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

June 15, 2015

On behalf of the Association for Career and Technical Education (ACTE), representing America's teachers, administrators and counselors in the field of career and technical education (CTE), and the National Association of State Directors of Career Technical Education Consortium (NASDCTEc), representing the state and territory leaders of our nation's CTE system, we write to provide comments on the notices of proposed rulemaking referenced above regarding implementation of the Workforce Innovation and Opportunity Act.

Our comments are focused on **Docket No. ETA–2015–0002/RIN 1205-AB74** and **Docket No. ETA–2015–0001/RIN 1205-AB73**. In addition to these comments, we would also like to highlight comments submitted by the Workforce Data Quality Campaign (WDQC), which both of our organizations have endorsed and fully support. We have provided some supplementary information on key areas of those comments below as part of our joint submission in response to the Departments' proposal.

Docket No. ETA–2015–0002
Regulatory Information Number (RIN) 1205–AB74 and/or 1830– AA21
Workforce Innovation and Opportunity Act; Joint Rule for Unified and Combined State Plans, Performance Accountability, and the One-Stop System Joint Provisions; Notice of Proposed Rulemaking
http://www.gpo.gov/fdsys/pkg/FR-2015-04-16/pdf/2015-05528.pdf

A.) Unified and Combined State Plans

The Workforce Innovation and Opportunity Act's (WIOA's) call for better coordination among federal programs to improve efficiency, access and outcomes is potentially one of its strongest goals and most hopeful legacies. The unified and combined state planning options present a

state with opportunities to determine how best to support its education and workforce priorities, including leveraging existing, aligned initiatives, partnerships and investments.

We offer the following recommendations that we believe will clarify the legislative intent of WIOA's state planning provisions, as well as offer questions that we think will be critical to answer in subsequent combined plan guidance or a final regulation. When we offer specific language revisions to the NPRM, that language is *italicized and underlined.*

Future Combined State Plan Guidance

At present, the law's "combined state plan" option presents challenges, particularly when states attempt to reconcile WIOA's goals with their various statutory obligations and responsibilities under other federal programs, such as those contained in the Carl D. Perkins Career and Technical Education Act (Perkins). The NPRM makes many references to "joint planning guidance" that will be issued at a later date.

> **ACTION**: We strongly encourage the Departments to move quickly to disseminate this guidance, as we have heard from our memberships that states are likely to forego the opportunity to pursue a combined plan with Perkins without this additional clarity and guidance in hand.

Federal Review of Combined State Plans

As we read current statute and the NPRM, there appears to be little incentive for states to pursue a combined state plan other than as a demonstration of a philosophical desire to show program alignment. We believe there are valuable benefits that can be achieved through a combined state plan, but states need assurances that the combined plan review will be handled by the federal agencies in a manner different than how the unified plans were handled under the Workforce Investment Act (WIA), which was largely superficial in nature.

> **ACTION**: The federal WIOA state plan review process should enforce statutory requirements but should also consider the plan in a coordinated, cross-agency approach. States need additional clarity on how the federal agencies will manage the review process and make determinations, particularly when the statutes send mixed or conflicting direction.

Optional Programs' Role in State Plan Development, Review and Approval

The draft regulations at 20 CFR 676.105(d)(2), which implement the law's provisions regarding state strategic planning (WIOA sec. 102(b)(1)) under a Unified State Plan, specifically require states to include strategies for how core WIOA programs and optional programs will coordinate

and align. This requirement would ensure that states engage in cross-program planning and coordination among all related core and optional programs—a key feature of WIOA that our organizations fully support.

> **ACTION**: In order to strengthen this draft regulation, we encourage the Departments to amend proposed 676.105(d)(2) to include "*as described in §676.140(d)*" after the words "optional programs" to ensure that WIOA's required one-stop partner programs, including those authorized under the Perkins Act, are more clearly incorporated into this section of the joint NPRM.

The draft regulations at 20 CFR 676.130(c)(1), which outline the parties the State must seek public comment and input from prior to plan submission, do not explicitly include required one-stop partner programs as part of this list.

> **ACTION**: We recommend modifying 20 CFR 676.130(c)(1)to read: "(1) The opportunity for public comment must include the opportunity for comment by representatives of Local Boards and chief elected officials, businesses, representatives of labor organizations, community-based organizations, adult education providers, institutions of higher education, *one-stop partner programs described in 20 CFR 676.140(d)*, other stakeholders with an interest in services in provided by the six core programs, and the general public, including individuals with disabilities."

