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Notes from NASDCTEc’s WIOA NPRM Call

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Outline Key:

Legislative / Regulatory Terms: **WIOA** = Workforce Innovation and Opportunity Act; **NPRM** = Notice of Proposed Rulemaking

Key Terms: **CSP** = Combined State Plan; **ETP** = Eligible Training Provider; **MOU** = Memorandum of Understanding; **WDB** = Workforce Development Board; **WDA** = Workforce Development Area; **USP** = Unified State Plan;

Department Acronyms: **ED** = U.S. Department of Education; **DOL** = U.S. Department of Labor

Relevant Links:

* [Link to joint DOL / ED NPRM covering Unified and Combined State Plans, WIOA Accountability, and One-Stop System Provisions](#)

This is the most readable version of the joint NPRM. The below table of contents is also aligned with this version.

* Please note that the NPRM is divided into two sections— the first half contains a “plain English” justification / discussion of the proposed rule while the second half is the proposed rule itself.

WIOA NPRM Table of Contents:

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Summary of WIOA's State Planning Provisions

- WIOA **requires** the Governor, in conjunction with the State WDB, to develop a "Unified State Plan" (USP— *Sec. 102*)
 - o Must cover ALL core WIOA programs (the 6 programs directly authorized under WIOA)
 - All WIOA Title 1B programs
 - Adult and Family Literacy Act programs (Title II)
 - Wagner-Peyser Act Employment service programs (Title III)
 - Vocational Rehabilitation programs (VR) (Title IV)
 - o Must cover at least four years
 - o Deadline: March 3, 2016—ALL states must have submitted a USP by this time
 - o Must be approved by BOTH Secretary of DOL and ED
- **CTE Opportunity**: The Governor and State WDB should solicit feedback from ALL stakeholder groups, including required one-stop partner programs (i.e. Perkins) during plan development
 - o **Be sure to be proactive during this planning period**

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- WIOA also **allows** for a state to submit a “Combined State Plan” (CSP— Sec. 103)
 - o Must cover ALL core WIOA programs AND at least one (or more) required partner programs
 - All state Perkins activities (BOTH secondary and postsecondary) would be covered in a CSP (Sec. 103(a)(2)(A))
 - o Would be subject to same requirements as USP (deadline, minimum period covered etc.)
 - o **IMPORTANT:** There is a special provision in WIOA related to Perkins’ inclusion in a CSP (Sec. 103(c)(4))
 - Rule requires that the U.S. Secretary of Education approves Perkins’ inclusion in a CSP
 - Approval is distinctly different than the joint approval process for a USP
 - o Primarily concerned w/ reconciling Perkins’ core indicators of performance and WIOA’s common performance metrics
 - o Even if Perkins (or any of the program) is included in a CSP, the plan would still have to conform to the program’s authorizing statute (Perkins) and meet all of the requirements for a Perkins state plan

- ***So what does that mean if a state were to pursue a CSP?***
 - o States would essentially submit a State plan for Perkins that meets ALL of the requirements under Perkins Sec. 122 under the auspices of a WIOA CSP
 - o States would still have to meet / report on ALL core indicators of performance in Perkins Sec. 113
 - o Depending on what is decided in your state, a CSP **MAY ALSO** use WIOA common metrics
 - Reconciliation between WIOA-Perkins seems to come about for the negotiated performance levels only
 - o It remains unclear what benefits / incentives there are under WIOA for a state to pursue a CSP as currently written other than having all plans in one place

Summary of DOL / ED’s NPRM’s— State Planning Provisions

- **Key points to keep in mind as we consider the NPRM’s interpretation of WIOA:**
 - o The Administration is **STRONGLY** encouraging states to pursue and develop a CSP
 - o In lieu of further legislative activity, it remains unclear what incentive State Directors of CTE have with regards to Perkins’ participation in a CSP
 - CSP would still require the Perkins portion to meet ALL of Perkins’ state plan requirements
 - CSP would still require the Perkins portion to maintain and, to the extent possible, align Perkins indicators w/ WIOA’s
 - o The Governor, in consultation with the State WDB, ultimately determines whether a state will pursue a USP or a CSP
 - For a CSP, the Governor (et. al) would determine WHAT programs would be covered

- **§ 676.100**—*What is the purpose of the Unified and Combined State plans?*
 - o USP & CSP provide the state’s strategic vision for workforce development

