



VIA ELECTRONIC SUBMISSION

June 15, 2015

Adele Gagliardi
Administrator
Office of Policy Development and Research
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: Docket ID ETA-2015-0001, Comments on ETA's Proposed Rulemaking on the Workforce Innovation and Opportunity Act (RIN 1205-AB73)

Dear Administrator Gagliardi:

The undersigned organizations hereby submit the following comments to the Department of Labor's Employment and Training Administration in response to the above referenced notice of proposed rulemaking (NPRM), published in the *Federal Register* on April 16, 2015, at 80 Fed. Reg. 20690.

Of all the improvements mandated by the Workforce Innovation and Opportunity Act (WIOA), by far the most significant are the enhanced incentives for employers to partner with the workforce system to design and provide occupational training.

Educators, employers and policymakers increasingly agree that employer engagement is vital and the key to effective, up-to-date training. We appreciate the ways in which WIOA promises to revamp the workforce system to be more responsive to employers: the enhanced opportunities for employers to offer training themselves, to partner with local educational institutions to make training more relevant and effective, and to serve in more meaningful and constructive ways on state and local bodies that plan and oversee training.

These incentives are enticing to the employers we represent. These and other opportunities will be lacking if the system does not work on the ground to engage employers (i.e., if incentives are inappropriate or unappealing, partnerships are poorly structured, requirements are too burdensome or employer input is ignored).

We appreciate the opportunity to comment on the NPRM for WIOA, and believe our comments offer constructive insight into improvements the U.S. Department of Labor can make to streamline the workforce and one-stop system, improve the engagement of employers in the system, and reduce inefficiencies in order to target more investments in worker training connected to employer skill needs. Following are our specific comments on the NPRM:

Local Board-Workforce Membership

Analysis: The WIOA statute says that workforce members of a Local Workforce Development Board shall include “representatives” of labor organizations or other representatives of employees where employees are not represented by such organizations. Because the statute uses the plural “representatives,” the Labor Department is interpreting this to mean at least two labor organization representatives where such organizations represent employees.¹

Comment: We believe the Labor Department’s interpretation is misplaced and that flexibility should be provided at the local level to determine how many members of labor organizations should be on the Local Board. In particular, in many local workforce investment areas, mandating two or more members of labor organizations disproportionately represents the demographic makeup of workers in an area where labor organization membership may not be very high. We understand that at least one member of the Local Board must be a member of a labor organization; however, the use of “representatives” should be interpreted as meaning the entirety of individuals fitting in the “workforce” category and not assuming it means only members of labor organizations. We urge the Labor Department to change this interpretation in the Final Rule, and interpret the statute as only mandating at least one member of the Local Board must be a member of a labor organization.

One-Stop Delivery and Apprenticeship

Analysis: The Labor Department is seeking comment on how individuals being served through the One-Stop system, including those receiving Individual Training Accounts (ITAs) and how they can best be served through apprenticeship.²

Comment: We believe the following elements should be part of all one-stop services related to apprenticeship:

1. While we understand that the statute provides automatic training provider eligibility for registered apprenticeship programs, we believe that an employer sponsored craft training program that is not registered, but leads to an industry-recognized credential should have an automatic initial eligible training provider determination. These programs promote employment, measurable skills enhancements and improved earnings for participants, and are industry-driven and valued by employers. After the one-year period of initial eligibility, the craft training program will meet the state requirements for continued eligibility as an eligible training provider.
2. Information on all available apprenticeship programs in a local area, both registered and craft training programs, should be available to individuals and presented in an unbiased fashion. One-stop system employees should make the full array of apprenticeship programs easily accessible and available to WIOA participants regardless of whether they are union-sponsored or open shop.
3. ITAs could be offered to pay for required educational courses and/or certifications as part of the work-based experience. To provide flexibility to participants regarding the skills, competencies and experiences necessary to fully qualify for an occupation through an apprenticeship opportunity, ITAs should be able to pay training providers, such as community colleges, for educational programming or industry certification,

¹ 80 Fed. Reg., at 20705; § 679.320(c)

² 80 Fed. Reg., at 20718; § 680.330

and employers directly for costs of industry certifications and/or training costs associated with the apprenticeship.