Preserving Optional Programs' State Leadership Designation and Authority

The draft regulations at 20 CFR 676.140(e)(4) reiterate WIOA's requirement that all of the entities responsible for planning or administering an eligible program described in a state's combined plan have a "meaningful opportunity to review and comment" on all portions of the plan. We support this provision and note that it accurately reflects the intent of WIOA. However, this proposed rule does not fully account for WIOA's statutory requirement that those programs remain subject to their original authorizing statutes.

> **ACTION**: As such we recommend 20 CFR 676.140(f) be strengthened to read: "Each optional program included in the combined state plan remains subject to the applicable program-specific requirements of the Federal law and regulations, and any other application legal or program requirements, governing the implementation and operation of that program. *This includes meeting all the definitions, designations and state plan requirements, procedures and regulations, including plan revision, amendment and hearing processes, as articulated in the optional program's authorizing statute and related Federal Regulations*. *Should the optional program's designated state leadership, as defined by its*

> *authorizing statute, disagree with any component of the State's combined plan, an opportunity must be provided for inclusion of dissenting opinions to be submitted with the state's submission to the Departments."*

This additional language clarifies and asserts the authority of the Perkins eligible agency—as defined by the Perkins Act's definition of a state's "eligible agency" (Public Law 109-270, Section 3(12)). It also clarifies that the state's designated Perkins eligible agency will remain responsible for and approve all components of a combined state plan that implicate Perkins funding.

This is particularly important to clarify in instances where the Perkins eligible agency does not fall under the direct line of authority or control of the Governor, who would be submitting the state's WIOA plan. Because the Perkins eligible agency must attest and sign-off on a great many federal assurances and administrative requirements, and is ultimately responsible to the federal government for Perkins fiscal and accountability reporting regardless of whether the state Perkins plan is separate or part of a WIOA combined plan, it is imperative that the Perkins eligible agency be assured its full authority to carry out these responsibilities under a combined state WIOA plan.

If decisions are made in conflict with the Perkins eligible agency's wishes or approval, there must be an ability by such entity or agency to indicate dissent in the combined state plan and provide recommendations for the plan's improvement.

WIOA and Perkins Accountability Provisions

Recognizing that the Departments' plan to release further "joint planning guidance" at a yet to-be-determined date, the draft regulations at 20 CFR 676.143(f) reiterate a special rule in WIOA for programs authorized by the Perkins Act directing the state to come to an agreement with the U.S. Secretary of Education regarding state performance measures.

> **ACTION**: We are requesting further clarification as to what accountability measures—whether WIOA's common metrics or Perkins core indicators of performance (Public Law 109-270, Section 113(b))—would take precedence under an agreement between the U.S. Secretary of Education and a state as described in 20 CFR 676.143(f). Given WIOA's requirement that any program incorporated in a combined state plan would still be "subject to the requirements . . . under the Federal law authorizing the program" (WIOA 103(b)(1)), it is unclear if a state were to pursue a combined state plan and include Perkins in it, whether the state would be required to simultaneously report both Perkins' current core indicators of performance *and* WIOA's common performance metrics. In

particular, clarity needs to be provided related to the potential interpretation and application of Perkins Section 113(b)(2)(C) and possibly (D).

While the WIOA and Perkins measures for postsecondary programs could be reconciled with some Departmental guidance, the secondary measures in WIOA and Perkins have very different audiences and goals. Perkins Section 113(A)(i) requires alignment of academic achievement standards, the same as those described in Section 1111(b) of the Elementary and Secondary Education Act (ESEA) and measured by the state-determined proficiency levels on the academic assessments described in section 1111(b)(3) of such Act, as well as Perkins Section 113(A)(iv), which requires alignment of student graduation rates as described in section 1111(b)(2)(C)(vi) of ESEA.

Also implicated in these decisions are 20 CFR 677.170, which identifies the process for determining state performance targets, and 20 CFR 677.180 through 677.210, which identify the local performance indicators and state and local sanctions and improvement processes. These processes all conflict with Perkins Sections 113 and 123. The NPRM asserts that Perkins' existing statutory requirements cannot be "trumped" by WIOA's new requirements within a combined state plan and we fully support and agree with this interpretation of WIOA. However, it is hard to understand how a state would not be required to live by multiple sets of rules related to performance accountability under a combined state plan as the law and joint NPRM are currently written.

