

**Planned Colorado Comments on Joint NPRM**  
**May 22, 2015**

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

**Comment:** In order for combined plans to be effective and efficient for all partners that opt in, the federal agencies responsible for the optional programs must accept the combined plan on the timeline outlined in WIOA and not prescribe more frequent updates or different timeframes for modifications and renewals. The submission deadlines must also align.

Final guidance needs to be issued with substantial time allowed for negotiating the levels of performance for State performance accountability measures so that that process can be concluded by the submission deadline.

**Part 677: Performance Accountability**

**Comment:** While WIOA retains purposes of AEFLA, though expanding them, it fails to recognize that some learners are strictly interested in supporting the educational development of their children. The application of these performance measures to AEFLA programs creates a shift in who can be served and will force programs to change their customer base or forego Title II funding. Specifically, the accountability measures create a disincentive to serve students who have more general language acquisition or basic skills goals, such as older adults, adults who have integration into the community as a goal, parents who want to take advantage of family literacy instruction but who have the intention to be stay at home parents, and undocumented individuals.

Some learners are not looking to be in the work force. And, if they were looking to get into the work force they would be faced with living in an area with high unemployment and very few opportunities for them. It appears that programs serving largely ESL populations would not qualify for funding anymore, and the benefits that shift brings to communities is questionable. Will DEd make other grant opportunities to help learners who wish to fit into their new home towns and make a better opportunity for their children?

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

- (a) Participant. A reportable individual who has received staff-assisted services after satisfying all applicable programmatic requirements for the provision of services, such as eligibility determination.
- (2) The following individuals are not Participants:
  - (ii) Individuals who only use the self-service system.

**Comment:** The proposed regulation defines a participant for performance purposes to exclude those who only used self-service systems. Colorado fully supports this approach as an effective way to focus performance measurement toward those customers who are most

engaged with the Workforce system. This approach also better adapts to those customers who continuously use the Title III self-service systems to maintain continuous contact with the labor market. This approach will avoid these customers staying active in the Workforce system indefinitely. We would recommend implementing this definition immediately and excluding any and all self-directed services from automatically extending the 90-day time period and reactivating a case. We believe this will have a positive impact on WIOA performance measures.

However, the proposed regulations clearly identify for Wagner Peyser only those individuals who receive a staff assisted services will be included in performance calculations. Since the numerator for the performance standards for Wagner Peyser may very well be significantly lower than previous years due to the exclusion of self-registrations, performance targets will need to renegotiated and not tied to previous years.

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

- (a)(1) The six primary indicators for performance are:
- (i) The percentage of participants, who are in unsubsidized employment during the second quarter after exit from the program;
  - (ii) The percentage of participants, who are in unsubsidized employment during the fourth quarter after exit from the program;
  - (iii) Median earnings of participants, who are in unsubsidized employment during the second quarter after exit from the program;
  - (iv) The percentage of participants who obtained a recognized post-secondary credential or a secondary school diploma, or its recognized equivalent during participation in or within 1 year after exit from the program. A participant who has obtained a secondary school diploma or its recognized equivalent is only included in this measure if the participant is also employed or is enrolled in an education or training program leading to a recognized post-secondary credential within 1 year from program exit;
  - (v) The percentage of participants who during a program year, are in an education or training program that leads to a recognized post-secondary credential or employment and who are achieving measurable skill gains, defined as documented academic, technical, occupational or other forms of progress, towards such a credential or employment.
  - (vi) Effectiveness in serving employers, based on indicators developed as required by sec. 116(b)(2)(A)(iv) of WIOA. (iii) Median earnings of participants, who are in unsubsidized employment during the second quarter after exit from the program.

**Comment:** The six primary indicators are valid measures of program performance. DVR suggests regulatory clarification and, as necessary, additional regulatory language pertaining to: individual skills measurement; data collection, sharing and management; and performance across the core programs.

The proposed regulation will use median earnings in the 2<sup>nd</sup> quarter after exit as a performance measure (iii). This type of measure will pressure states to serve those who least need our assistance in order to maximize performance. In order to prevent this we

support a strong performance model that will take into account the characteristics of the actual customers served in the performance period rather than in past years, and a negotiation process that will allow adjustments to the model for groups not considered in the model itself that would likely impact performance on this and other measures. A good example of this would be a program to serve ex-offenders. This group is likely to impact performance negatively, but might not be considered in the model.

