



**Comments on the Workforce Innovation and Opportunity Act (WIOA) Notices of Proposed Rulemaking (NPRMs)
Strumpf Associates: Center for Strategic Change
and the Center for Youth and Communities, Brandeis University**

Strumpf Associates: Center for Strategic Change and the Center for Youth and Communities, Brandeis University is pleased to submit the following comments regarding:

[Docket No. ETA-2015-0001] for Regulatory Information Number (RIN) 1205-AB73 Workforce Innovation and Opportunity Act; Notice of Proposed Rulemaking implementing Title I and III of WIOA

[Docket No. ETA-2015-0002] for 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

[Docket No. ED-2015-OCTAE-0003] for implementing programs and activities under Title II of WIOA, NPRM RIN 1830-AA22

These joint comments reflect our two organizations' collective efforts over the past 30 years to innovate, improve and professionalize services in the workforce development field in general and with regard to youth services specifically. Brandeis University has conducted numerous evaluations that have produced some of the preeminent research on evidence regarding what works in youth development and service delivery to effect the long term impacts of enabling youth to gain self sufficiency and become healthy and productive citizens. Strumpf Associates has provided assistance to over 400 workforce investment boards to develop comprehensive, customer focused services for both youth and adults, and currently directs the only Workforce Innovation Fund grant, awarded to Riverside County Economic Development Agency, focused exclusively on 18 to 24 disconnected young adults.

WIOA includes a number of improvements to ensure low-income workers—youth and adults—have the skills and supports they need for full participation in the American workforce. Specifically, Title I of WIOA includes several significant provisions that will increase the focus on comprehensive programming for out-of-school youth and those who face the greatest challenges. Youth and young adults continue to face obstacles to entering the workforce. The proportion of teenagers and young adults able to find jobs has declined since the 1980s, with the steepest drops occurring in the past decade and among teens. Teen employment rates have fallen

from 50 percent in 1978 to just 25.8 percent today.¹ Young people living in high-poverty communities have less access to work, as well as fewer opportunities to gain early work experience and develop the skills needed to advance in school and the workplace. They are more likely to live in communities where public schools are under-resourced and where high school graduation rates are far below the national average.

Brandeis and Strumpf strongly support the vision and goals of WIOA that help to address these challenges. We look forward to working with the Departments of Labor and Education – as well as other federal agencies responsible for administration of partner programs – to support the successful implementation of the law. The NPRMs released by the Departments in April 2015 are a critical step towards achieving that vision. We thank the Departments for their hard work on the proposed regulations and for their inclusion of several proposed rules that would support comprehensive and integrated programming for out-of-school youth within the WIOA Title I youth funding as well as across the WIOA core programs.

What follows are comments to [*Workforce Innovation and Opportunity Act; Notice of Proposed Rulemaking*](#), primarily focused on proposed rules relating to *Part 681 - Youth Activities Under Title I Of The Workforce Innovation and Opportunity Act*. Also, included are comments relating to the performance and accountability in the joint Notice of Proposed Rulemaking from the Departments of Education and Labor - [*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*](#).

Throughout our comments, we note areas where we believe the draft rules are consistent with the statutory intent, as well as areas where we believe additional regulatory clarification or guidance may be needed.

Part 681 – Youth Activities Under Title I Of The Workforce Innovation and Opportunity Act

Subpart A – Standing Youth Committees

Section 681.120

WIOA does not require local workforce boards to have a youth council, as is the case in current law. However, WIOA does allow local boards to establish a standing youth committee and allows them to maintain any existing youth council established under the previous law. WIOA does not provide any criteria for what a standing youth committee should do, should a local board elect to establish one. We applaud the Department for including in the proposed regulations suggested activities that a standing youth committee may be charged to do. WIOA requires substantial change to the local youth system, including a dramatic shift in service to out-of-school youth, a greatly expanded age range, and an increase in the number of program elements. Such dramatic changes will require strategic planning and coordination to achieve the legislative intent. Thus, in addition to the list of possible roles that standing youth committees might play which is provided in the proposed rule, we would encourage the Department to

¹ Sarah Ayres, *The High Cost of Youth Unemployment*, Center for American Progress, 2013, <http://cdn.americanprogress.org/wpcontent/uploads/2013/04/AyresYouthUnemployment1.pdf>.

