

Comments on the Workforce Innovation and Opportunity Act (WIOA) Notices of Proposed Rulemaking (NPRMs)

Relating to Immigrants and Limited English Proficient Individuals

June 2015

Introduction

Results from the international Survey of Adult Skills indicate that there are approximately 12 million working-age immigrants in the US who have limited English language, literacy, or math skills.¹ Many of these individuals are already working, but need greater skills in order to advance in the workforce. Others are not yet employed.

The Workforce Innovation and Opportunity Act (WIOA), passed in 2014, includes a number of important changes that have the potential to help states and localities aid eligible immigrants in improving their skills, pursuing education and training opportunities, and strengthening their ability to find family-sustaining employment. These activities are critical in fostering the three pillars (linguistic, civic, and economic) of immigrant integration articulated by the Department of Education's Networks for Integrating New Americans initiative, and reaffirmed in the recent White House Task Force on New Americans plan.²

However, in order to realize this potential, WIOA will need to be implemented with attention to the particular assets represented and barriers faced by immigrant adults and youth. The Notices of Proposed Rulemaking to which we are responding represent a powerful signal from federal agencies to the states and localities that are implementing WIOA. Our comments focus on areas in

¹ *Time for the US to Reskill?* OECD, 2014. "Working age" means between the ages of 16-64.

² The Task Force plan, *Strengthening Communities by Welcoming All Residents: A Federal Strategic Action Plan on Immigrant & Refugee Integration*, is available at:

https://www.whitehouse.gov/sites/default/files/docs/final_tf_newamericans_report_4-14-15_clean.pdf

which more can be done through the rulemaking and guidance processes to address issues facing immigrant and Limited English Proficient (LEP) individuals.

In particular, these comments are made in response to the Workforce Innovation and Opportunity Act Notice of Proposed Rulemaking (NPRM) RIN 1205-AB73, implementing Title I and Title III of WIOA; NPRM RIN 1830-AA22, implementing Title II of WIOA; and NPRM RIN 1205-AB74, “Joint Rule for Unified and Combined State Plans, Performance Accountability, and the OneStop System Joint Provisions.” We appreciate the opportunity to offer these suggestions to the U.S. Departments of Labor (DOL) and Education (ED) (collectively, the Departments).

State and local WIOA planning

WIOA for the first time requires states to submit a statewide plan that incorporates activities across all four titles of WIOA. While this focus on cooperation between WIOA’s workforce and adult education activities is a welcome one, it is vital that states be specifically and strongly encouraged to include additional partners in their state planning processes.

Inclusive planning is necessary to ensure that the full range of local and state expertise is drawn upon in creating WIOA plans. In particular, we recommend that states should include Title II adult education partners, as well as other immigrant-serving organizations, in their WIOA planning.

The Notices of Proposed Rulemaking make several references to “joint planning guidance” that will be issued by the Departments. We encourage the Departments to issue this guidance as expeditiously as possible. In addition, we urge the Departments to ensure that the guidance emphasizes the importance of an inclusive planning process that both analyzes local demographic data to inform its understanding of immigrant and Limited English Proficient constituents, and meaningfully incorporates the perspective of organizations with expertise in serving these populations.

Connections between Title I and Title II programs

While every state has one-stop centers³ in which WIOA Title I services are provided, states take different approaches to providing Title II services. Adult education activities may be carried out by a state’s community college system, by

³ Officially known as American Job Centers.

school districts, by nonprofit community-based organizations, or by some combination of these or other mechanisms.

Given this heterogeneity, it is all the more important that states have clear guidance from the Departments about strategies for aligning Title I and Title II services. This is especially significant given that immigrant and Limited English Proficient individuals are overwhelmingly concentrated in Title II services, and more rarely are able to take advantage of Title I opportunities. Today, approximately 700,000 individuals a year are served via Title II English language acquisition classes, representing 44% of all Title II participants.⁴ In comparison, just 1.5% of participants in Title I intensive or training services are LEP.

