American Association of Community Colleges
Association of Community College Trustees

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NPRM RIN 1205-AB73, RIN 1205-AB74 and RIN 1830-AA22

Dear Ms. Gagliardi and Campbell,

On behalf of the American Association of Community Colleges (AACC) and the Association of Community College Trustees (ACCT), which represent the nation's more than 1,100 community college presidents and their trustees, we are submitting the following comments regarding the Workforce Innovation and Opportunity Act (WIOA) Notice of Proposed Rulemaking (NPRM) RIN 1205-AB73 (Docket No. ETA-2015-0001), implementing Title I and Title III of WIOA, NPRM RIN 1205-AB74 (Docket No. ETA-2015-0002), Joint Rule for Unified and Combined State Plans, Performance Accountability, and the OneStop System Joint Provisions, and NPRM RIN 1830-AA22 (Docket ID ED-2015-OCTAE-0003). References to specific sections in our response to NPRM RIN 1205-AB74 correspond to 20 CFR, and should be read to also apply to the corresponding sections in 34 CFR.

NPRM RIN 1205-AB73

Access to Unemployment Compensation Wage Records
(20 CFR Part 603)
Proposed § 603.2

Community colleges support the steps taken by the Department of Labor (DOL) to increase access to state wage records by defining public institutions of higher education as "public officials" that have direct access to these records for the purposes of fulfilling WIOA reporting requirements. Presently, accessing this information by providing state unemployment insurance (UI) agencies with student information so that they could then match that with wage information has proven to be unworkable still in a number of states. We believe this more direct approach will be beneficial to the colleges and the workforce system, particularly in light of the WIOA requirements to provide earnings and employment information on all students in programs of study in which WIOA participants are enrolled. We note, however, that many community colleges do not routinely collect social security numbers from their students, so to the extent this access requires that information, it still may leave a hurdle in acquiring the needed information for reporting purposes.

Eligible Training Providers
(20 CFR Part 680, Subpart D)
Proposed Section 680.460

The burden associated with obtaining subsequent trainer provider eligibility under WIA provided a disincentive to some community colleges to make any or more of their programs eligible to receive WIA participants. The statute and the proposed regulations take steps to avoid this burden, thereby encouraging greater customer choice of training programs. However, some potential pitfalls remain if various sections of WIOA and the corresponding regulations are not well integrated. First and foremost, the regulations should state clearly that where the same information is duplicative to the information required in the eligible trainer provider (ETP) performance reports, that submission of those ETP reports satisfies the relevant information requirements in 680.460. DOL has taken a step towards this by recognizing that the provision of earnings and employment information on all students in a program via the performance reports addresses a similar requirement with respect to the ETP lists, but should go further in tightly coordinating the two sections. By doing this, the regulations would effectively prevent possible duplications of effort on the part of eligible trainer providers.

We appreciate the flexibility that the regulations provide to governors to use alternate measures until the first cycle of WIOA performance data is available. We encourage the use of other information already supplied for other state and federal accountability measures, such as Carl D. Perkins Act performance indicators.

NPRM RIN 1205-AB74

Unified and Combined State Plans
(20 CFR Part 676; 34 CFR Part 361, Subpart D; 34 CFR Part 463, Subpart H)

Community colleges serve a large and diverse population of students, many of whom also participate in a variety of federal workforce and education programs. Hence creating a comprehensive plan as required under WIOA is of great benefit to our institutions. The NPRM notes that additional guidance will be issued by the Departments on joint planning relative to the development of Unified and Combined State Plans. We encourage the Departments to expedite the availability of this guidance as its absence may hinder states in the planning process.

Additionally, a notable change from WIA to WIOA is that institutions of higher education are no longer mandatory members of the state workforce development board. Now as part of the strategic plan, states must detail how they will engage community colleges as partners in the workforce development system. As you develop additional guidance under joint planning we encourage requiring that states receive input and approval from community and technical colleges in the development of the strategic plan.

Performance Accountability
(20 CFR Part 677; 34 CFR Part 361, Subpart E; 34 CFR Part 463, Subpart I)
Proposed § 677.150

The departments seek comment on their proposed definitions of "participant" and "exit" for the purposes of the common performance indicators in § 677.150. One of the core aspects of evaluating performance accountability is determining who is a participant and the parameters by which they are assessed. Four of the six core indicators are triggered based upon a participant's 'exit' from a program. The NPRM proposes defining 'exit' as the last date of service; whereby a participant has not received any services for 90 days, and no future services are planned. We understand the desire for uniform definitions of these terms so as to better measure the impact that WIOA programs are having on their customers. We caution the department to ensure that the definition of "exit" as proposed is flexible enough to account for customary attendance patterns at an institution of higher education, particularly for those students that stop out during a summer term. We believe that the language of the regulation allows for this, by defining exit in part only "where no future services are planned." However, community colleges will often not be in a position to determine that a participant has left one of its programs with no expectation of returning for some time after the fact. Finally, as discussed below, the definitions as

proposed for "participant" and "exit" are very problematic when applied to all individuals in a program of study for purposes of the eligible training provider performance reports.