ensure that local boards and/or their standing youth committees also identify how they will address the following issues:

- i. How the local board will facilitate co-enrollment of participants across core programs – of particular importance for youth and young adults ages 18-24 that can be served through Title I, Title II, and Title IV.
- ii. How the local board will implement specific provisions related to career pathways, such as the requirement that local areas use youth funds to conduct an objective assessment “for the purpose of identifying appropriate services and career pathways for participants”; and broader career pathways for youth and young adults across core programs.
- iii. How the procurement processes and requests for proposals will be adapted and aligned across the core programs, when possible, to encourage longer-term and more intensive services for out-of-school youth.
- iv. How connections will be made with Temporary Assistance for Needy Families (TANF) partners at One-Stops to ensure policy and programmatic alignment for the young adult population under 25, who may receive a different set of services if they are not served through Title I – youth. This is important because a large percentage of the TANF recipients are under 25 and would benefit from out-of-school youth programs; however, there are varying federal requirements and outcomes for the two programs. WIOA and TANF differ greatly from each other so serving TANF recipients in a WIOA program does require specific “policy and programmatic alignment” by the state and local workforce boards.

We also recommend that the Department emphasize that if the local area chooses not to establish a youth council or standing committee, then the activities listed in the regulations will fall to the local board which will be responsible for documenting the activities and providing opportunity for stakeholder input.

Subpart B – Eligibility for Youth Services

Section 681.230 What does “school” refer to in the “not attending or attending any school” in the out-of-school and in-school definitions?

We are concerned about two basic issues within this section. First, because the definitions for attending any school, and of alternative education, are to be determined based on state law, some youth who have dropped out of high school and who are in nontraditional programs in states with broad definitions of school could be barred from being served with WIOA OSY dollars. Second, while we welcome the clarifications that individuals enrolled in Title II programming, as well as in YouthBuild and Jobs Corps, are not considered to be attending school for the purposes of WIOA, we also believe that young people who are in similar programming (e.g., GED and other high school equivalency programming funded with non-WIOA sources) should also be considered to be “out-of-school.”

State Definitions of School and Alternative Education. The Department clarifies that the term “school” as it relates to WIOA out-of-school eligibility shall be defined by state law for both secondary and postsecondary institutions. The Department also directs states to define

“alternative schools” and in the same paragraph suggests that 43 states already have definitions for “alternative education,” which implies that these definitions may be used. These definitions cover the gamut of programming, including the various offerings of community-based organizations (CBOs) directed at youth who have dropped out of high school. We appreciate and support the legislative and departmental intent to focus WIOA out-of-school funding on students who are not attending any school. However, we are very concerned that some state definitions of school might be so broad that youth who have dropped out of high school and are receiving GED or high school equivalency education at a CBO or community college might be considered ineligible for support with WIOA out-of-school dollars. As a result, these vulnerable young people – for whom access to WIOA resources may represent the difference between success and failure – would have very limited access to WIOA youth services. We do not believe this was the legislative intent.

Title II, YouthBuild and Job Corps. The proposed rule clarifies that youth attending an adult education program funded by WIOA Title II, YouthBuild, or Job Corps, can be considered OSY for the purposes of Title I of WIOA youth program eligibility, as these programs are not considered schools. We agree with the Department’s assessment, and believe this type of cross-eligibility will facilitate co-enrollment across programs, supporting youth who do not have secondary school credentials and have dropped out of high school and enabling them to be in enrolled in comprehensive interventions. However, we are quite concerned that youth who have dropped out of high school and who are participating in adult education and/or high school equivalency programs that are not funded through Title II WIOA, or in interventions similar to YouthBuild or Job Corps but funded by other public and private sources, may be deemed ineligible for services as an OSY under Title I WIOA.