We encourage the Departments to provide additional guidance, whether through regulation or other types of policy directives, to states and localities regarding the alignment of Title I and Title II services to improve services to immigrant and LEP individuals. This guidance should acknowledge and allow for differences in eligibility criteria across the titles, encouraging states and localities to align services without precluding participation by individuals who may be eligible for services under one title but not another.

We also support the NPRM's affirmation that eligible individuals may be co-enrolled in Title I youth services and Title II adult education programs. Particularly for immigrant youth who have been granted Deferred Action for Childhood Arrivals (DACA) status and are still working to obtain their high school equivalency, simultaneous participation in Title I services can foster educational persistence and provide a valuable stepping stone to occupational credentials and higher wages.

In addition, formally affirming that all individuals with work authorization, including those granted Deferred Action, are eligible to participate in Title I programs – as was previously done through a DOL policy guidance regarding the earlier Workforce Investment Act – would be a powerful step in ensuring access for this subset of immigrant participants.

⁴ It is important to note that the actual percentage of LEP individuals served by Title II is even higher, as not all LEP individuals are taking English language acquisition classes. Others are participating in adult basic education or high school equivalency classes.

Priority of Service

The WIOA statute states that in addition to veterans, priority should be given to “public benefits recipients, other low-income individuals, and individuals who are basic skills deficient” when providing career and training services using Title I Adult funds.

However, the statute itself provides limited guidance as to how states are to operationalize this priority of service. Such guidance is needed: The percentage of individuals receiving Title I intensive or training services who are low income has dropped significantly over the past decade, from 64 percent in Program Year 2003 to 48 percent in PY 2013. Similarly, the number of individuals receiving intensive or training services who are Limited English Proficient dropped even more dramatically, to just 1.5 percent in PY 2013.⁵

We support Proposed §680.600(b), which requires states and local areas to establish criteria by which the one-stop operator will apply the priority, and to ensure that local plans include direction given regarding priority of service. These are important steps in affirming the importance of the priority and in allowing stakeholders to monitor its implementation.

However, we urge DOL to provide more detailed guidance on this topic, including an explanation of how states and localities will be monitored to ensure that an appropriate process or protocol is established, and what such protocols should include. DOL should also consider encouraging states and localities to assess the demographics of their Title I career and training participants in comparison to local US Census/American Community Survey statistics on low-income and limited English proficient individuals, and take steps to address any under-served populations.

Integrated English Literacy and Civics Education

We appreciate the new codification of Integrated English Literacy/Civics Education programs in the WIOA statute, and the specific affirmation that individuals with degrees and credentials from abroad are eligible to participate in such programs provided they meet standard eligibility criteria.

We note that this provides a fresh opportunity for the Departments to encourage creativity and innovation by providing guidance to states and Local Boards

⁵ Source: Department of Labor WIASRD Data Book, PY2013. Online at: http://www.doleta.gov/performance/results/pdf/PY_2013_WIASRD_Data_Book.pdf

regarding the options for implementing Integrated English Literacy/Civics Education programs. We think it would be a missed opportunity if such programs were conceptualized merely as English language acquisition for citizenship preparation. Rather, we encourage the Departments to provide diverse examples of how such programs may be designed, including ways in which they may represent components of sector partnerships and/or career pathways initiatives, and how they may facilitate the economic, linguistic, and civic integration of participants.

Program Exit

In proposed §677.150, the Departments request public comment on whether participants' WIOA exit should be calculated as a "program exit" from a single WIOA program or as a "common exit" based on the last staff-assisted service from all core programs. We would caution that being able to calculate a common exit will require states to be able to match and exchange data across agencies. This may be particularly challenging in states where the different WIOA programs do not collect the same data elements from participants – for example, it may be the case that Title I providers collect Social Security Numbers from participants, while Title II providers do not collect such information. Federal regulations and guidance on should take this issue into consideration.

