CFR 679.430 for demonstrating internal controls and preventing conflict of interest.

§ 463.625 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 WDB level regarding oversight, monitoring, and evaluation of performance of the service provider. The firewalls must conform to the specifications in 20 CFR 679.430 for demonstrating internal controls and preventing conflicts of interest.

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

Yes. State merit staff can continue to perform functions and activities in the one-stop center. The Local WDB 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 for the provision of Wagner-Peyser Act services or services from other programs with merit staffing requirements must be included in the competition for and final contract with the one-stop operator when Wagner-Peyser Act services or services from other programs with merit staffing requirements are being provided.

§ 463.635 What is the compliance date of the provisions of this subpart?

(a) No later than July 1, 2017, one-stop operators selected under the competitive process described in this subpart must be in place and operating the one-stop center.

(b) By November 17, 2016, every Local WDB 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 the 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 WDBs 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 WDB, and Local WDBs, and consistent with guidance and policies provided by the State WDB, 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, and relative benefit received, consistent with Office of Management and Budget (OMB) 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 WDBs, 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 use and relative benefit received, and consistent with Federal cost principles contained in the Uniform Guidance at 2 CFR part 200.

(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 based on its proportionate use of the one-stop centers and relative benefit received, consistent with Federal cost principles at 2 CFR part 200; and

(3) The timelines regarding notification to the Governor for not reaching local agreement and triggering the State funding mechanism described in § 463.730, and timelines for a one-stop partner to submit an appeal in the State funding mechanism.

§ 463.710 How are infrastructure costs funded?

Infrastructure costs are funded either through the local funding mechanism

described in § 463.715 or through the State funding mechanism described in § 463.730.

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

(a) In the local funding mechanism, the Local WDB, 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 funding mechanism must meet all of the following requirements:

(1) The infrastructure costs are funded through cash and fairly evaluated non-cash and third-party 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 WDB 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 its use of the one-stop center, relative to benefits received. Such costs must also 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 to the use of the one-stop center and relative 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 described in § 463.755, the Local WDB 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 WDB 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 funding agreement must be finalized within 6 months of when the MOU is signed. If the interim infrastructure funding agreement is not finalized within that timeframe, the Local WDB must notify the Governor, as described in § 463.725.

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

(a) In the local funding mechanism, one-stop partner programs may determine what funds they will use to pay for 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 programs authorized by title I of WIOA, these infrastructure costs may be considered program costs. In the case of partners administering adult education and literacy programs authorized by title II of WIOA, these funds must include Federal funds made available for the local administration of adult education and literacy programs authorized by title II of WIOA. These funds may also include non-Federal resources that are cash, in-kind or third-party contributions. In the case of partners administering the Carl D. Perkins Career and Technical Education Act of 2006, funds used to pay for infrastructure costs may include funds available for local administrative expenses, non-Federal resources that are cash, in-kind or third-party contributions, and may include other funds made available by the State.

(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 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 of the one-stop centers and relative benefit received by 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 part 200, including the Federal cost principles.

(c) Cash, non-cash, and third-party in-kind contributions may be provided by one-stop partners to cover their proportionate share of infrastructure costs.

(1) Cash contributions are cash funds provided to the Local WDB or its designee by one-stop partners, either directly or by an interagency transfer.

(2) Non-cash contributions are comprised of—

(i) Expenditures incurred by one-stop partners on behalf of the one-stop center; and

(ii) Non-cash contributions or goods or services contributed by a partner program and used by the one-stop center.

(3) Non-cash contributions, especially those set forth in paragraph (c)(2)(ii) of this section, must be valued consistent with 2 CFR 200.306 to ensure they are fairly evaluated and meet the partners' proportionate share.

(4) Third-party in-kind contributions are:

(i) Contributions of space, equipment, technology, non-personnel services, or other like items to support the infrastructure costs associated with one-stop operations, by a non-one-stop partner to support the one-stop center in general, not a specific partner; or

(ii) Contributions by a non-one-stop partner of space, equipment, technology, non-personnel services, or other like items to support the infrastructure costs associated with one-stop operations, to a one-stop partner to support its proportionate share of one-stop infrastructure costs.