Finally, it is important to clarify that Perkins requires a single state plan to be submitted as defined in Section 122(a). This plan covers both secondary and postsecondary CTE programs.

ACTION: As a consequence, it must be asserted in the joint NPRM or in the forthcoming combined state plan guidance that if a state chooses to include Perkins in a combined state plan, it is required to include the *totality* of the state plan and cannot break off the parts relevant only to postsecondary CTE.

B. Sharing of Infrastructure Costs for the One-Stop System

Under WIA and again in WIOA, Perkins-funded postsecondary CTE programs are a required partner of the one-stop delivery system. Our organizations understand the challenges faced by some local areas under WIA when attempting to balance the competing interests of funding one-stop centers' infrastructure versus the need to provide robust training services.

According to WIOA and reiterated by the NPRM, states and their local workforce development areas now have two options to support the infrastructure costs for local one-stop systems—the development of a *local* memorandum of understanding (MOU) or a *state-determined* funding mechanism. We understand that an overarching goal of WIOA is to build a collaborative and inclusive state-led workforce development system. This is a goal we fully endorse and support. Regrettably, we find the NPRM at best unclear, and often misguided in its interpretation of local infrastructure provisions, at times actually proposing to create new provisions not contained in the law. Further, we fear that the proposed NPRM will have an unfortunate, deleterious effect on systems' collaboration. If these proposed regulations stand, they will result in the worsening of or dissolution of many existing collaborations built upon local program partnerships and create significant conflict and role confusion between the state and local entities.

At present, both WIOA and the NPRM remain extremely difficult to follow, and there is a lack of understanding in the field about how to appropriately implement the law's various options for the sharing of local infrastructure costs for the one-stop system. The NPRM attempts to apply common provisions to all one-stop partner programs across the board, while also indicating that each one-stop partner program's authorizing law's provisions take precedence and cannot be circumvented. Because each one-stop partner program has its own unique law, provisions, regulations and requirements, it imperative for the NPRM to address each partner program individually rather than apply common guidelines to all.

Further, WIOA has specific and unique provisions that apply only to Perkins postsecondary programs. Those provisions must be clarified in the NPRM separately and distinctly from all other required one-stop partner programs. To illustrate the confusion caused by the joint NPRM, we call your attention to 20 CFR 678.720(a). This proposed regulation here applies to both Perkins and WIOA, Title II - Adult Education and Literacy. Both of these programs have different statutory constructs, administrative requirements / restrictions, local distribution funding formulas, and many other contrasting provisions. Lumping both programs into a common rule does little to provide the needed clarity to states and local communities who will need to implement these regulations.

> **ACTION**: We urge the Departments to revise the draft regulations starting at Subpart C (20 CFR 678.500 through 678.510) as well as Subpart E (20 CFR 678.700 through 678.760) in a way that clearly lays out all of the expectations for each one-stop partner program individually.

Additionally, we offer the following recommendations that we believe will significantly clarify the legislative intent of WIOA's one-stop infrastructure provisions:

Ensure Negotiations are Locally Driven and Locally Funded

The draft regulations at 20 CFR 678.400(b)(6) reiterate WIOA 121(b)(1)(B)(vi), which stipulates that only *CTE programs at the postsecondary level receiving Perkins funding* are required partners of the one-stop system. Nevertheless, the joint NPRM at proposed 20 CFR 678.415(e) contradicts both itself and the statute. Disconcertingly, the Departments have either disregarded the statute or misinterpreted it, and have made an arbitrary proposal in 20 CFR 678.415(e) to have a state's Perkins eligible agency act as the local one-stop partner for the purposes of negotiating a local MOU. Such a proposal lacks any support in the text of the law and would make an already complicated negotiation process that much more complex. Moreover, this proposal unduly and improperly burdens state agencies in what has been and what WIOA has always intended to be a *local* issue between *local* entities in a *local* area.