4. The Labor Department should encourage and accelerate processes to encourage use of competency-based apprenticeship models, provide additional guidance to the workforce system on use of competency-based apprenticeship and support use of ITAs for competency-based apprenticeship models.

Recognized Postsecondary Credential

Analysis: Throughout the NPRM, and when defining “program of training services,” the Labor Department uses the term “Recognized Postsecondary Credential.” Yet there is no definition of the term.³

Comment: We believe the term “Recognized Postsecondary Credential” should be defined. A proposed definition could be: “A degree, diploma, certificate, certification or completion of an apprenticeship program, provided by either an educational institution, employer, third-party industry association or industry accreditation body, which does not include a Certificate of Completion or similar document that is not widely recognized by multiple employers in a region or industry.”

Work-Based Training

Analysis: The Labor Department seeks multiple comments on work-based training, which includes on-the-job training (OJT), incumbent worker training, customized training, registered apprenticeship and transitional jobs. Work-based training is exempt from ITA and Eligible Training Provider requirements, and can occur via contract directly with an employer.⁴

Comment:

1. What is the best way to structure an incumbent worker training arrangement to assist workers with gaining new skills for higher level employment?

We believe that incumbent worker training is most effective when Local Boards and employers partner to provide workers with labor force attachment the opportunity to gain a higher level of skills or skills retraining while remaining employed. Incumbent worker training should promote career advancement, as well as layoff aversion, depending on the circumstance surrounding the company, industry and local economy.

An incumbent worker arrangement should be flexible with a shared interest in assuring the worker is successful in meeting an employment goal through the training. Suggested metrics that could be outlined prior to incumbent worker training could include earnings gains, new skills and competencies gained, new certifications received and/or number of employees migrating into new employment, especially in the case of layoff aversion.

2. Should “extraordinary costs” be defined, and if so, what is the definition, as it pertains to OJT?

We do not believe the Labor Department should define “extraordinary costs” and, instead, leave this to local discretion. OJT arrangements must be applicable to local labor market conditions and needs of employers and workers.

³ 80 Fed. Reg., at 20720; § 680.420

⁴ 80 Fed. Reg., at 20728-20730; § 680.700-850

3. How should "competitiveness of participant" be defined with regard to raising the OJT reimbursement rate to 75 percent?

We do not believe "competitiveness of participant" should be defined in the Final Rule and that other factors for consideration at the state and local levels, such as size of employer, are the most appropriate factors for determining OJT reimbursement rates. We also believe that Local Boards should be encouraged to implement policies that promote higher OJT reimbursement rates, in particular when it promotes increased employment opportunities and labor market attachment for workers who need job experience and middle skills.

4. What is an appropriate amount of time for OJT funds to be used for apprenticeship programs?

Most apprenticeship programs are four years long. We believe that OJT funds should remain with the participant during the entire duration of the apprenticeship. It is more important to have a higher OJT reimbursement rate at the front end of the apprenticeship to promote initial participant retention due to the likelihood that a participant will persist and complete the apprenticeship if completing the initial six months. Later in the apprenticeship, the OJT reimbursement rate could decrease.

5. Use of the term "significant cost of training" with regard to employer requirements for customized training.

We believe the term "significant" is vague and arbitrary and should be eliminated as part of the criterion for customized training. Customized training is most effective when an employer has specific skill needs and is able to procure a training provider, such as a community college, that can quickly implement the training program and produce the skilled workers needed by the employer. Local Boards have an interest in sharing in the costs of customized training with employers, as it enhances local and regional employment and is one of the most effective sector strategies, which are promoted by WIOA.

6. Use of the "self-sufficiency wage" standard as part of Local Board policy with regard to appropriateness of OJT and customized training.