(iii) In-kind contributions described in paragraphs (c)(4)(i) and (ii) of this section must be valued consistent with 2 CFR 200.306 and reconciled on a regular basis to ensure they are fairly evaluated and meet the proportionate share of the partner.

(5) All partner contributions, regardless of the type, must be reconciled on a regular basis (*i.e.,* monthly or quarterly), comparing actual expenses incurred to relative benefits received, to ensure each partner program is contributing its proportionate share in accordance with the terms of the MOU.

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

With regard to negotiations for infrastructure funding for Program Year (PY) 2017 and for each subsequent program year thereafter, if the Local WDB, chief elected officials, and one-stop partners do not reach consensus on methods of sufficiently funding local infrastructure through the local funding mechanism in accordance with the Governor's guidance issued under § 463.705 and consistent with the regulations in §§ 463.715 and 463.720, and include that consensus agreement in the signed MOU, then the Local WDB must notify the Governor by the deadline established by the Governor under § 463.705(b)(3). Once notified, the Governor must administer funding through the State funding mechanism, as described in §§ 463.730 through 463.738, for the program year impacted by the local area's failure to reach consensus.

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

(a) Consistent with sec. 121(h)(1)(A)(i)(II) of WIOA, if the Local WDB, chief elected official, and one-stop partners in a local area do not reach consensus agreement on methods of sufficiently funding the costs of infrastructure of one-stop centers for a program year, the State funding mechanism is applicable to the local area for that program year.

(b) In the State funding mechanism, the Governor, subject to the limitations in paragraph (c) of this section, determines one-stop partner contributions after consultation with the chief elected officials, Local WDBs, and the State WDB. This determination involves:

(1) The application of a budget for one-stop infrastructure costs as described in § 463.735, based on either agreement reached in the local area negotiations or the State WDB formula outlined in § 463.745;

(2) The determination of each local one-stop partner program's proportionate use of the one-stop delivery system and relative benefit received, consistent with the Uniform Guidance at 2 CFR part 200, including the Federal cost principles, the partner programs' authorizing laws and regulations, and other applicable legal requirements described in § 463.736; and

(3) The calculation of required statewide program caps on contributions to infrastructure costs from one-stop partner programs in areas operating under the State funding mechanism as described in § 463.738.

(c) In certain situations, the Governor does not determine the infrastructure cost contributions for some one-stop partner programs under the State funding mechanism.

(1) The Governor will not determine the contribution amounts for infrastructure funds for Native American program grantees described in 20 CFR part 684. The appropriate portion of funds to be provided by Native American program 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 States in which the policy-making authority is placed in an entity or official that is independent of the authority of the Governor with respect to the funds provided for adult education and literacy activities authorized under title II of WIOA, postsecondary career and technical education activities authorized under the Carl D. Perkins Career and Technical Education Act of 2006, or VR services authorized under title I of the Rehabilitation Act of 1973 (other than sec. 112 or part C), as amended by WIOA title IV, the determination of the amount each of the applicable partners must contribute to assist in paying the infrastructure costs of one-stop centers must be made by the official or chief officer of the entity with such authority, in consultation with the Governor.

(d) Any duty, ability, choice, responsibility, or other action otherwise related to the determination of infrastructure costs contributions that is assigned to the Governor in §§ 463.730 through 463.745 also applies to this decision-making process performed by the official or chief officer described in paragraph (c)(2) of this section.

§ 463.731 What are the steps to determine the amount to be paid under the State one-stop infrastructure funding mechanism?

(a) To initiate the State funding mechanism, a Local WDB that has not reached consensus on methods of sufficiently funding local infrastructure through the local funding mechanism as provided in § 463.725 must notify the Governor by the deadline established by the Governor under § 463.705(b)(3).

(b) Once a Local WDB has informed the Governor that no consensus has been reached:

(1) The Local WDB must provide the Governor with local negotiation materials in accordance with § 463.735(a).

(2) The Governor must determine the one-stop center budget by either:

(i) Accepting a budget previously agreed upon by partner programs in the local negotiations, in accordance with § 463.735(b)(1); or

(ii) Creating a budget for the one-stop center using the State WDB formula (described in § 463.745) in accordance with § 463.735(b)(3).

(3) The Governor then must establish a cost allocation methodology to determine the one-stop partner programs' proportionate shares of infrastructure costs, in accordance with § 463.736.