> **ACTION**: 20 CFR 678.415(e) should be revised to read: "For the Carl D. Perkins Career and Technical Education Act of 2006, the entity that carries out the program for the purposes of paragraph (a) of this section *is the local workforce development area's* ~~State eligible agency~~ *Perkins eligible institution*." ~~The State eligible agency may delegate its responsibilities under paragraph (a) of this section to one or more State agencies, eligible recipients at the post-secondary level, or consortia of eligible recipients at the post-secondary level."~~

We strongly contend that these negotiations should uphold the spirit of the law, which encourages *local* collaboration and leadership by and among *local* entities. The state should only be involved in these discussions when those local entities fail to come to agreement via the state-determined funding mechanism. The state does not have the capacity to fully understand and appreciate the local conditions, programs, services and possibilities, unique to each of a state's local areas that local CTE leadership can offer to a one-stop system. Tearing the negotiation authority out of the hands of local leadership, where it currently resides, will result in significant loss of credibility of local CTE leadership with their colleagues in the workforce development area.

Further, and perhaps most detrimental, this shift in negotiation responsibility will likely result in loss of services, collaborative offerings and contributions that benefit those served by the one-stop system because the state does not fully understand what may already be in place and available to be offered in each of a state's local workforce development areas. This proposal undermines the local partner program's ability to engage in key decisions being made during the local MOU negotiations, which is vital for the successful implementation of this Act. This proposal is akin to the U.S. Department of Education negotiating CTE's role, on behalf of the

Perkins eligible agency, in every state's combined state plan. This is neither desirable nor what the law intended.

Finally, we believe 20 CFR 678.720 is in error in its implication of Perkins *state* administration funding to support *local* one-stop infrastructure. Similar to the argument noted above related to local autonomy and leadership of its decision-making, we believe directing Perkins state administration is a violation of the uses of funds for such dollars as articulated in Perkins Section 112(a)(3).

> **ACTION**: 20 CFR 678.720(a) should be revised to read: ". . . In the case of partners administering ~~adult education and literacy programs authorized by title II of WIOA or~~ the Carl D. Perkins Career and Technical Education Act of 2006, these funds ~~may include Federal funds that are available for State administration of adult education and literacy programs authorized by title II of WIOA or for State administration of post-secondary level programs and activities under the Perkins' Act, and non-Federal funds that the partners contribute to meet these programs' matching or maintenance of effort requirements. These funds may also~~ *shall* include local administrative funds available to local *eligible institutions* ~~entities~~ or consortia of ~~local~~ *such institutions."* ~~entities that have been delegated authority to serve as one-stop local partners by a State eligible agency as permitted by 678.415(b) and (e).~~

The draft regulations at 20 CFR 678.720 also reference the "State administration of post-secondary programs" which further underscores the joint NPRM's misunderstanding of current Perkins statute. Such a proposal applies a set of assumptions that are inappropriate for the structure of Perkins funding as established by statute. Perkins calls for a single state eligible agency to be solely responsible for the execution and implementation of a single state plan. The funds the eligible agency receives for state administration and leadership are a single pot of funds and not divided among secondary and postsecondary CTE programs.

Segregating out "postsecondary" state administrative funds under Perkins is, for all intents and purposes, a non sequitur. The distribution of Perkins funding between secondary and postsecondary programs only happens at the local level, when the state applies its sub-state distribution of funds between secondary and postsecondary CTE eligible recipients (Perkins Section 122(c)(6)). Since each eligible institution applies for Perkins funding via a separate local postsecondary plan (Perkins Section 131), this further underscores the necessity of revising proposed 20 CFR 678.415(e) and 20 CFR 678.720 to apply solely to local-level funding made available to eligible institutions rather than the Perkins eligible agency and the state's administrative dollars.

State Funding Mechanism

Our organizations strongly support the proposal outlined in 20 CFR 678.735(b)(2). We concur with the Departments that WIOA's intent is to reinforce the authority for determining program contribution levels under the state funding mechanism of the chief official charged with overseeing that program. We agree and underscore the critical importance of preserving states' rights and governance of CTE as made through the determination of its Perkins eligible agency. As a consequence, we strongly urge the Departments to maintain 20 CFR 678.735(b)(2) in the final regulations.

However, in the context of the state funding mechanism described in proposed 20 CFR 678.730(a), further clarification from the Departments is needed as it relates to the meaning of "proportion to relative benefits received and consistent with the partner program's authorizing laws and regulations." It is critically important that the Departments recognize and factor into its final regulation that the Perkins Act funds *systems* and *programs*, not individuals. Consequently, the proportionality determination within the state funding mechanism will be difficult to implement as there is no such data source to determine relative benefit on a per-student basis in an objective, cost-effective manner.