We do not believe "self-sufficiency wage" should be a criterion or standard for use by Local Boards in determining appropriateness of any work-based training arrangement. This standard is arbitrary, holds many different meanings to different people in different communities, and has the potential effect of discouraging work-based training and partnerships with employers. We strongly urge the Labor Department to eliminate this standard where mentioned currently in the NPRM. If some type of factor or metric is desired, we encourage a more objective measure such as wage gain.

7. How should customized training be distinguished from OJT?

OJT is an effective training strategy for individuals needing labor force attachment and an opportunity to gain both work experience and skills. It is an opportunity for Local Boards and employers to partner to promote increased employment opportunities in communities through a shared investment in the skills of workers. Customized training is typically for workers already employed by the company or another employer who can gain very specific skills needed by an employer in order to meet the processes and production needs of the employer. For instance, individuals can learn welding through a variety of training methods; however, customized training could be targeted at a specific type of weld or ability to weld with certain materials used by the employer. We believe improved arrangements between community colleges and employers could promote more customized training and skills enhancement opportunities for workers.

8. Who is an “incumbent worker”?

We believe the Labor Department’s proposed definition of six months on the job is appropriate.

Pay for Performance Contracts

Analysis: WIOA allows for pay for performance contracting of up to 10 percent of a local allotment. The NPRM details components of this new contracting strategy and seeks comments.⁵

Comment: We believe performance-based contracts should be prioritized in cases where an employer, group of employers or a trade association representing employers are directly involved in training and credentialing of individuals. Employers operate in a daily environment of “performance,” and this contracting tool is a positive way to better engage the employer community. As part of employer-based performance contracts, the feasibility analysis should be straightforward, streamlined and identify agreed-upon outcomes such as earnings gains, certifications gained or new hiring. The clear identification of deliverables and proposed outcomes should be stated upfront as part of the contract negotiation process. Finally, we support innovative bonus payment and incentive features that encourage employer partnerships and overall improvements in worker skills, competencies and employment.

Wagner Peyser Employment Services, State Merit Staffing

Analysis: WIOA retains the separate silo Wagner Peyser Employment Services program. The labor exchange services under Wagner Peyser are essentially the same Career Services provided under WIOA programs. The Labor Department seeks comments on how to better align these programs.⁶

Comment: The NPRM upholds the state merit staffing requirement for the provision of Wagner Peyser funded services. Further, both the preamble and rule state that the Michigan court case, *Michigan v. Herman*,⁷ “upheld this policy.” This statement is misleading in that the *Michigan* case actually provided discretion to the Secretary of Labor to determine whether there would be a state merit staffing requirement. Further, under the ruling in the Workforce Investment Act (WIA) regulations, three states (Michigan, Massachusetts and Colorado) received a waiver of the requirement and operated non-state merit staff Wagner Peyser programs during that time. Finally, given that the “core services” under WIA, the “career services” under WIOA and the “employment services” under Wagner Peyser are essentially the same services, we believe there is no policy rationale for maintaining a state merit staff requirement in the latter program, while city, county and non-governmental employees provide/will provide the services in the WIA/WIOA programs. Therefore, we strongly urge the Labor Department to remove this requirement from the Final Rule, or, at a minimum, allow for waiver or demonstration authority whereby states can apply for an opportunity to opt out of this requirement.

Conclusion

On behalf of the thousands of employers and millions of workers represented by our organizations, we appreciate the Labor Department’s consideration of our comments and recommendations on this very important issue. We believe that aligning the public workforce system with employer needs will ultimately result in a stronger economy and a better future for job seekers. Our organizations look forward to continuing our work with the

⁵ 80 Fed. Reg., at 20754-20755; § 683.500

⁶ 80 Fed. Reg., at 20805; § 652.215

⁷ 80 Fed. Reg., at 20805; § 652.211

public workforce system at all levels to get employers engaged and help provide individuals with skilled training and industry-recognized credentials that lead to a successful career. We would welcome any future opportunities to assist the agency in achieving this goal.

Sincerely,

American Staffing Association
Associated Builders and Contractors
Associated General Contractors of America
Independent Electrical Contractors
Opportunity America
National Roofing Contractors Association