DVR anticipates an increased burden for field and administrative staff as data collection is aligned statewide across the core WIOA programs and as a mechanism is created and implemented to track individuals for an extended period of time following exit from the program. Additionally, DVR anticipates increased costs as our electronic data collection system is modified to collect, manage and report the new data required by WIOA core program performance measures.

Adult education programs already collect interim progress data in reading, writing, math, and English prior to completing secondary goals. These measures are successful in providing feedback on program performance. Therefore, Performance Accountability measures should include the following:

1. At least one EFL in basic skills as defined by standardized, approved tests, with time intervals as defined by the test developers, based on standard measures.
2. Attainment of HS diploma or equivalent. This accountability measure should not be dependent upon employment or post-secondary enrollment after attainment.

**Comment:** 677.155(a)(1)(iv) would result in a strong disincentive to enroll participants in Title I programs that are only seeking career services that would not result in an industry recognized credential. We would support a change in this section to apply this measure only to those engaging in training services.

**Comment:** 677.155 (a)(1)(v), which measures progress toward the credential measured in this section, includes language limiting the measure to those “in an education or training program.” If that is intended for (a)(1)(iv) as well, more specific language would be helpful.

The proposed regulation discussion on pages 51 and 52 offers documentation options that are acceptable as examples. We want to ensure that these are only intended as options and that other documentation options could be developed in consultation with the regional office for other program types. Having the time period of measurement set at the 1<sup>st</sup> anniversary of enrollment and each year thereafter would fit well with the examples offered.

Additionally, DVR appreciates the regulatory recognition that measurable skills gain is not simply the product of an academic test or other standardized calculation. This recognition supports the fair measurement of skill gains for individuals with multiple barriers including individuals with disabilities who experience significant academic, educational and cognitive limitations. The inclusion in regulation of satisfactory or better milestones from an employer who is providing training, and the inclusion of measurable observable

performance based on industry standards can be more accurate measures of skill gains for individuals with multiple barriers including individuals with disabilities.

However, DVR is concerned that not all employers and positions use vetted industry standards to measure employee performance and growth, and recommends the inclusion of regulatory language that specifically allows reliance upon employer-developed performance plans with position-specific goals and objectives as a measure of skill gains.

**Comment:** With respect to potential employer performance measures in 677.155 (a)(1)(vi), Colorado has concerns with any measure that uses FEIN numbers as they are difficult to get from employers and often employers have more than one FEIN number. This would make measuring things such as the percentage of employers in the state served difficult to accurately measure. We would support a model that looks at retention of employers measured by the percentage of employers served in the current year who also used our services in the prior year.

In addition, we currently track employers who use a set of services beyond the basics, such as having customized hiring events at our offices. We would support customer satisfaction surveys for employers that access those more intensive services as part of a set of employer measures, but not surveys of all employers who use our services. The employers who received intensive services are usually more responsive to surveys.

Colorado DVR wishes to respond to the federal request for comment concerning how to best understand and measure the effectiveness of services provided to employers. DVR believes a count or percentage measure of the number of employers using the core programs, relative to the number of employers in an area, is not a good indicator of employer effectiveness. It is simply a measure of market penetration, which is of little value without accompanying qualitative and additional quantitative data. Colorado DVR believes qualitative measures are important.

While acknowledging the additional burden to employers, DVR believes that a mechanism for regular and ongoing employer follow up to assess satisfaction with core program services is important. Qualitative information, including the collection of information about the relationship between employers and core program staff, and the collection of information indicating reduced time and resources required by the employer for hiring qualified employees, could be collected and used to inform the State plan and to improve the program.

Valuable quantitative measures could include measures of employer engagement, such as a count of the employers involved in hiring events, workshops, mentorships and internships. The number of employers providing business-to-business referrals of core program services and service recipients, participation in employer networks and the use of the workforce development system's labor market exchange could be counted. Additional measures DVR believes to be valuable include *repeat* usage of the core programs by employers and the job retention of individuals following their receipt of services from core programs.