The promise of WIOA is that local program services can be enriched by combining service strategies and leveraging resources. Thus, defining “out-of-school” in a way that renders some youth that have dropped out of high school ineligible for Title I WIOA youth services is counter-intuitive. Adult education services are funded by a patchwork of revenue sources—including local, state, and federal governments and tuition or fee payments by students. According to a survey conducted by CLASP and the National Council for State Directors of Adult Education (NCSDAE) of state directors of adult education, *56 percent of adult education funding comes from three nonfederal sources: 45 percent of total funding comes from the state; 10 percent comes from local sources, which include programs, school districts, and institutions and local levies; and 1 percent comes from tuition.*² Thus, many youth may attend high school equivalency programs that are funded outside of the WIOA Title II adult education system. The legislative intent in WIOA is to provide out-of-school youth with more intensive and integrated services. A young person that is accessing a high school equivalency program that is funded outside of WIOA would be unduly penalized, since he/she would be deemed ineligible for services as an out-of-school youth. This becomes extremely critical for youth older than the age of 21, who if deemed an in-school youth for the purposes of Title I of WIOA youth program eligibility, would not be allowed to be served through the Title I WIOA youth program. The following recommendations are intended to support clarity in determining an out-of-school

² <http://www.clasp.org/resources-and-publications/files/Sinking-or-Swimming-State-Adult-Education-Tuition-and-Financing-Policies.pdf>

youth's eligibility status – not to open loopholes for serving “in-school” youth within the 75 percent expenditure requirement for out-of-school youth.

Recommendation:

- A. The regulations should make clear that youth without a secondary credential who are attending a high school equivalency program, regardless of how that program is funded, should be deemed eligible for Title I out-of-school youth services. Eligibility determination should be based on the educational status of the youth and not on the funding of the entity providing the adult education service.
- B. We encourage the Department to further define what “attending” means in the context of determining eligibility. There could be numerous applications and interpretations, especially in considering the older youth population. For example, does taking a single course at a community college make one ineligible for services while one is attending? And does enrolling in a non-credit bearing or continuing education course given by a community college make one ineligible for youth services?

Section 681.240 When do local youth programs verify dropout status, particularly for youth attending alternative schools?

The Department makes clear that youth who are enrolled in an alternative school at the time of enrollment in the Title I WIOA youth program are not considered out-of-school youth. However, if the youth is determined to be out-of-school at the time of enrollment, and is subsequently placed into an alternative school or any school, then he/she is considered an out-of-school youth. Brandeis and Strumpf support this proposed rule and believe the status of initial program eligibility determination should prevail. In addition, we recommend that status be portable when moving across other WIOA funding streams as long as that movement is part of the individual career plan and part of articulated agreement among the partners.

681.260 How does the Department define “high poverty area” for the purposes of the special rule for low-income youth in Workforce Innovation and Opportunity Act?

WIOA contains a new provision that allows youth living in a high-poverty area to be considered low-income individuals for the purposes of eligibility. The intent of this provision is to address the overwhelming burden on eligible youth, as well as on local systems and providers associated with eligibility certification requirements. The proposed rule suggests that a high-poverty area be defined as a Census tract; a set of contiguous Census tracts; Indian Reservation, tribal land, or Native Alaskan Village; or a county that has a poverty rate of at least 30 percent as set every 5 years using American Community Survey 5-Year data. In addition, to these criteria, we recommend that the Department encourage the use of a variety of proxies which a local area can use to define “high poverty area,” including:

- i. the proposed language in the rule that allows for including a cluster of contiguous census tracts with poverty rate over 30%,
- ii. living in public housing or project-based subsidized housing,
- iii. living in a high-poverty school catchment area where over 75% of the student population are eligible for the free and reduced priced lunch program (FRPL).

Section 681.310 Must youth participants enroll to participate in the youth program?

In the proposed rule, the Department defines enrollment *as the collection of information to support an eligibility determination and participation in any one of the 14 program elements*. Further justification for this rule is provided in the background sections of the NPRM, which clarifies that there is no self-service concept for the WIOA youth program and every individual receiving services under WIOA youth provisions must meet ISY or OSY eligibility criteria and formally enroll in the program. There are two separate but related concepts embedded in this rule: (1) how to determine youth eligibility; and (2) when an enrollee is considered a youth participant. For the purposes of clarity, we will address each concept separately.

How to determine youth eligibility. The proposed rule states that part of the enrollment process is a “collection of information” to support an eligibility determination.