The Departments seek comment on the "measurable skills gains" indicator (§ 677.155(a)(1)(v) that would count participants that are in an education and training program during a program year who are achieving measurable skills gains towards a recognized postsecondary credential or employment. We support the Departments intention to use this indicator to measure interim progress of participants that are still enrolled in education and training programs. A shortfall of the WIA performance indicators was that they provided no way to positively count these individuals, thereby discouraging the placement of participants in longer-term education and training programs where warranted. We believe Congress's primary intent in including this indicator was to rectify this situation.

To avoid confusion and "double counting," it seems necessary to exclude from this indicator those who exit during a program year, however that term ends up being defined. At the same time, individuals should still be considered participants for as long as they are continuously enrolled (allowing for normal breaks in the academic schedule, such as summer term) in education and training programs and making measurable skills gains.

We strongly encourage the Departments to allow for flexibility in how measurable skills gains are to be documented, and in particular to recognize the various methods that community colleges already use for this purpose. The examples that the Departments list, particularly "a transcript or report card for either secondary or post-secondary education…that shows a participant is achieving the State unit's policies for academic standards," go some way in achieving that purpose. We encourage the Departments to add to this example language that specifies that students enrolled in Higher Education Act (HEA) Title IV eligible programs that are making "satisfactory academic progress" towards a degree or certificate as required by the HEA are deemed to be making measurable skills gains for the purposes of this indicator.

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

Of the six core indicators established in WIOA, effectiveness in serving employers is one of the more challenging metrics to establish. We appreciate and agree with the Departments desire to limit burden on employers, but caution on scaling this indicator back to only one metric. We have particular concerns with the sole use of the proposed metric on employee retention. For certain students or programs of study remaining with one employer for four quarters may not align with their career advancement, and does not accurately represent effectiveness. Additionally, we recommend measuring not just outputs, but inputs as well. The level of employer engagement and alignment with sector needs is also indicative of effectiveness.

Eligible Training Provider Performance Reports
Proposed § 677.230

AACC and ACCT agree with the Departments that, if implemented well, the eligible training provider performance reports may prove to be a useful tool for providing information to WIOA participants choosing among training providers. As discussed above, we strongly believe that these reports should serve as the primary vehicle for complying with the eligible training provider list information requirements and other similar provisions in the statute and regulations. The statute's provisions in this area create several challenges to effective regulation and implementation, and we make the following recommendations and seek clarification on some items.

Foremost among these complexities is how to report the levels of performance achieved for the primary performance indicators with respect to all individuals in a program of study as required by § 677.230(a)(5), not just WIOA participants. But applying the proposed definitions of "participant" and "exit" as they apply to WIOA participants to all students in an institution's program of study is not practicable and will produce confusing and misleading information for all stakeholders. For the reasons stated below, we believe that information on employment and earnings in this case should be based on a cohort of program completers. Put another way, the term "exit" as it applies to all individuals in a program of study should be defined as "completer."

Determining who is a participant in a particular program of study at a community college is much more complex than determining when a given individual becomes a WIOA participant. Students often explore courses or take courses applicable to a number of programs, and even then often move from program to program in rapid succession. It's feasible that a student may have declared themselves enrolled in a given program yet their behavior indicates otherwise. In short, there are not the same relatively clear cut events that allow someone to be dubbed a program participant at the outset as exists for WIOA participants vis a vis the core programs.

In the NPRM's preamble, the Departments stress the fact that the information in the performance reports will be of great use to a variety of stakeholders, and in particular WIOA participants choosing among training providers. We also believe that accurate earnings information is very valuable for current and prospective students. As WIOA participants examine these reports, they will be asking themselves "What are my employment prospects and potential earnings if I complete this training program?" Focusing this information on a completers cohort will provide the answer to that question. A cohort that includes all individuals that exit, and not just completers, will not. Encapsulating all exiters regardless of program completion will skew the earnings information for many community college programs. From a consumer information perspective it is essential to provide information on potential earnings for program completers, rather than combined earnings information of completers and non-completers. This would also be consistent with Gainful Employment regulations that only look at earnings data of program completers.