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- Outlines the 4-year plan to achieve objectives laid out in the strategic vision using WIOA and related program funding
- **§ 676.140**—*What are the general requirements for submitting a Combined State Plan (CSP)?*
 - Must cover ALL six core WIOA programs (listed above) + one additional program (11 eligible programs total, including Perkins)
 - Note—ALL Perkins activities (both secondary and postsecondary) need to be covered in a CSP
 - CSP plan contents:
 - All of the info needed under a USP
 - (If Perkins is included) ALL of the information required under Perkins’ state planning requirements (Sec. 122)
 - A description of how activities / programs will be coordinated
 - ** An assurance that all [programs] covered under a CSP were able to give meaningful input and review ALL portions of CSP ((e))
 - *Each optional program under a CSP (including Perkins) would still be required to meet ALL existing statutory obligations*
- **§ 676.143**—*What is the submission and approval process for a Combined State Plan (CSP)?*
 - Follow same submission instructions that apply to a USP
 - Relevant Secretaries (i.e. those with oversight authority for a program) have 90 days to approve or disapprove (silence-is-approval provision remains)
 - **Special Perkins Rule:** If Perkins is included in a CSP, plan approval MUST ALSO include an “agreement between the State and [Secretary of ED]” related to Perkins’ state performance measures AND negotiated levels of performance
 - Again, this is a more detailed approval than the sign-off for a USP
- **§ 676.145**—*What are the requirements for modifications to a Combined State Plan (CSP)?*
 - No matter what, modifications to a CSP are due at the end of the 1st two years of the four-year plan (needs to be reflective of changes in the labor market)
 - Modifications must be submitted to State WDB for approval
 - States can always submit modifications more frequently
 - A modification may add a new program to be covered under a CSP
 - A modification is REQUIRED if changes to the authorizing statute (i.e. Perkins) are made during the covered period of the CSP
 - Modifications are subject to the same input / comment period as in the initial development of a USP or CSP
 - Approval of modifications still fall under the jurisdiction of the relevant Secretary (for Perkins this is ED Secretary)

Summary of WIOA’s Sharing of One-Stop Infrastructure Costs

- Under the Workforce Investment Act (WIA) and now WIOA, Perkins-funded postsecondary CTE programs have always been a required partner of the One-Stop system (*Sec. 121(b)(B)(vi)*)
 - WIOA is **explicit** that secondary education / CTE cannot and should not be implicated in the workforce system insofar as the One-Stop system is concerned
 - *Sec. 121(b)(1)(B)(vi)*
 - *Sec. 121(d)(3)*

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- Under WIA, Members of Congress felt that One-Stop partner programs had not been contributing their “fair share” into the One-Stop system
 - As a consequence, an increasing amount of WIA / WIOA funding was expended on the costs of the One-Stop infrastructure rather than on services & training
 - In WIOA, Congress created **TWO new provisions** that require One-Stop partner programs to contribute to the costs of operating the One-Stop centers
 - *Sec. 121(h)(1)(A)*

- **Option #1: Memorandum of Understanding (MOU) (Sec.121(c))**
 - ***IMPORTANT:*** *The NPRM refers to this option interchangeably as an “MOU” AND as a “local funding mechanism”—the two are the same and WIOA does not make reference to the latter term.*
 - The local WDB, chief elected official(s) in a local WDA, and the required One-Stop partners in a local WDA must come to agreement on the operation of the local WDA’s One-Stop center(s) (there is at least one center required for each WDA)
 - Each local WDA is required to **FIRST** attempt to come to an MOU
 - MOU would cover service delivery **AND** costs related to operation of the One-Stop center including infrastructure
 - **The Governor** must develop **criteria / guidelines** for how an MOU is negotiated, to be used by the state’s WDAs (*Sec. 121(h)(1)(B)*)
 - 1st, must consult state WDB, chief elected officials and local WDBs to develop these guidelines
 - 2nd, guidelines must, at a minimum, contain:
 - An objective method of determining the One-Stop partner program’s **proportional** use of the system
 - Objective guidance / rules for local WDAs to undertake these negotiations + a timeline for agreement