> **ACTION**: The Departments must therefore clarify how Governors, or according to 678.735(b)(2) the Chief Official of the state's Perkins eligible agency, should determine this proportional benefit with regards to Perkins programs in a transparent, valid and reliable manner.

Our biggest concern related to the state funding mechanism, as proposed in the NPRM's 20 CFR 678.740(d), is the perverse incentive it appears to create for local workforce development areas to fail to come to agreement via a locally-developed MOU. We understand that there will be instances where local entities are not able to come to agreement and that in those instances, an objective and reasonable alternative funding mechanism must be put in place that ensures appropriate and proportional contributions by partner programs.

However, as 20 CFR 678.730(a), 20 CFR 678.735(a), 20 CFR 678.735(b)(2), 20 CFR 678.735(c)(2) and 20 CFR 678.740(d) are currently constructed, they dictate that not coming to agreement through a local MOU would result in local areas gaining access to state administrative funds via the state funding mechanism and its related reallocation process. We do not believe this is the intent of the state funding mechanism nor is this authorized by the statute. The state funding mechanism is intended to be a *disincentive* in order to prevent this situation from happening by removing authority from the locals to determine the allocation of its dollars, not rewarding it with additional state administrative dollars for lack of leadership or collaboration.

ACTION: 20 CFR 678.740(d) must first be corrected to note that it is eligible *institutions* that are the entities eligible for Section 132 funds for postsecondary CTE programs under the Perkins Act. Eligible recipients is a broader term, which includes institutions that are eligible to receive secondary CTE program funds. We note that similar changes will need to be made throughout the joint NPRM to reflect this consistently. Such a change will more accurately represent what is contained in statute, which reiterates that only postsecondary CTE programs authorized under Perkins are required partners of the one-stop system.

ACTION: 20 CFR 678.730(a), 20 CFR 678.735(a), 20 CFR 678.735(b)(2), 20 CFR 678.735(c)(2) and 20 CFR 678.740(d) must be clarified so that it is clear that the state funding mechanism results in the reallocation of the local one-stop partner programs' administrative funding within the local workforce development area and that it does not implicate or redirect any of the optional programs', namely Perkins, state administration funds.

To achieve this, we recommend the following revisions to the proposed joint NPRM:

20 CFR 678.730(a) should be revised to read: "In the State one-stop infrastructure funding mechanism, the Governor *or the official described in 678.735(b)(2)*, after consultation with the chief elected officials, Local Boards, and the State Board, determines *local* one-stop partner contributions, based upon a methodology where infrastructure costs are charged to each *local* partner in *the workforce development area* in proportion to relative benefits received and consistent with the *local* partner program's authorizing laws and regulations, 2 CFR chapter II, including Federal cost principles, and other applicable legal requirements described in 678.735(a)."

20 CFR 678.735(a) should be revised to read: "In the State one-stop funding mechanism, the Governor *or the official described in 678.735(b)(2)*, after consultation with State and local Boards and chief elected officials, will determine the amount each partner must contribute *out of local program administration allocations based upon the methodology described in 678.730(a)* to assist in paying the infrastructure of one-stop centers."

20 CFR 678.735(b)(2) should be revised to read: "In a State in which the State constitution or a State statute places policy-making authority that is independent of the authority of the Governor in an entity or official with respect to the funds provided for adult education and literacy activities, post-secondary career and technical education

activities, or vocational rehabilitation services, the chief officer of that entity or the official must determine the *local program* contribution amounts for infrastructure funds in consultation with the Governor."

20 CFR 678.740(d) should be revised to read: "In the State one-stop infrastructure funding mechanism, infrastructure costs for the Carl D. Perkins Career and Technical Education Act of 2006 must be paid from the Federal funds that are available ~~for State administration of post-secondary level programs and activities under the Perkins Act, or from non- Federal funds that the partner contributes to meet the program's matching or maintenance of effort requirements. Carl D. Perkins Career and Technical Education Act of 2006 may also be paid~~ for local administration of post-secondary level programs and activities to eligible *institutions* ~~recipients~~ or consortia of eligible *institutions*." ~~recipients delegated responsibilities to act as a local one-stop partner pursuant to 678.415(c)."~~

The joint NPRM at 20 CFR 678.735(c)(2) must also be clarified because it refers to state administration dollars in determining the statewide maximum, aggregate eligible one-stop contribution for local Perkins administration dollars. Some have misinterpreted this NPRM to mean that Perkins state administration dollars would be redirected to local areas under the state funding mechanism, which we do not believe is an accurate nor appropriate interpretation of the law. The correct interpretation of the intent of the statute is to limit the percent of *local* administration dollars that can be contributed by each Perkins eligible institution.