One of the biggest challenges that consistently emerged from the youth field in the lead up to the passage of the WIOA legislation was the undue burden associated with certification of income eligibility and the certification of youth’s status in high risk categories. The WIOA Title I youth funding is an improvement from current law and provides for an expanded population of high risk and disconnected youth to be served without regard to income. Under current Workforce Investment Act law, youth must be low-income **and** belong to one of the risk groups. In WIOA, there is no longer an income requirement for out-of-school youth who are dropouts, offenders, homeless, pregnant and parenting, in foster care, runaways, or disabled. WIOA also allows residence in a high poverty area to meet the definition of low-income for in-school and out-of-school youth (see page 5 for more information) on defining high poverty area. While these provisions are improvements over current law, they do not alleviate all of the challenges related to eligibility certification and documentation. Out-of-school youth would still have to produce documentation to demonstrate their “risk status”.

Eligibility certification is not addressed in the new law. However in prior years, guidance issued by the Department of Labor on data accuracy and verification has been utilized by state and local areas to establish acceptable criteria for certification - which usually requires documentation from the school system, justice system, welfare system, or administrative records. And although self-attestation is allowed for some categories, in many cases it is made clear that it is an option of last resort after others have been exhausted. As a result, many states and localities, out of fear of disallowed cost or other administrative findings, have embedded these requirements as part of up-front eligibility verification. Requiring youth in the most precarious situations to navigate major bureaucracies to produce documentation of their risk status before any service is rendered is a major deterrent to serving those most in need.

We recommend the Department of Labor build on the guidance that was included in the [Advisory: Training and Employment Guidance Letter No. 6-14 “Program Year \(PY\) 2013/Fiscal Year \(FY\) 2014 Data Validation and Performance Requirements and Associated Timelines”](#) regarding self-attestation.

In this document, self-attestation (also referred to as a participant statement) is defined as “*when a participant states his or her status for a particular data element, such as pregnant or parenting youth, and then signs and dates a form acknowledging this status. The key elements for self-*

attestation are: (a) the participant identifying his or her status for permitted elements and (b) signing and dating a form attesting to this self-identification. The form and signature can be on paper or in the state management information system, with an online signature.” Self-attestation is included as one of the allowable sources of documentation for the purposes of data validation for youth in the following categories:

- Pregnant or Parenting Youth
- Youth Who Needs Additional Assistance
- Offender
- Homeless Individual and/or runaway youth
- School Status at Participation

We recommend that the Department of Labor clarify that the “collection of information” can be supported by self-attestation for upfront eligibility determination, in particular for youth in high risk categories, with the exception of “Youth Who Needs Additional Assistance,” which the Department is proposing that states and/or local areas define (Section 681.300). Further, we recommend that the Department make *explicit* that self-attestation is allowable or even preferred, and that services can begin immediately for youth who provide such statements. This should apply to out-of-school youth who: do not have a secondary credential; are subject to the juvenile or adult justice system; are homeless and/or runaway youth; or are pregnant or parenting. Once a youth has been determined eligible and is receiving services, the process for collecting official documentation can happen over time for the purposes of data validation.

Lastly, we encourage the Department to make clear that the requirements for data quality and validation and the requirements for eligibility determination are separate processes, and states should not unduly impose those data validation requirements on the upfront eligibility determination process.

When an enrollee is considered a youth participant. The proposed rule makes clear that there is no self-service for youth participants ages 14-21 for in-school youth and 16-24 for out-of-school youth within the Title I youth program.

As proposed, the rule appears to bar access to any upfront services, which are particularly critical to effectively serving and maintaining engagement for out-of-school youth. However, older youth, ages 18-24 may access services through the one-stop system and participate in self-service activities. Additionally, according to proposed rules in the “Unified and Combined State Plans, Performance Accountability, and the One-Stop System Joint Provisions,” these youth would be included as reportable individuals.

The proposed WIOA regulation does not define self-service and it is no longer included as a term in WIOA. In WIA Title I, self-service activities are defined in 20 CFR 666.140(a)(2) as core and informational services that are made accessible to the general public and that do not require significant staff involvement. Self-services are available “*to educate individuals about the labor market, their employment strengths and weaknesses, and the range of services appropriate to their particular situation*” as included in [Training and Employment Notice \(TEN\) NO. 8-10 “Workforce Investment Act Self-Service Participant Reporting –What, Where, and How”](#).