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

- (a) Section 116(d)(2) of WIOA requires States to submit a State performance report. The State performance report must be submitted annually using a template the Departments will disseminate and must provide, at a minimum, information on the actual performance levels achieved consistent with § 677.175 with respect to:
- (6) The amount of funds spent on each type of career and training service for the most recent program year and the 3 preceding program years, as applicable to the program

**Comment:** The proposed regulations require that states report the amount of funds spent on each type of career and training service. Specific payments to training providers can readily be tracked, but many of the career services will be provided by Workforce Center staff. In addition to the burden imposed by tracking staff hours devoted to these specific activities, any full accounting of the costs of these services would include indirect costs such as benefits paid to staff, building space and allocated costs for computers used to deliver the services, and other distributed costs. Overall, the effort required to determine these specific cost breakouts greatly exceeds the value of the information gained.

**§ 677.165 States may require additional indicators of performance:**

The proposed regulation indicates that States may identify additional indicators of performance, which must be included in the State Plan

**Comment:** Colorado DVR appreciates the opportunity that the newly proposed regulation offers for states to identify and propose additional indicators of performance. This will allow the variables unique to a state or a vocational rehabilitation or other core program, which impact performance, to be identified, analyzed and managed to measure and improve program performance.

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

- (c) An objective statistical adjustment model will be developed and disseminated by the Secretaries. The model will be based on:
- (2) The characteristics of participants...

**Comment:** The proposed regulations would establish a statistical model including characteristics of participants described in this section. We support the intent of this section, but wish to point out that while many of these characteristics will be well known for the Title I, II, and IV case managed programs, they will be much harder to obtain in the Title III programs that are often delivered by self-service systems. Information from Title III will generally be self-attestation, and customers on self-service systems often rebel against too many intrusive questions that aren't directly related to their purpose in using the system. In addition, some of the suggested factors such as "Low levels of literacy" will be impossible to collect on a self-service system. This suggests that Title III programs may need to use a version of the model that uses fewer factors and recognizes those customers' more limited interactions with counselors than in case managed programs.

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

- (d) The objective statistical adjustment model developed under paragraph (c) of this section will be:
- (1) Applied to the core programs' primary indicators upon availability of data which is necessary to populate the model and apply it to the programs;
  - (2) Subject to paragraph (d)(1) of this section, used before the beginning of a program year in order to establish State performance targets for the upcoming program year; and
  - (3) subject to paragraph (d)(1) of this section, used to revise performance levels at the end of a program year based on actual circumstances, consistent with sec. 116(b)(3)(vii) of WIOA.

**Comment:** The proposed regulations require that the statistical model be applied before the beginning of the program year and then at the end of the program year to allow revision of performance levels based on actual circumstances. We agree with the intent of this section, but want to ensure that the detailed model is available for the states to install within their own information systems so that it can be made accessible to the local areas and continuously adjusted targets based on current enrollments are available to both the state and the local areas throughout the year.

Additionally, states maintain expectations that item (2) will be as part of negotiation between states and ETA, and that the results of the model are not required without discussion and agreement. The steps referenced in (3) are new and clarification is needed as to whether or not states will be able/required to negotiate the final targets, or if the results from the model will be required without discussion.

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

**Comment:** The proposed regulations provide for sanctions if states fail to meet performance targets. We agree with the overall goal of this provision, but wish to note that setting the targets will require solid data in order to appropriately apply the sanction provisions of the law. Since the new measures are based on information that hasn't previously been tracked we feel that sanctions should not be applied for the first three years of the WIOA measures to allow enough data to be gathered to allow the targets to be appropriately established. In addition, the proposed regulations provide for sanctions if a program averages below 90% of the targets levels. This is significantly higher than the 80% level established for WIA, and will require a careful process be used in setting the targets. Especially in the early years of the new measures setting the averaged levels across program and across the measures at the 80% level for possible sanctions would be preferable.

On an ongoing basis, financial sanctions should not apply until the third performance failure to allow time for interventions and adjustments to work.

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

- (a) The Secretary of Labor and the Secretary of Education will reduce the Governor's Reserve Allotment by 5 percent of the maximum available amount for the immediately succeeding program year if:
- (1) The State fails to submit the State annual performance reports as required under WIOA sec. 116(d)(2), as defined in § 677.185; or
  - (2) The State fails to meet State adjusted levels of performance for the same primary performance indicator(s) under either § 677.190(d)(1) or § 677.190(d)(2) for the second consecutive year as defined in § 677.190.
- (b) If the State fails under paragraphs (a)(1) and (2) of this section in the same program year, the Secretary of Labor and the Secretary of Education will reduce the Governor's Reserve Allotment by 10 percent of the maximum available amount for the immediately succeeding program year.