Employment Rate

In Proposed §677.155(a)(1)(ii), the Departments seek comment on the advantages and disadvantages of collecting or reporting the employment retention rate in addition to the employment rate. We recommend *not* requiring collection or reporting on the employment retention rate. The Departments will already be able to gauge participants' labor-force participation based on the required reporting on employment in the 2nd quarter after exit and in the 4th quarter after exit.

Measuring whether an individual is still employed at the same job is not nearly as meaningful as whether he or she is still engaged in the labor market generally. This is particularly true for low-income immigrant workers, who are often employed in industries with higher-than-average turnover rates. In addition, measuring retention with the same employer could even disincentivize providers from informing participants about opportunities to change jobs, a particularly damaging result because such changes often provide a vital opportunity for workers to obtain higher-paying positions.

Measurable Skill Gains

In Proposed § 677.155(a)(1)(v), the Departments seek comment on how states can document participants' progression in an education or training program in a standardized way. In the shorter term, we endorse the continued use of Educational Functioning Levels (EFLs), as measured using validated testing instruments, as one approved method of documenting such progress under WIOA.

Over the longer term, we encourage the Departments to explore the refinement of EFLs and/or the development of other potential measures that can effectively document participants' progress toward educational goals.

Such education-focused measures represent an important indicator of progress for many immigrant and Limited English Proficient individuals being served in Title II adult education programs, including those who are still far from achieving high school equivalency.

Sector Partnerships

WIOA establishes the development and implementation of industry or sector partnership as a required activity at both the state and local levels. However, the NPRMs provide very limited guidance on how states are to carry out the requirements of the statute. We urge the Departments to issue additional guidance regarding the implementation of sector partnerships. In particular, guidance should emphasize the role of sector partnership conveners (whether Local Workforce Boards or others) in ensuring that partnerships take into account the needs and opportunities represented by immigrant and Limited English proficient workers, as well as facilitating participation by immigrant and LEP business owners as employer members in sector partnerships.

Career Pathways

WIOA for the first time codifies a definition of career pathways in federal law. We applaud this formalization of a valuable approach that is becoming increasingly widespread in the workforce field. However, we are concerned that the NPRMs include relatively little guidance on how career pathways are to be implemented.

We strongly urge the Departments to issue regulations pertaining to the implementation of career pathways. In particular, we recommend amending the unified state plan requirements to require states to describe how they will carry

out the requirements under WIOA sections 101(d)(3)(B) and 223(a)(1)(A) relating to the development of career pathways.

In addition, we recommend adding a new section, “How does the Local Board meet its requirement to develop and implement career pathways?” under CFR Part 679, Subpart C. The new section should clarify the minimum requirements that a Local Board must satisfy in order to demonstrate successful implementation of career pathways, including the establishment of a formal agreement or partnership between the Local Board, representatives of secondary and postsecondary education programs, and other entities that outlines the educational, training, and supportive services to be provided by each partner. Consistent with the language under section 107(d)(5), the agreement or partnership should include a description of how services will be provided to adults and youth, including those with barriers to employment.

In addition, we encourage the Departments to consider how additional guidance or publications can be used to encourage states and localities to ensure that career pathways under WIOA are accessible to eligible immigrants and Limited English Proficient individuals. The recent *Strategic Action Plan* released by the White House Task Force on New Americans made specific reference to a forthcoming *Career Pathways and Credentials Toolkit* which will “build awareness and capacity within the workforce system around promising credential attainment models for new Americans.”⁶ We encourage the Departments to use this publication to amplify and build awareness of states’ and localities’ requirements for career pathways under WIOA.

Tracking Outcomes: Use of Unemployment Insurance Wage Records

Proposed § 677.175 implements the requirement in sec. 116(i)(2) of WIOA that States use quarterly wage records, consistent with State law, to measure State and local progress on the performance accountability measures. We recommend that the Departments issue additional guidance on acceptable ways to track employment outcomes for participants for whom wage-record matching is not a viable solution. Some participants served in Title II programs, though employed, will not be able to be matched with state UI records. It is likely that immigrant and Limited English Proficient individuals will be over-represented in this non-matching group, which includes participants who work in a different state from the one in which they are receiving WIOA services; those who work for the

⁶ *Strengthening Communities by Welcoming All Residents: A Federal Strategic Action Plan on Immigrant & Refugee Integration*, page 77.

federal government; those who are self-employed or are independent contractors; and others.