Furthermore, the proposed WIOA regulation does not define staff-assisted service, and it is no longer included in WIOA.

Both the WIOA statute and the proposed regulations encourage the co-enrollment of 18-24 year-old out-of-school youth across core programs; e.g. Title I, youth activities and Title II, adult education (Section 681.230); and Title I adult and youth programs (Section 681.440). However, this proposed rule is based on funding streams, and not in consideration of the best and most effective services to youth. Therefore, for the purposes of 18-24 year-old OSY, and in keeping with alignment across the core programs and ensuring youth are adequately served, we recommend that the Department clarify that (1) a young person is *not enrolled* in the Title I WIOA youth program as soon as information collection begins; and (2) local areas are allowed to begin assessment activities and other efforts such as referring age appropriate youth to take advantage of self-service opportunities through the one-stop system. Furthermore, we urge the Department to provide more definitional language around what self-service and staff-assisted service entail.

In order to maximize service provision and performance, there should be consistent definitions regarding point of enrollment (participation) across titles, which should be triggered by engagement in program activity, not just initial assessment activities. Regardless of which funding stream is providing services, we recommend that youth participation should stay in keeping with the preamble in section 677.150 (within the joint Notice of Proposed Rulemaking from Departments of Education and Labor) that defines “participant,” subject to age eligibility (except in the case of co-enrollment, [see page 12](#) for a more detailed explanation).

- A. For WIOA adults, reportable individuals who receive staff assisted services would be considered participants and, thus, be included in performance calculations.
- B. For WIOA youth, reportable individuals who are determined eligible, receive an assessment, and receive a program element (delete ‘a staff assisted service’) would be considered participants and, thus, be included in performance calculations.
- C. For the AEFLA program, reportable individuals who have been determined eligible and who have completed at least 12 contact hours in an adult education and literacy activity under AEFLA would be considered participants and, thus, be included in performance calculations.
- D. For the Vocational Rehabilitation program, reportable individuals who have been determined eligible for services and who have an approved and signed Individualized Plan for Employment (IPE) that outlines the services that the individual will receive would be considered participants and, thus, be included in performance calculations.

We do however, recommend that the Department remove “*a staff-assisted service*” since it is not defined in the statute or regulations and can be misleading when providing needed upfront navigation, assessment, and counseling services to youth.

For WIOA youth, reportable individuals who are determined eligible, receive an assessment, and receive a program element (~~a staff-assisted service~~) would be considered participants and, thus, be included in performance calculations.

We also recommend similar language be used to define participation in Title I Adult, to provide consistency in determining when participation starts and who will be included in performance.

Subpart C – Youth Program Design, Elements, and Parameters

Section 681.410 Does the requirement that a State and local area expend at least 75 percent of youth funds to provide services to out-of-school youth apply to all youth funds?

We strongly support this proposed rule. The intent of WIOA statute is for the Title I youth funding stream to serve more out-of-school youth, up from a required 30 percent to 75 percent. We strongly encourage the Department to maintain a strict assessment when considering waivers to States regarding decreasing their expenditures to serve out-of-school youth within local areas. Further, we recommend the Department be more prescriptive about what is required in the “analysis of in-school youth and out-of-school youth populations in the local area.” For example, based on the out-of-school definition, the Department should require any State seeking a waiver to provide at minimum documentation of the following, using available Census data and data from reliable state and local sources:

- i. Number and percentage of youth age 16 to 24 who are not enrolled in school and do not have a high school diploma or equivalent;
- ii. Number and percentage of youth age 16 to 24 who are not enrolled in school, do not have a high school diploma or equivalent, and are not working;
- iii. Number and percentage of youth age 16 to 24 who are subject to the juvenile or adult justice system and are not enrolled in school; and
- iv. Number and percentage of youth age 16 to 24 who are a runaway, in foster care or has aged out of the foster care system, a child eligible for assistance under section 477 of the Social Security Act (42 U.S.C. 677), or in an out-of-home placement and are not enrolled in school.