**Comment:** Given that the Governor's Reserve Allotment will be reduced by failure to submit performance reports, or failure to meet performance standards, we are recommending that the regulations be amended to state that no reduction of the Governor's Reserve Allotment will occur unless such Allotment has been restored by Congressional action to the statutory level of 15% for the program year of funds impacted by the sanction.

DVR requests regulatory clarification pertaining to the impact to each program and across all core programs when one or more of the core programs identified within the Unified or Combined State Plan do not achieve the measures of performance to which they have committed.

Further, when financial sanctions are applied, the amount held back from the Governor's reserve for should be placed into a dedicated technical assistance fund for use in the state.

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

- (e) The Governor may designate one or more State agencies such as a State education agency or State educational authority to assist in overseeing eligible training provider performance and facilitating the production and dissemination of eligible training provider performance reports. These agencies may be the same agencies that are designated as responsible for administering the eligible training providers list as provided under § 680.500 of this chapter. The Governor or such agencies, or authorities, is responsible for:
- (1) Facilitating data matches between ETP records and UI wage data in order to produce the report;
  - (2) The creation and dissemination of the reports as described in paragraphs (a) through (d) of this section;

(3) Coordinating the dissemination of the performance reports with the eligible training provider list and the information required to accompany the list, as provided in § 680.500 of this chapter.

**Comment:** Allowing designation of a state education agency to assist with the eligible training provider list does allow better information for evaluating training providers, since the education agency can get social security numbers from other educational entities to match up with Unemployment Insurance wage data. This is a more effective option for tracking the performance of training programs, but is currently limited to in-state wage records. If the Wage Record Interchange System could be modified to allow sharing of these records at an individual level, this process could provide much more accurate information.

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

(2) A “direct linkage” does not include providing a phone number or computer Web site that can be used at an individual’s home; providing information, pamphlets, or materials; or making arrangements for the customer to receive services at a later time or on a different day.

**Comment:** As written, item 2 implies that all customers entering a one-stop center that may be eligible for partner programs, including programs designed for very low-income households, have internet access and a computer in their home. This is not true. For any individual without internet access at home, being able to use a computer at the one-stop center is a very useful service. This statement should be clarified to indicate that providing a computer with access to a web site that is used for enrollment or eligibility does qualify as a direct linkage.

For TANF, the program can be segmented into two parts: application/eligibility, and ongoing case management/services. The latter is contingent upon the former.

Eligibility: For application, if we define access as written, it would mean the ability to apply for benefits at the one-stop. While the application can be done online, this fails to meet the criteria of ‘direct linkage’. However, this is the preferred way to make an application across the system. Applicants must be interviewed as part of the eligibility process, and each county has their own business process for scheduling/conducting interviews. It may not be feasible to provide ‘access’ to Colorado Works as described in the Joint NPRM from an eligibility perspective, without causing undue burden on the system. Counties need to be able to complete phone interviews per their business processes and as applications are received during PEAK for new applications.

Case Management: Case management services can (and often are) be provided through a one-stop, in addition to all of the career services described. Dedicated staff must be provided in order to ensure program rules/requirements are met, to avoid potential audit or non-compliance, or harm to the customer. Data entry and decision on the case management side can impact the receipt of benefits, and necessary precautions would have

to be taken. Additionally, Colorado Works functions through a separate data system (CBMS), which would continue to be the case.

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

**Comment:** Assessment is done well by different entities - the system should ensure that clients/students are not over assessed and that results can be shared with all the one-stop partners.

**§ 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.

**Comment:** These regulations create confusion and possible conflict with the 678.305. To clarify, we request that language be adjusted to read: “(a) Basic career services must be made available in accordance with the methods outlined in 678.305, and, at a minimum...”

One Stop Services should be expanded to include “adult basic education,” in addition to English language acquisition and integrated education and training. It now includes services only for second language speakers and not for English language low skilled adults.

**§ 678.605 How is the one-stop operator selected?**

**Comment:** The timeline for frequency of the required one-stop procurement should be flexible and determined by the state and local areas.

**§ 678.710: How are infrastructure costs funded?**

**Comment:** Many local programs already have both formal and informal arrangements with one-stop centers that include in-kind services in lieu of any cash transfers. We are seeking confirmation that in-kind contributions can count towards infrastructure in both the local and state funding mechanisms. Further, clarification is needed as to whether or not fairly evaluated in-kind contributions that are assigned through the state funding mechanism are counted towards the 1.5% funding cap of partners.