We believe that it is important to be consistent in how the 1.5 percent is calculated and suggest that the method described in proposed 20 CFR 677.195 (as outlined in the narrative explanation of the joint NPRM) that determines the state sanction of the Governor's reserve fund is also applied in this determination as well. This clarification is important because some have interpreted the NPRM to read that the 1.5 percent is of the state's *entire* Perkins allocation, which we contend is not an accurate interpretation of the statute in the slightest. WIOA makes clear that it is the postsecondary portion of Perkins that is implicated and only those funds dedicated for the purposes of administering postsecondary Perkins-funded programs. The recommended language below limits the local administration contribution to that of Perkins eligible institutions, which are the relevant postsecondary entities in these instances.

20 CFR 678.735(c)(2) should be revised to read: "The portion of funds required to be contributed must not exceed 1.5 percent of the amount of Federal funds provided to *an eligible institution under the Carl D. Perkins Career and Technical Education Act of 2006* for *local administration* ~~carry out that~~ of *postsecondary* education program*s* or employment and training program*s* ~~in the State for~~ *in* a fiscal year." ~~For the purposes of Carl D.~~

~~Perkins Career and Technical Education Act of 2006, the cap on contributions is determined based on the funds made available for State administration of post-secondary level programs and activities.~~

Clarification of Fiscal Provisions in the Reallocation Formula

ACTION: In both infrastructure funding options - the state funding mechanism and the local MOU - it is important for the Departments to clarify how a redirection of Federal funds from one program to another will not negatively impact the calculation of the Perkins Act's "maintenance of effort" provisions or Federal "supplement not supplant" provisions.

If in fact the Perkins statute takes precedence as indicated in the NPRM and under WIOA, it seems nearly impossible for a state not to violate these fiscal and administrative provisions if it redirects *any* Perkins state administration dollars to one-stop infrastructure. Additionally, if the erroneous interpretation of allowing Perkins state administration dollars to be implicated in the local funding of one-stop infrastructure stands, this will complicate, and in some instances contradict, Perkins' maintenance of effort and state matching requirements (Perkins Section 112(3)(b)), as well as the law's supplement not supplant provisions. We strongly believe that a redirection of state Perkins funds outside of its original, statutorily required purpose is not aligned with the allowable uses of funds for state administration as defined in Perkins Section 112(3).

Moreover, and in light of our above recommendations, the reallocation formula described in the joint NPRM at 20 CFR 678.745 must take the same considerations into account when determining how funds will be redistributed among a state's various local workforce development areas. The funds derived from local Perkins eligible institutions' administrative dollars will need to find their way back to that same local area in order to stay within Perkins' statutorily prescribed within-state allocation formula (Perkins Sec. 132(a)(2)). For instance, the Departments need to be clear that administrative funding contributed by a Perkins eligible institution in one area cannot be redirected, in part or in its entirety, to another local workforce development area in another part of the state as this would violate the Perkins Act. The state Perkins eligible agency is best positioned to make this determination and this is yet another reason why our recommendations throughout this submission would strengthen and improve the draft regulatory proposal put forth by the Departments.

C.) Eligible Training Providers Eligibility and Annual Performance Reports

Eligible Training Providers (ETPs) are a key part of the WIOA system, and as stated in the NPRM, the quality and selection of providers and programs of training services are vital to achieving the law's core principles. States and local areas are charged with working to ensure that ETPs offering a wide variety of job-driven training programs are available. However, the required eligibility procedures and annual performance reports present many challenges for even the highest-quality providers, and if not addressed, will create very real disincentives for participation. Listed below are several areas where additional clarification or guidance is necessary to ensure that the burden on educational institutions is minimized.

Performance Report Data Disaggregation

The proposal at 20 CFR 677.230 specifies the information required for the eligible training provider performance reports**.** One point of confusion in subsection (a) is the continued reference to disaggregating data by the "type of training entity," including in paragraphs 1(iii), (2) and (3). Since these are reports by individual eligible training providers, it is unclear how this disaggregation language should be interpreted.