Section 681.430 *Many youth participate in both the Workforce Innovation and Opportunity Act youth and adult programs concurrently, and how do local program operators track concurrent enrollment in the Workforce Innovation and Opportunity Act youth and adult programs?* **Section 681.440** *How does a local youth program determine if an 18 to 24 year old is enrolled in the Workforce Innovation and Opportunity Act youth program or the Workforce Innovation and Opportunity Act adult program?* **Section 681.450** *For how long must a local Workforce Innovation and Opportunity Act youth program serve a participant?*

The following discussion and recommendations are in response to proposed rules in Section 681.430, Section 681.440 and Section 681.450.

Brandeis and Strumpf thank the Department for clarifying that youth may be served in the Title I adult and youth programs concurrently. We also support the notion that there is no minimum or maximum time that governs youth participation in the Title I WIOA youth program; and the proposed rule’s statement that local programs must provide services to youth for the amount of time it takes to fulfill their individual service strategy goals and to successfully enter into postsecondary education and/or unsubsidized employment.

Co-enrollment.

While co-enrollment is encouraged in the proposed regulations, the term is not defined in [Workforce Innovation and Opportunity Act; Notice of Proposed Rulemaking; Docket No. ETA–2015 - 0001](#). However, a definition is included in [Programs and Activities Authorized by the](#)

[Adult Education and Family Literacy Act \(Title II of the Workforce Innovation and Opportunity Act\): Docket ID ED–2015–OCTAE–0003.](#)

The proposed definition of “concurrent enrollment” or “co-enrollment” would clarify its meaning specific to enrollment in two or more of the four core programs in WIOA to provide consistency with how it is used throughout the statute. This definition, developed for the purposes of WIOA, differs from general use of the term which implies enrollment in two or more educational programs.

In current practice, co-enrollment is when multiple funding streams are used to provide program service to the same participants. Participants are reported in each funding stream and included in the performance calculations for each funding stream. In the proposed regulations in Section 679.560(b)(2)(ii) and in the explanatory language for Section 681.230, the Department of Labor emphasizes:

Co-enrollment allows partners to leverage resources, while providing a more comprehensive service delivery strategy that meets the needs of customers with several barriers to employment. Additionally, coordination of services in a customer-focused manner minimizes the possibility of subsequent reentry into the public workforce system in cases where needed services were not provided or possible barriers not addressed.... Many disconnected youth age 16 to 24 meet eligibility requirements for both WIOA title I youth activities and WIOA title II adult education. Co-enrollment between these two programs can be very beneficial to disconnected youth as they can receive work experience and occupational skills through title I funding and literacy skills through title II funding.

We applaud the Department’s use of the regulations to encourage greater use of co-enrollment strategies and its emphasis on how this can expand the range of services to out-of-school youth. We would like to see local areas undertake much more strategic approaches that utilize all the core program funding streams to craft substantive pathway options for youth being served across the funding streams. There are however, potential disincentives to this related to inconsistencies across the funding streams in how *enrollment, participation, and exit* are defined and how performance is measured.

Recommendation:

Enrollment and Participation.

- A. We recommend again (as referenced on [pages 6-8](#)), that the Department make clear (1) a young person is *not enrolled* in the Title I WIOA youth program as soon as information collection starts; (2) local areas are allowed to begin assessment activities, and other efforts, such as referring age appropriate youth to access self-service through the one-stop system.
- B. For youth age 18-24, there should be a consistent definition regarding point of enrollment (participation) across all titles, and it should be triggered by engagement in program activity, not just initial assessment activities. We support the definition used for WIOA Title I Youth and recommend the Department remove “a staff-assisted service” since it is not defined in the statute or regulations and can be misleading when providing needed upfront navigation, assessment, and counseling services to youth.

For WIOA youth, reportable individuals who are determined eligible, receive an assessment, and receive a program element (~~a staff-assisted service~~) would be considered participants and, thus, be included in performance calculations.

We recommend that the above language also apply to participation in all the core WIOA programs for any youth (age 18-24) who is co-enrolled, to provide consistency especially as it relates to when participation starts and who will be included in performance. This inconsistency in performance measures across WIOA core programs is a good example of the barriers to co-enrollment and cross-system alignment that the Department has sought to address through the Performance Partnership Pilots for Disconnected Youth, and the option for flexibility might be usefully employed in this instance, as well. We encourage the Department to allow local areas to seek a departmental waiver in order to resolve the issue of the funding streams having different performance expectations for the exact same population.