- **Option #2: Infrastructure Funding Mechanism (IFM) (Sec. 121(h)(2))**
 - ***IMPORTANT:*** *The NPRM refers to this option as the “state infrastructure funding mechanism”—we refer to it simply as the “Infrastructure Funding Mechanism” (IFM)*
 - **JULY 1, 2016 Deadline—**
 - If the local WDB, chief elected officials, and required One-Stop partner programs in a local WDA **do not come to an MOU**, WIOA’s IFM is triggered
 - Would apply **ONLY** to WDAs where an MOU is not reached
 - Must come from “Federal funds provided to a state (**including local areas within the State**) under the Federal law authorizing that program . . .” (*Sec. 121(h)(2)(A)*)—emphasis added by NASDCTEc
 - One-Stop partner programs’ contributions would be given to the Governor for later redistribution to **those** local WDAs where an MOU was not reached for funding One-Stop infrastructure costs
 - *Think of this as a “tax” on all the partner programs in a local WDA, which is collected by the Governor and later distributed back to those local WDAs where no MOU exists*

OPTION #2 CONTINUED ON NEXT PAGE

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- For instances where MOU is not reached, the Governor must develop **criteria / guidelines** outlining how One-Stop partner programs will make this contribution (*Sec. 121(h)(2)(C)*).—These are the rules governing the structure of the “tax” the Governor imposes on One-Stop partner programs in each local WDA
 - Each contribution must be representative of the partner program’s proportional use of the One-Stop system
 - Must take into consideration partner program’s own administrative capacity **not** related to the One-Stop system
 - Must take into account the partner program’s ability to meet its own existing statutory obligations **AND** ability to meet those obligations
 - Partner program contributions **MUST** come from Administrative funds:
 - “Shall be subject to the program’s limitations with respect to the portion of funds under such program that may be used for administration” (*Sec. 121(h)(2)(D)(i)(I)*)
 - CAPS Contribution for Perkins at 1.5% of “. . . Federal funds provided to carry out that program in the State for a fiscal year” (*Sec. 121(h)(2)(D)(ii)(III)*)
 - **SPECIAL EXCEPTION:** “In a State in which the State constitution or State statute places policymaking authority that is independent of the Authority of the Governor in an entity or official with respect to the funds provided to . . . [Perkins]” above considerations are made by Chief official / officer of that entity in consultation with the Governor (*Sec. 121(h)(2)(C)(ii)*)
- The Governor, must also establish an “appeals process” by which partner programs can appeal the above determination
 - *Process may only be MADE on the basis of contradicting the provisions laid out above— contained in Sec. 121(h)(2)(C)*
- Partner programs’ contributions, from each of a state’s local WDAs, are given to the Governor for reallocation among the local State’s WDAs which do not have an MOU
 - The STATE WDB will create an “allocation formula” which dictates how these funds are reallocated and have to be based on (*Sec. 121(h)(3)*):
 - # of One-Stop centers in a given local WDA
 - The population served by those centers
 - The services provided by those centers
 - Other factors deemed appropriate by the State WDB

Summary of DOL / ED’s NPRM’s— Sharing of One-Stop Infrastructure Costs

- Key points to keep in mind as we consider the NPRM’s interpretation of WIOA:
 - In WIOA, “policymaking authority independent of the Governor” remained unclear. The proposed NPRM’s seek to clarify Perkins’ role under this provision.
 - No distinction is made in Perkins between secondary and postsecondary admin funding
 - How can states reasonably and accurately estimate the division between the two?
 - Perkins state allocations and within state grants have separate admin set-asides for both the state **AND** local levels

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- It remains unclear whether the 1.5% cap would be used as a percentage out of Admin funding or as a specific dollar figure (is this 1.5% out of 5% or 1.5% of a dollar amount)
- ***Vast majority of states have Perkins eligible agency at a Secondary education Agency / Office despite WIOA's focus on postsecondary CTE

**** This point is particularly important as we turn to the NPRM's and ED/ DOL's interpretation of a "local partner" for Perkins*