(4)(i) Using the methodology established under paragraph (b)(2)(ii) of this section, and taking into consideration the factors concerning individual partner programs listed in § 463.737(b)(2), the Governor must determine each partner's proportionate share of the infrastructure costs, in accordance with § 463.737(b)(1), and

(ii) In accordance with § 463.730(c), in some instances, the Governor does not determine a partner program's proportionate share of infrastructure funding costs, in which case it must be determined by the entities named in § 463.730(c)(1) and (2).

(5) The Governor must then calculate the statewide caps on the amounts that partner programs may be required to contribute toward infrastructure funding, according to the steps found at § 463.738(a)(1) through (4).

(6) The Governor must ensure that the aggregate total of the infrastructure contributions according to proportionate share required of all local partner programs in local areas under the State funding mechanism do not exceed the cap for that particular program, in accordance with § 463.738(b)(1). If the total does not exceed the cap, the Governor must direct each one-stop partner program to pay the amount determined under § 463.737(a) toward the infrastructure funding costs of the one-stop center. If the total does exceed the cap, then to determine the amount to direct each one-stop program to pay, the Governor may:

(i) Ascertain, in accordance with § 463.738(b)(2)(i), whether the local partner or partners whose proportionate shares are calculated above the individual program caps are willing to voluntarily contribute above the capped amount to equal that program's proportionate share; or

(ii) Choose from the options provided in § 463.738(b)(2)(ii), including having the local area re-enter negotiations to reassess each one-stop partner's proportionate share and make adjustments or identify alternate sources

of funding to make up the difference between the capped amount and the proportionate share of infrastructure funding of the one-stop partner.

(7) If none of the solutions given in paragraphs (b)(6)(i) and (ii) of this section prove to be viable, the Governor must reassess the proportionate shares of each one-stop partner so that the aggregate amount attributable to the local partners for each program is less than that program's cap amount. Upon such reassessment, the Governor must direct each one-stop partner program to pay the reassessed amount toward the infrastructure funding costs of the one-stop center.

§ 463.735 How are infrastructure cost budgets for the one-stop centers in a local area determined in the State one-stop infrastructure funding mechanism?

(a) Local WDBs must provide to the Governor appropriate and relevant materials and documents used in the negotiations under the local funding mechanism, including but not limited to: The local WIOA plan, the cost allocation method or methods proposed by the partners to be used in determining proportionate share, the proposed amounts or budget to fund infrastructure, the amount of total partner funds included, the type of funds or non-cash contributions, proposed one-stop center budgets, and any agreed upon or proposed MOUs.

(b)(1) If a local area has reached agreement as to the infrastructure budget for the one-stop centers in the local area, it must provide this budget to the Governor as required by paragraph (a) of this section. If, as a result of the agreed upon infrastructure budget, only the individual programmatic contributions to infrastructure funding based upon proportionate use of the one-stop centers and relative benefit received are at issue, the Governor may accept the budget, from which the Governor must calculate each partner's contribution consistent with the cost allocation methodologies contained in the Uniform Guidance found in 2 CFR part 200, as described in § 463.736.

(2) The Governor may also take into consideration the extent to which the partners in the local area have agreed in determining the proportionate shares, including any agreements reached at the local level by one or more partners, as well as any other element or product of the negotiating process provided to the Governor as required by paragraph (a) of this section.

(3) If a local area has not reached agreement as to the infrastructure budget for the one-stop centers in the local area, or if the Governor determines that the agreed upon budget does not adequately meet the needs of the local area or does not reasonably work within the confines of the local area's resources in accordance with the Governor's one-stop budget guidance (which is required to be issued by WIOA sec. 121(h)(1)(B) and under § 463.705), then, in accordance with § 463.745, the Governor must use the formula developed by the State WDB based on at least the factors required under § 463.745, and any associated weights to determine the local area budget.

§ 463.736 How does the Governor establish a cost allocation methodology used to determine the one-stop partner programs' proportionate shares of infrastructure costs under the State one-stop infrastructure funding mechanism?

Once the appropriate budget is determined for a local area through either method described in § 463.735 (by acceptance of a budget agreed upon in local negotiation or by the Governor applying the formula detailed in § 463.745), the Governor must determine the appropriate cost allocation methodology to be applied to the one-stop partners in such local area, consistent with the Federal cost principles permitted under 2 CFR part 200, to fund the infrastructure budget.