> **ACTION:** While the references reflect statute, additional clarification is needed in the regulations as to the disaggregation expectations of each ETP and how these references should be interpreted.

Performance Report Definitions

Proposed 20 CFR 677.230(a)(4) provides that the ETP performance reports contain information on the total number of individuals exiting from a program of study (or its equivalent), and 20 CFR 677.230(a)(5) requires the reporting on the WIOA performance measures for all students in a particular program of study. While these measures may help to provide better information on the overall effectiveness of the program of study, they also raise many questions related to how these reporting measures can be structured to accommodate the way that students who are non-WIOA participants generally enroll in and progress through education programs at institutions of higher education.

One challenge is the use of the term "exit" in proposed 20 CFR 677.230(a)(4). The definition of exit used for WIOA participants is targeted at 90 days after an individual last receives services. In a traditional education environment, however, 90 days might merely be the equivalent of not taking classes for a summer term, and postsecondary research confirms that students often "stop out" for a semester and then return to school.

> **ACTION:** A different definition of "exit" is required to determine who should be included in this required reporting, and should take into account the wide variety of enrollment patterns in postsecondary institutions, as well as how to include students who change programs within an institution or transfer to another institution. When possible, additional guidance or the final regulation should seek to use existing data sources and definitions to streamline data collection and limit the burden on institutions.

The other side of this issue is the question of how students get counted as participating in the program of study in order to be included in the data set. Once again, the WIOA NPRM definition of "participant" is not applicable to all students in an education program, and includes references to WIOA services that are not paralleled during a typical non-WIOA student's enrollment in a postsecondary institution. Many postsecondary students never officially "enroll" in a program. Instead, a student might take courses for a period of time before deciding on a particular degree pathway, or even sample courses from several different programs before deciding on one.

These issues are even more critical in 20 CFR 677.230(a)(5). It must be clarified how participation in a program is defined and how exit is calculated in order to determine the appropriate population for reporting on the measures in a manner that is consistent, valid and useful to a variety of stakeholders.

> **ACTION**: An alternative definition of participant must be allowed by the Departments for use by Eligible Training Providers in their required reporting on all students. Due to the wide variety of postsecondary program structures, such definitions may require considerable local flexibility—it is likely a "one-size fits all" approach will not be feasible. When possible, additional guidance or the final regulation should seek to use existing data sources and definitions to streamline data collection and limit the burden on institutions. For instance, data already being reported at the state and federal level, such as that under programs like Perkins or requirements found in the Higher Education Act and further expanded upon by the U.S. Department of Education should be used when promulgating the final regulation or included in future Departmental guidance.

Data Matches

The proposal for the state to be required to facilitate data matches between ETP records and unemployment insurance (UI) wage data referenced in 20 CFR 677.230, and to be responsible for the creation and dissemination of performance reports, is an important step toward reducing burden for educational institutions. However, it is important to note that in many

states, the data sharing necessary to ensure this match has long been prohibited by state law or practice. Additionally, data from the UI wage record system often does not present a complete picture of employment, excluding the self-employed and those outside of an individual state. Provisions elsewhere in the NPRM suggest an expansion of the WRIS system, which we strongly support.

> **ACTION:** Moving forward, the Departments will need to provide substantial technical assistance to ensure that data matches can be completed. In addition, processes should be put into place to allow local programs to correct or supplement UI wage record data, particularly in geographic areas or industries where self-employment is common. Finally, WRIS and WRIS 2 should be revisited to make it easier for states to match and use data for reporting across programs.

Supporting ETPs in Meeting Reporting Requirements

One of the questions posed in the NPRM was how the Departments may best support ETPs in meeting the requirements of this section as well as how to make the ETP reports a useful tool for WIOA participants, ETPs, interested stakeholders and the general public. These are indeed critical questions, and if not handled appropriately, could result in many potential ETPs identifying the participation burden as too great, resulting in fewer high-quality training providers for WIOA participants to access.

> **ACTION:** Further guidance from the Departments should continue to emphasize the role of the state in facilitating data sharing and reducing the data burden on individual programs. Efforts must also be made to address challenges to such data sharing agreements, such as when ETPs lack social security numbers for students. In addition, the results generated from this data sharing should explicitly be permitted for use in other federal and state reporting to reduce overall burden on institutions. In order to ensure that the data made available through training reports is also useful to consumers, it must be aligned with data reported on educational programs from other sources, such as through any college ratings system, scorecards or gainful employment, otherwise it will merely confuse consumers and leave them with questions about how programs will actually meet their needs.