It is critical that states be provided with alternative ways to verify the employment status of such participants, such as the use of paystubs or self-attestations, to ensure that the full array of outcomes is captured. In addition, the indicator outcomes shown on required performance reports should incorporate information from allowable alternatives to wage records.

Use of Regression Models to Adjust Performance Models

Proposed § 677.170(c) provides that the Secretaries will disseminate a statistical adjustment model that will be used to make the adjustments in the State adjusted levels of performance for actual economic condition and characteristics of participants including the factors required by WIOA sec. 116(b)(3)(A)(viii).

We commend the Departments for their commitment to using a statistical model to adjust performance levels. The Departments request comment on whether any additional factors should be considered in developing the model. We strongly encourage the Departments to include race and Hispanic ethnicity in the model. The disturbing persistence of education and employment barriers correlated with race and ethnicity affirms the importance of accounting for this factor in the statistical model.

Youth

WIOA represents a substantial shift from the prior Workforce Investment Act (WIA) legislation. In particular, WIOA increases the amount of Title I youth funding dedicated to out-of-school youth to 75% (up from the prior 30%), and expands the age range to include those between 16-24 years old.

Overall, immigrants represent more than 1 in 10 youth in this age range nationwide.⁷ In addition to the Title I/Title II co-enrollment issue mentioned above, we encourage the Departments to explore ways to encourage states and Local Boards to review their program design and recruitment strategies to ensure that they are reaching and effectively serving eligible immigrant and Limited English Proficient youth in their communities.

⁷US Census Bureau data from the 2009-13 American Community Survey show that 11% of youth ages 18-24 are foreign-born. (Data for 16- and 17-year-olds are grouped in the younger age category of ages 5-17, and are not included in this statistic.)

About these Comments

These comments were developed by National Immigration Law Center and National Skills Coalition. They are endorsed by those organizations as well as:

Asian Counseling and Referral Service
Building Skills Partnership
Causa
Community College Consortium for Immigrant Education
English for New Bostonians
Illinois Coalition for Immigrant and Refugee Rights
IMPRINT
The Literacy Council of Northern Virginia
MIRA Coalition
National Partnership for New Americans
National Immigration Forum
One America
Rhode Island Welcome Back Center
Spring Institute for Intercultural Learning
United We Dream
Upwardly Global
Welcome Back Initiative
Welcoming Center for New Pennsylvanians
World Education Services

About the National Immigration Law Center

The **National Immigration Law Center** (NILC) is a nonpartisan, national legal advocacy organization that works to advance and defend the rights of low-income immigrants and their families. Since its inception in 1979, NILC has earned a national reputation as a leading expert on the intersection of immigration law and the employment rights of low-income immigrants. NILC's extensive knowledge of the complex interplay between immigrants' legal status and their rights under U.S. employment laws is an important resource for immigrant rights coalitions and community groups, as well as policymakers, attorneys, labor unions, government agencies, educational institutions, and the media. NILC has long collaborated with an array of immigrant and worker advocacy organizations throughout the U.S. to help low-wage immigrant workers access and maintain quality employment as a means of securing economic stability.



About National Skills Coalition

National Skills Coalition is a broad-based coalition working toward a vision of an America that grows its economy by investing in its people so that every worker and every industry has the skills to compete and prosper. We engage in organizing, advocacy, and communications to advance state and federal policies that support these goals – policies that are based on the on-the-ground expertise of our members. NSC’s 4,000 members are drawn from the ranks of business, labor, community colleges, community-based organizations, and the public workforce system, across 30 states.



NATIONAL SKILLS COALITION
Every worker. Every industry. A strong economy.