§ 463.737 How are one-stop partner programs' proportionate shares of infrastructure costs determined under the State one-stop infrastructure funding mechanism?

(a) The Governor must direct the one-stop partners in each local area that have not reached agreement under the local funding mechanism to pay what the Governor determines is each partner program's proportionate share of infrastructure funds for that area, subject to the application of the caps described in § 463.738.

(b)(1) The Governor must use the cost allocation methodology—as determined under § 463.736—to determine each partner's proportionate share of the infrastructure costs under the State funding mechanism, subject to considering the factors described in paragraph (b)(2) of this section.

(2) In determining each partner program's proportionate share of infrastructure costs, the Governor must take 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 WDB or information technology systems), as well as the statutory requirements for each partner program, the partner program's ability to fulfill such requirements, and all other applicable legal requirements. The Governor may also take into consideration the extent to which the partners in the local area have agreed in determining the proportionate shares, including any agreements reached at the local level by one or more partners, as well as any other materials or documents of the negotiating process, which must be provided to the Governor by the Local WDB and described in § 463.735(a).

§ 463.738 How are statewide caps on the contributions for one-stop infrastructure funding determined in the State one-stop infrastructure funding mechanism?

(a) The Governor must calculate the statewide cap on the contributions for one-stop infrastructure funding required to be provided by each one-stop partner program for those local areas that have not reached agreement. The cap is the amount determined under paragraph (a)(4) of this section, which the Governor derives by:

(1) First, determining the amount resulting from applying the percentage for the corresponding one-stop partner program provided in paragraph (d) of this section to the amount of Federal funds provided to carry out the one-stop partner program in the State for the applicable fiscal year;

(2) Second, selecting a factor (or factors) that reasonably indicates the use of one-stop centers in the State, applying such factor(s) to all local areas in the State, and determining the percentage of such factor(s) applicable to the local areas that reached agreement under the local funding mechanism in the State;

(3) Third, determining the amount resulting from applying the percentage determined in paragraph (a)(2) of this section to the amount determined under paragraph (a)(1) of this section for the one-stop partner program; and

(4) Fourth, determining the amount that results from subtracting the amount determined under paragraph (a)(3) of this section from the amount determined under paragraph (a)(1) of this section. The outcome of this final calculation results in the partner program's cap.

(b)(1) The Governor must ensure that the funds required to be contributed by each partner program in the local areas in the State under the State funding mechanism, in aggregate, do not exceed the statewide cap for each program as determined under paragraph (a) of this section.

(2) If the contributions initially determined under § 463.737 would exceed the applicable cap determined

under paragraph (a) of this section, the Governor may:

(i) Ascertain if the one-stop partner whose contribution would otherwise exceed the cap determined under paragraph (a) of this section will voluntarily contribute above the capped amount, so that the total contributions equal that partner's proportionate share. The one-stop partner's contribution must still be consistent with the program's authorizing laws and regulations, the Federal cost principles in 2 CFR part 200, and other applicable legal requirements; or

(ii) Direct or allow the Local WDB, chief elected officials, and one-stop partners to: Re-enter negotiations, as necessary; reduce the infrastructure costs to reflect the amount of funds that are available for such costs without exceeding the cap levels; reassess the proportionate share of each one-stop partner; or identify alternative sources of financing for one-stop infrastructure funding, consistent with the requirement that each one-stop partner pay an amount that is consistent with the proportionate use of the one-stop center and relative benefit received by the partner, the program's authorizing laws and regulations, the Federal cost principles in 2 CFR part 200, and other applicable legal requirements.

(3) If applicable under paragraph (b)(2)(ii) of this section, the Local WDB, chief elected officials, and one-stop partners, after renegotiation, may come to agreement, sign an MOU, and proceed under the local funding mechanism. Such actions do not require the redetermination of the applicable caps under paragraph (a) of this section.

(4) If, after renegotiation, agreement among partners still cannot be reached or alternate financing cannot be identified, the Governor may adjust the specified allocation, in accordance with the amounts available and the limitations described in paragraph (d) of this section. In determining these adjustments, the Governor may take into account information relating to the renegotiation as well as the information described in § 463.735(a).