- **§ 678.300**— *What is the One-Stop delivery system?*
 - The One-Stop delivery system is designed to bring together "partner programs" to deliver training, education and workforce development activities in each local WDA of a state
 - ((3)(e)) Required One-Stop partner programs must coordinate on the local One-Stop system's design and service delivery via an MOU for each local WDA
- **§ 678.305**— *What is a comprehensive One-Stop center and what must be provided there?*
 - A comprehensive one-stop center is the actual "physical location" in a local WDA
 - Individuals can access programs and services of ALL required One-Stop partner programs here
 - The One-Stop "system" is the combination of all these centers throughout the a state and throughout the country
- **§ 678.400**— *What are the "Required One-Stop partner programs" and what are their responsibilities?*
 - Required partner programs are responsible for administering their program in the local WDA
 - Lists out ALL required One-Stop partner programs
 - ((b)(6))—"Career and technical education programs at the post-secondary level authorized under the [Perkins Act]"
 - ONLY postsecondary CTE programs receiving funding from Perkins
- **§ 678.415**— *Who serves as the One-Stop partner for a program in a local WDA?*
 - ((e)) For Perkins, the **STATE'S PERKINS ELIGIBLE AGENCY** acts as the One-Stop partner for **EACH** local WDA
 - The State agency MAY delegate these responsibilities to:
 - One or more other state agencies
 - Postsecondary Perkins eligible recipients located in a local WDA
 - Consortia of postsecondary Perkins eligible recipients in a local WDA
- **§ 678.420**— *What are the roles and responsibilities of the required One-Stop partners in a local WDA?*
 - Provide access to its programs via the One-Stop system
 - Provide "career services" (i.e. training and education activities described in WIOA and elsewhere in the NPRMs)
 - Use a portion of their funds to pay for the One-Stop system (this could be covered in the MOU option outlined in WIOA or could be done via the IFM described there as well)
 - Partners would be required to enter into an MOU regarding the operation of the One-Stop system

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- **§ 678.500**— *What is the required MOU for the One-Stop system and what needs to be in it?*
 - An MOU must be negotiated and agreed to by the local WDB, local chief elected official, and ALL One-Stop partners in a local WDA.
 - Negotiations would make use of criteria / guidelines developed by the Governor for use in each of the local WDAs
 - MOU must cover:
 - Description of services to be provided via the One-Stop system (including how those services will be delivered and by which program)
 - An agreement on how to pay for the costs of services AND the infrastructure costs of the One-Stop centers
 - Must be updated at least once every 3 years
 - Before an MOU can go into effect, it must have signatures from representatives from local WDB, local chief elected official, and ALL partner programs

- **§ 678.505**— *Can there be more than one MOU in a local WDA?*
 - YES—an MOU can cover all parties listed above OR alternatively:
 - The local WDB can enter into individual MOU's with single partner programs or multiple partner programs
 - ALL requirements of a regular MOU still apply in this instance

- **§ 678.510**— *How are MOU's negotiated in a local WDA?*
 - All parties must enter into “good faith” negotiations on the topics listed above
 - MOU must develop a plan that covers infrastructure funding
 - If no agreement is reached, an interim measure (the IFM) can be used temporarily until there is agreement
 - Local WDB runs most aspects of the negotiations process
 - Local WDB must take minutes of negotiations and report back all actions to the state

- **§ 678.700**— *What are the “infrastructure costs” of a One-Stop center?*
 - Infrastructure costs cover ALL costs that are NOT related to personnel
 - Mainly covers the costs of keeping the center operational

- **§ 678.705**— *What guidance must the Governor issue regarding the funding of One-Stop infrastructure funding?*
 - Per WIOA (Sec. 121(h)(2)(C)) and this NPRM, the Governor must develop and distribute guidance and policies for use in local WDAs for the instances in which NO MOU is reached ((a))
 - Note this appears to be separate from the guidance the Governor (or chief program official) must issue in the IFM
 - The guidance must include ((a)(1)):
 - Outline the process for determining each **STATE ADMINISTERED** One-Stop partner program's contribution to infrastructure costs based on:
 - Partner program's proportionate use of the system
 - Federal and state costs principles
 - Describe the appropriate roles of the One-Stop partner programs in determining their contributions ((b)(1))

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- Provide an objective and reliable method for determining partner program contributions based on proportionate use AND the benefits received ((b)(2))
- The timeline for notifying the Governor if no MOU (at least an MOU containing agreement on infrastructure) is reached in a local WDA ((b)(3))

- **§ 678.710**— *How are infrastructure costs funded?*
 - These costs can be funded by the two options listed out in WIOA (Sec. 121(h)(1)):
 - **#1**— **An MOU** in a local WDA (must always be 1ST choice)
 - **#2** If no MOU in a local WDA, the **IFM** (NPRM refers to this as “the state level infrastructure funding mechanism)