D.) Performance Accountability

State Performance Reports

According to the preamble, proposed 20 CFR 677.160(a)(9) implements the WIOA statutory allowance for the collection of information that facilitates comparisons of programs with

programs in other States, and the Departments are considering collecting a variety of supplemental information for this purpose. The list of possible additions to state reporting is long and many of the measures are not essential to ensuring program quality or comparisons between states, considering other information that is already being collected. We are particularly concerned about additional measures that would require new information from ETPs, such as those related to employment or education participation, as the burden on ETPs to collect and provide data is already very high.

> **ACTION:** As such, we recommend that Departments not require any additional data collection in a final rule, as the current proposal already lays out extensive requirements that will take a great deal of time and resources to be properly implemented.

Measurable Skills Gain Indicator

The preamble related to proposed 20 CFR 677.155(a)(1)(v) provides several questions about how the Departments should implement the indicator related to measurable skills gain. While it is important that this measure be standardized to the extent possible, the wide variety of programs it applies to may require additional nuance, as outlined in the list of possible measurement approaches. However, questions have emerged from our stakeholders about how this measure applies to shorter-term training programs that are completed within one year.

> **ACTION:** The NPRM should clarify the appropriate population to be included in this measure, whether all participants or only participants who have not "exited" for the purposes of other measures within a program year. In addition, clarification is needed as to whether program-developed assessments that may be offered in shorter-term programs would be an appropriate measurement tool.

Youth Earnings Indicators

The earnings measure for youth, proposed 20 CFR 677.155(d)(3), requires states to report on the median point for earnings for all program participants in unsubsidized employment in the second quarter after exit. Since postsecondary education is emphasized in WIOA as a positive outcome for youth as well, and many young adults must work at the same time they are pursuing their education (but often at lower overall wages), additional clarification is needed to ensure that wages of youth working part-time and still enrolled in education do not negatively impact program performance ratings.

> **ACTION:** This measure should exclude youth who are enrolled in postsecondary education or training. Otherwise postsecondary enrollment—a positive outcome—would skew an individual's earnings because of a reduction in the amount of hours

worked. We therefore recommend modifying proposed 20 CFR 677.155(d)(3) to read: "Median earnings of participants who are in unsubsidized employment, *and not enrolled in education or training activities*, during the second quarter after exit from the program;"

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Defining Work Experiences for Youth

Work experience is a valuable component of preparing youth for career success, and we support the emphasis placed on work experience as part of the WIOA youth program. However, questions have been raised related to the definition of work experience and how the requirements of including both academic and occupational education can be met in workplace settings. Additional guidance on these provisions would be helpful as programs seek to create seamless education and training experiences for youth.

ACTION: We recommend that the Department clarify the language of proposed 20 CFR 681.600(b), which implements the statutory requirement that work experiences must include "academic and occupational education," to indicate whether such education may be provided by the participating employer and whether all the education must be provided in the workplace. We recommend that such clarification allow for academic and occupational education to take place outside of a traditional workplace, where appropriate, and to be provided by an educational provider in partnership with the employer.

Coordination of ETP Applications and Reporting

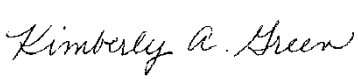
Proposed regulations in 20 CFR 680.460 outline application procedures for continued eligibility for ETPs, and paragraph (h)(1) requires that at least some supporting information on performance and cost be provided every two years. The data required in paragraph (g) of this section seems largely duplicative of information that is required to be submitted annually as part of the ETP performance report or through the accountability system at large.

ACTION: Provide additional clarification as to how the information required under 20 CFR 680.460 relates to the requirement for annual performance reports in 20 CFR 677.230. We recommend that specific language be included in the NPRM that references

how these reports can be combined so that data collection can be streamlined and coordinated to reduce duplication of effort.

We hope that these comments are helpful as the Departments develop a final rule that supports greater coordination and consistency within the workforce development system, while also recognizing the wide diversity of programs involved and unique needs of those partners and providers. Please do not hesitate to contact Steve Voytek (svoytek@careertech.org), NASDCTEc's government relations manager, or Alisha Hyslop (ahyslop@acteonline.org), ACTE's public policy director, should you have any clarifying questions about our comments or positions.

Sincerely,



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