(c) *Limitations.* Subject to paragraph (a) of this section and in accordance with WIOA sec. 121(h)(2)(D), the following limitations apply to the Governor's calculations of the amount that one-stop partners in local areas that have not reached agreement under the local funding mechanism may be required under § 463.736 to contribute to one-stop infrastructure funding:

(1) *WIOA formula programs and Wagner-Peyser Act 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 three percent of the amount of the program in the State for a program year.

(2) *Other one-stop partners.* For required one-stop partners other than those specified in paragraphs (c)(1), (3), (5), and (6) of this section, 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 program in the State for a fiscal year. For purposes of the Carl D. Perkins Career and Technical Education Act of 2006, the cap on contributions is determined based on the funds made available by the State for postsecondary level programs and activities under sec. 132 of the Carl D. Perkins Career and Technical Education Act and the amount of funds used by the State under sec. 112(a)(3) of the Perkins Act during the prior year to administer postsecondary level programs and activities, as applicable.

(3) Vocational Rehabilitation

(i) Within a State, for the entity or entities administering the programs described in WIOA sec. 121(b)(1)(B)(iv) and § 463.400, the allotment is based on the one State Federal fiscal year allotment, even in instances where that allotment is shared between two State agencies, and the cumulative portion of funds required to be contributed must not exceed—

(A) 0.75 percent of the amount of Federal funds provided to carry out such program in the State for Fiscal Year 2016 for purposes of applicability of the State funding mechanism for PY 2017;

(B) 1.0 percent of the amount provided to carry out such program in the State for Fiscal Year 2017 for purposes of applicability of the State funding mechanism for PY 2018;

(C) 1.25 percent of the amount provided to carry out such program in the State for Fiscal Year 2018 for purposes of applicability of the State funding mechanism for PY 2019;

(D) 1.5 percent of the amount provided to carry out such program in the State for Fiscal Year 2019 and following years for purposes of applicability of the State funding mechanism for PY 2020 and subsequent years.

(ii) The limitations set forth in paragraph (d)(3)(i) of this section for any given fiscal year must be based on the final VR allotment to the State in the applicable Federal fiscal year.

(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 Federal 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 § 463.737).

(5) *TANF programs.* For purposes of TANF, the cap on contributions is determined based on the total Federal TANF funds expended by the State for work, education, and training activities during the prior Federal fiscal year (as reported to the Department of Health and Human Services (HHS) on the quarterly TANF Financial Report form), plus any additional amount of Federal TANF funds that the State TANF agency reasonably determines was expended for administrative costs in connection with these activities but that was separately reported to HHS as an administrative cost. The State's contribution to the one-stop infrastructure must not exceed 1.5 percent of these combined expenditures.

(6) *Community Services Block Grant (CSBG) programs.* For purposes of CSBG, the cap on contributions will be based on the total amount of CSBG funds determined by the State to have been expended by local CSBG-eligible entities for the provision of employment and training activities during the prior Federal fiscal year for which information is available (as reported to HHS on the CSBG Annual Report) and any additional amount that the State CSBG agency reasonably determines was expended for administrative purposes in connection with these activities and was separately reported to HHS as an administrative cost. The State's contribution must not exceed 1.5 percent of these combined expenditures.

(d) For programs for which it is not otherwise feasible to determine the amount of Federal funding used by the program until the end of that program's operational year—because, for example, the funding available for education, employment, and training activities is included within funding for the program that may also be used for other unrelated activities—the determination of the Federal funds provided to carry out the program for a fiscal year under paragraph (a)(1) of this section may be determined by:

(1) The percentage of Federal funds available to the one-stop partner program that were used by the one-stop partner program for education, employment, and training activities in

the previous fiscal year for which data are available; and

(2) Applying the percentage determined under paragraph (d)(1) of this section to the total amount of Federal funds available to the one-stop partner program for the fiscal year for which the determination under paragraph (a)(1) of this section applies.

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

(a) In the State funding mechanism, infrastructure costs for WIOA title I programs, including Native American Programs described in 20 CFR part 684, may 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.*) may also be paid using program funds, administrative funds, or both.

(b) In the State 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.