- **§ 678.715**— *How are infrastructure costs funded under an MOU?*
 - ****Note**—NPRM refers to an MOU as the “local funding mechanism”
 - The infrastructure component of an MOU must:
 - Describe *how* the costs of infrastructure will be funded –
 - Cash, in-kind contributions, leveraged private donations are all acceptable forms of payment ((a)(1))
 - Contributions must be long-term; Cannot be a one-time gift ((a)(1))
 - Be negotiated among all the entities in a local WDA (all partner programs, chief elected officials, and local WDB)
 - One-Stop partner program contributions’ must be proportionate to use of the system and benefits received
 - ((c))—An interim funding agreement is allowable if all other parts of the MOU have been negotiated successfully. Interim agreement must:
 - Be finalized within 6 months of when the MOU is signed
 - Provide detail for how infrastructure costs will be covered for that period
 - If the interim agreement isn’t finalized within 6 months, the IFM is triggered

- **§ 678.720**— *What funds can be used to pay for infrastructure costs under an MOU?*
 - ((a))—for Perkins, funding provided under an MOU to meet their infrastructure funding obligation **MUST** come from:
 - Perkins STATE Admin funding for POSTSECONDARY CTE
 - Funding MAY also come from STATE MATCH (and in lieu of federal funds)
 - If State’s Perkins Eligible agency delegated responsibility to a local entity, that entity MAY use local Admin funding to contribute
 - Under an MOU, there are no required caps on how much a partner program can contribute to infrastructure ((b))
 - For Perkins, cannot exceed the 5% of STATE Admin

- **§ 678.725**— *What Happens if no MOU is reached in a local WDA?*
 - DEADLINE FOR AGREEMENT: July 1, 2016
 - If no agreement is reached by this date, the local WDB must notify the Governor who then would implement the IFM

- **§ 678.730**— *What is the infrastructure funding mechanism (IFM)?*
 - After consultation with chief elected officials, local WDBs, and the state WDB, the Governor must develop and distribute for local WDAs a uniform methodology for calculating One-Stop partner program contributions for infrastructure

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- This methodology is known as the IFM
 - It would levy a “tax” on all one-stop partner programs, in each local WDA where no MOU exists, based on the methodology listed out in 678.735 (below)
 - Funding from this is given to the Governor for later reallocation
 - At the same time, the State WDB develops **an allocation formula** to redistribute these contributions to the local WDAs where an MOU was not reached
- **§ 678.735**— *How are One-Stop partner program contributions determined in the IFM?*
- Governor’s uniform methodology for partner program contributions (IFM) would have to take account for:
 - Program’s proportionate use AND benefit from the One-Stop system
 - Ability of partner program to continue to administer its core program
 - Ability of partner program to meet its existing statutory obligations
 - **((b)(2))-- IMPORTANT:** “The chief officer or official” for each Perkins eligible agency would make the determination for Perkins’ contribution:
 - Nevertheless, the Perkins contribution is capped at 1.5% of “funds made available for the state administration of postsecondary CTE” ((c)(2))
- **§ 678.740**— *What funds are used to pay for infrastructure costs in the IFM?*
- ((d))—For Perkins, contributions to infrastructure:
 - **MUST** be paid from FEDERAL **OR** STATE funds for the state administration of postsecondary CTE
 - **MAY** be paid from local Admin funding **IF** a state delegates its authority to a local entity
- **§ 678.745**— *What funds are used to pay for infrastructure costs in the IFM?*
- In accordance with WIOA (Sec. 121(h)(3)), the “reallocation” formula must consider:
 - # of one-stop centers in a local WDA
 - The population in a local WDA
 - The services provided by the One-Stop Centers
 - And “other factors related to the performance” of the One-Stop centers, determined appropriate by the state WDB
 - This **COULD** allow for a reallocation of Perkins \$\$ between eligible postsecondary institutions as currently constructed
 - **HOWEVER**—both WIOA and the NPRM require that the allocation formula be “consistent with the Federal Cost principles” of the partner program
 - This means that existing regulations governing Perkins \$\$ take precedence **OVER** any new allocation formula
 - Existing Perkins statute also prevents redistribution among eligible entities within a State (i.e. they’d need to get any contribution paid back into the local WDA if a local contribution was made)
 - These two factors are most likely why the Departments are proposing to have the STATE agency and STATE funding on the table—they aren’t as tied up with existing regulations & statute