We seek clarification on the apparent disconnect between the fact that each of the elements on the eligible training provider reports is "with respect to each program of study" while at the same time several of the elements are to be disaggregated "by type of training entity." It is unclear how a report that is focused on a single program at a single training provider can be disaggregated in this manner. Rather, the language in the statute and the regulations seems to imply a hybrid report of sorts, with one part showing aggregated information from all training providers in the state (which is then disaggregated by type of training entity) and another section of the report with information pertaining to the specific program of study. We note further that disaggregation at the program of study level, by race, ethnicity and the other factors listed will often yield very small sample sizes that will be of little use, if not threaten the privacy of those students, because of the small size of many community college programs.

One of these elements is program cost information. We believe that supplying the published tuition rate for our colleges' programs will lead to the most useful information for WIOA participants in a manner that is not unduly burdensome for training providers.

Proposed § 677.230(e) establishes that a Governor may designate a State agency or entities to facilitate in the production and dissemination of ETP performance reports. This includes the data matching required to produce the ETP reports using quarterly wage data, and creating and disseminating the reports. The Departments are seeking comment on the relative burden to training providers under the new WIOA reporting requirements. Yet based on statue and the NPRM we are uncertain of the actual requirements of the training providers in this process. We appreciate the intent to limit burden on training providers, but seek further clarification on the role of training providers in generating ETP performance reports, and data on participants.

In general, however, the burden on training providers will be greatly alleviated by not requiring them to report any information that the state or local area already has in its possession, or is in a position to generate with the information in its possession. This would put the State in the best position to generate most performance data as it pertains to WIOA participants. For instance, States should generate all of the information required in § 677.230(a)(1), at a minimum.

We also note that many community colleges do not, as a matter of practice, collect student Social Security Numbers (SSNs), so any process that results in a de facto requirement that they do so would constitute a heavy burden for many institutions. The regulations must allow for generation of necessary employment and earnings information for non-WIOA participants in ways that are not reliant on student SSNs.

<u>One-Stop Delivery System</u>
(20 CFR Part 678; 34 CFR Part 361, subpart F; 34 CFR Part 463, subpart J)

Community colleges, which are often local recipients in at least two mandatory partner programs, are deeply invested in the operation and efficacy of the one-stop delivery system. Like many other aspects of the workforce development system, the envisioned coming together of local partners to share in the responsibility of operating the system has worked well in some areas and has caused friction in others. AACC and ACCT long supported a separate funding line item for the operation of this vital system, believing that its importance merited dedicated funding, but fiscal realities and other considerations rendered this option untenable. WIOA takes several steps to ensure that partner programs are shouldering their share of the load. After careful examination of the statute and proposed regulations, we believe there is a need for further clarity, particularly with respect to the state infrastructure spending mechanism as discussed below. Our particular recommendations are as follows:

- AACC and ACCT support the proposal in § 678.505 (page 20642) to provide for one "umbrella" MOU between the boards and all local partners or individual MOUs between partners and boards. We agree that, in general, an umbrella MOU is the best outcome on a policy level, but this option is necessary in situations where some local partners are cooperative and others are recalcitrant.

- § 678.600 (p. 20643) states that One-Stop Operators may be a single entity (the types of which are defined in statute and the regulation) or a consortium of entities. If that consortium consists of one-stop partners, at least three such partners must be part of the consortium. Taken together, these two provisions leave it somewhat uncertain whether a single one-stop partner is eligible to be a one-stop operator. We believe that past practice and the intent of the statute indicate that this is the case, so the regulations should clearly state that a single on-stop partner may be a one-stop operator, subject to the requirements in statute and regulations.

- In general, it is unclear to us exactly how the state one-stop infrastructure funding mechanism, laid out in Secs. 678.730 – 678.750, is intended to operate. Some language suggests a process whereby the governor will assemble a state-level fund with contributions from the partner programs, primarily at the state level and presumably after such time it is known how many local areas in the states have failed to fund their infrastructures through the local option. Using the formula established by the state board, the governor would then allocate these funds from the central repository to local areas that are using the state infrastructure funding mechanism. Other language in the regulations suggest that rather than there being a central fund from which monies would be allocated, the governor would decide on an area by area basis what the contributions from each partner should be and then collect and allocate those funds to the area. As this is an entirely new and significant addition to provisions governing the operation of the one-stop centers, we believe that the regulations should be as precise as possible as to exactly how this mechanism is intended to operate, including the timing of each step in the process.

- Other comments on the state infrastructure funding mechanism include:

    - § 678.735(c)(2) states that for purposes of the Carl D. Perkins Act, the 1.5% cap on partner contributions is "determined based on the funds made available for State administration of post-secondary level programs and activities" in keeping with the fact that only post-secondary Perkins is a mandatory partner. The plain language of this provision implies, then, that the denominator to be used for determining Perkins' 1.5% contribution cap is the amount used for administration of postsecondary programs and activities.