(c) In the State 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 local administration and may be paid from funds made available by the State or non-Federal resources that are cash, in-kind, or third-party contributions.

(d) In the State funding mechanism, infrastructure costs for the Carl D. Perkins Career and Technical Education Act of 2006 must be paid from funds available for local administration of postsecondary level programs and activities to eligible recipients or consortia of eligible recipients and may be paid from funds made available by the State or non-Federal resources that are cash, in-kind, or third-party contributions.

§ 463.745 What factors does the State Workforce Development Board use to develop the formula described in Workforce Innovation and Opportunity Act, which is used by the Governor to determine the appropriate one-stop infrastructure budget for each local area operating under the State infrastructure funding mechanism, if no reasonably implementable locally negotiated budget exists?

The State WDB must develop a formula, as described in WIOA sec. 121(h)(3)(B), to be used by the Governor under § 463.735(b)(3) in determining the appropriate budget for the infrastructure costs of one-stop centers in the local areas that do not reach agreement under the local funding mechanism and are, therefore, subject to the State funding mechanism. The formula identifies the factors and corresponding weights for each factor that the Governor must use, which must include: the number of one-stop centers in a local area; the population served by such centers; the services provided by such centers; and any factors relating to the operations of such centers in the local area that the State WDB determines are appropriate. As indicated in § 463.735(b)(1), if the local area has agreed on such a budget, the Governor may accept that budget in lieu of applying the formula factors.

§ 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.

(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), the cost contribution caps in § 463.738, consistent with the process described in the State Plan.

(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 20 CFR 683.630.

(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.

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

The MOU, fully described in § 463.500, must contain the following information whether the local areas use either the local one-stop or the State 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 its use of the one-stop center and relative benefit received, and that complies with 2 CFR part 200 (or any corresponding similar regulation or ruling).

(c) Identification of all one-stop partners, chief elected officials, and Local WDB participating in the infrastructure funding arrangement.

(d) Steps the Local WDB, chief elected officials, and one-stop partners used to reach consensus or an assurance that the local area followed the guidance for the State funding process.

(e) Description of the process to be used among 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. These other costs must include applicable career services and may include other costs, including shared services.

(b) For the purposes of paragraph (a) of this section, 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 WDB's functions.

(c) Contributions to the additional costs related to operation of the one-stop delivery system may be cash, non-cash, or third-party in-kind contributions, consistent with how these are described in § 463.720(c).

(d) The shared costs described in paragraph (a) of this section 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 2 CFR part 200 (or any corresponding similar regulation or ruling) requiring that costs are allowable, reasonable, necessary, and allocable.

(e) Any shared costs agreed upon by the one-stop partners must be included in the MOU.

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

(a) The State WDB, in consultation with chief elected officials and Local WDBs, must establish objective criteria and procedures for Local WDBs to use when certifying one-stop centers.

(1) The State WDB, in consultation with chief elected officials and Local WDBs, 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 WDB'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 WDB is the one-stop operator as described in 20 CFR 679.410, the State WDB 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 access to partner program services to the maximum extent practicable, including providing services outside of regular business hours where there is a workforce need, as identified by the Local WDB. 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 38. 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;

(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; and

(6) Providing for the physical accessibility of the one-stop center to individuals with disabilities.

(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 part 463. 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 WDBs 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 WDB. The Local WDB may establish additional criteria, or set higher standards for service coordination, than those set by the State criteria. Local WDBs must review and update the criteria every 2 years as part of the Local Plan update process described in § 463.580. Local WDBs must certify one-stop centers in order to be eligible to use infrastructure funds in the State funding mechanism described in § 463.730.

(e) All one-stop centers must comply with applicable physical and programmatic accessibility requirements, as set forth in 29 CFR part 38, the implementing regulations of WIOA sec. 188.

§ 463.900 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 November 17, 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 primary electronic resources used by the one-stop delivery system, and on any newly printed, purchased, or created materials.

(c) As of July 1, 2017, 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, electronic resources, facilities, and related property and new materials used in the one-stop delivery system.

(d) One-stop partners, States, or local areas may use additional identifiers on their products, programs, activities, services, facilities, and related property and materials.

Signed at Washington, DC, this 29th day of June 2016.

Thomas E. Perez,

Secretary of Labor.

John B. King, Jr.,

Secretary of Education.

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