    - § 678.740(c) and (d) provide flexibility as to exactly what funds are used in the case of the adult basic education and Perkins CTE programs, including the option to use local administrative funds when eligible recipients have been delegated the authority from the state eligible agency to act as the local one-stop partner pursuant to § 678.415(e). We believe that, because what is envisioned is a state mechanism, provision of those funds from the state level is most appropriate, and involving local recipients' funds complicates the operation of the mechanism.

      Should the "local option" remain, however, certain steps must be taken to protect the local recipients in the same way that the statute and regulations limit the exposure of partner programs at the state level. Because the caps provided for in § 678.735 apply to statewide program amounts, it raises the possibility, in scenarios where a subset of local areas are using the state mechanism, that local partners may be asked to contribute amounts that exceed the cap percentages in each of the local areas, so long as the overall amount of funds provided by that partner program statewide stays under the cap. To avoid this situation, the regulations should specify that any delegation from the state agency to a local recipient of the responsibility to act as a one-stop partner should come with the same protections that are available at the state level, including the 1.5% contribution cap. In other words, the regulations should ensure that no local recipient is required to contribute more than the cap percentage out of local administrative funds.

    - As noted above, bilateral or multilateral MOUs are permitted under the regulations in § 678.505, raising the possibility that there will not be full agreement on infrastructure funding amongst all the partners, invoking the state mechanism even though one or more partners had agreed with the board as to their contribution to infrastructure funding. The regulations should direct the governor or responsible entity to take these MOUs into account when determining the proper contribution from the partner programs in any area where the state infrastructure funding mechanism is being utilized. Specifically, a signed MOU between a partner and a local board should take precedence and exempt the partner from contributions via the state mechanism. Establishing this priority is especially important because in-kind contributions to infrastructure responsibilities are permitted at the local level, but are not provided for in the state mechanism. Local partner should not lose the ability to contribute on an in-kind basis because of the actions (or lack thereof) of other partners.

NPRM RIN 1830-AA22
(34 CFR Part 463)

As providers of adult education programs at the local level, and in many states administrators of the program at the state level, community colleges have long advocated for tighter linkages between postsecondary education

programs and the programs funded under the Adult Education and Family Literacy Act (AEFLA, Title II). We are heartened to see WIOA statutory language and ensuing proposed regulations that move in this direction.

Local Board Review of Grant Applications
Proposed § 463.21

As part of the overall effort to better align workforce and adult education programs, this section regulates the statute's requirement that eligible adult education providers submit their grant applications or contracts to the relevant local workforce development board for review and recommendations to ensure coordination between available services. The proposed regulations detail the responsibilities of the eligible provider, which all seem reasonable. We suggest that there should also be a requirement on the local boards to conduct their reviews and make recommendations within a timeframe specified by the eligible agency. This requirement seems to be implied, but the regulation would be clearer if it is explicitly stated that the eligible agency has this authority.

Demonstrated Effectiveness of Local Providers
Proposed Section 463.24

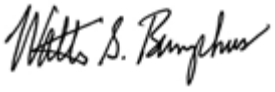
The Department asks for comments on the proposed means of demonstrating effectiveness for adult education providers that have been previously funded under Title II and those who have not. The proposed regulation in paragraph (a) requires providers to provide performance data on its record in a number of areas generally. Paragraph (b) requires that previously funded AEFLA providers submit data required under its accountability provisions, which eventually will be the new measures that apply to all core programs. It is unclear from the proposed regulation whether submission of the data required in paragraph (b) is sufficient to satisfy the more general requirements of paragraph (a), or merely a necessary element of what they must provide. Consistent with WIOA's and the proposed regulations intent to minimize burden on education and training providers, we believe that the former interpretation – data provided under paragraph (b) is sufficient - should prevail so that providers are not faced with overlapping, duplicative requirements to satisfy two different sections of WIOA.

English Language Acquisition Programs' Links to Postsecondary Education
Proposed Section 463.32

The Department invites suggestions on the methods suggested and other methods that an English Language Acquisition Program (ELAP) may use to meet the requirement that it leads to attainment of a secondary school diploma or its recognized equivalent and transition to postsecondary education and training or leads to employment. We believe that the means of meeting this requirement in the proposed regulation are reasonable and appropriate. We suggest one additional category: ELAPs that are offered by institutions of higher education that articulate with postsecondary programs at the institution. Many of these types of programs may very well fall under the proposed categories, particularly career pathways, but we believe it is important to ensure that all ELAPs that are offered by institutions of higher education and that offer a direct transition into postsecondary-level studies should be captured in this section.

We thank you for your consideration, and look forward to working with you throughout the implementation of WIOA.

Sincerely,



Walter G. Bumphus
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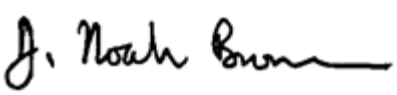

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