- C. Make it clear that as youth move from one funding stream to another (or to a non-funded activity on their personal career plan) they may remain enrolled in the funding stream until they complete their plan of service, even if funds are no longer being expended for their participation. There should be a hold status (with no specified timeframe – i.e., not like the 90 day automatic exit that is in current practice in the Workforce Investment Act) for participants on whom funds are no longer being expended from the funding stream, but who are still engaged in activities on their career plan funded from other sources.
- D. Youth who experience periods of inactivity (not actively engaged in program or services listed on their career plan, regardless of funding from any WIOA core program) may remain enrolled in the funding stream as long as they remain under active career counseling.
- E. Make clear that the set of staff assisted activities – such as assisting youth post-exit in transition, navigation, and support – is encouraged.
- F. Make clear that the set of staff assisted activities that are allowed do not trigger “enrollment.” Many local programs currently believe that no Title I WIOA youth funds may be spent on youth once they exit, except follow up service. In the context of encouraging career pathways and managing exits and handoffs to other systems and services, this should be clarified.

Furthermore, it is also important to reiterate that service to youth age 18 - 24 in the WIOA Title I adult program and at the one-stop should not decrease because the age range has been expanded for the WIOA Title I youth funding stream. Assembling a plan for youth should take into consideration all of the offerings of the one-stop and the WIOA adult and youth funding stream. Then, the appropriate combination of service and funding streams should be structured and delivered in keeping with the youth’s assessment and needs. This may result in enrollment in the adult funding stream, the youth funding stream, sequential enrollment and/or or co-enrollment.

Exit.

In Section 677.150(c) of [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: Docket No. ETA-2015-0002](#) the proposed rule defines the term “exit” for the purposes of a uniform performance accountability system for the core programs under WIOA.

One consistent definition of exit would facilitate this calculation and will allow the Departments to make meaningful comparisons across the States. For the core programs, excluding Vocational Rehabilitation, the Departments propose defining “exit” as the last date of service. The last date of service means the individual has not received any services for 90 days and there are no future services planned. For the purpose of this definition, “service” does not include self-service, information-only activities, or follow-up services.

The rule says that “exit” may not be triggered if future services are planned. We support this provision because for many participants, particularly youth, services may be planned for more than 90 days in the future. This may be because a participant has experienced a personal or family hardship and/or is experiencing a life changing event, such as pregnancy and incarceration, among other reasons.

Recommendation:

- A. With regard to the 90 day threshold for determining exit, we suggest that the Departments consider extending the period to 120 days. Out-of-school youth often cycle in and out of services before getting on a consistent track to completing services due to a variety of reasons, and may be inactive for longer than 3 months before being reengaged.
- B. Effective services for vulnerable youth are built on the recognition that vulnerable youth often experience unexpected hardships. A “hold status” should be maintained for youth who are not receiving services due to hardships documented in their records and who are expected to return to continue their plan of service upon alleviation of that hardship. Programs should be able to note that future services are planned, thereby putting a hold on exit or stopping the exit clock. It should be part of state monitoring to look at who is on hold and for what reason, to ensure that the hold provision is not being used inappropriately to delay exit and impact performance measurement.

Common Exit.

In theory, co-enrollment and common exit should increase both access and comprehensive service delivery that results in sustained employability for youth, and also provide a method of improving performance across WIOA core funding streams. However, this may not necessarily be the case for the WIOA Title I youth funding stream. Applying common exits could have unintended consequences in the performance system as it relates to the WIOA Title I youth funding stream. For example, for out-of-school youth, a service delivery strategy that uses WIOA Title II funds and Title I youth funds to deliver participants to high school equivalency and sequence them to longer term postsecondary training is a powerful strategy and should be

encouraged. However, the WIOA Title I youth program has two additional performance measures that are not required for the other core programs:

- (I) the percentage of program participants who are in education or training activities, or in unsubsidized employment, during the second quarter after exit from the program;*
- (II) the percentage of program participants who are in education or training activities, or in unsubsidized employment, during the fourth quarter after exit from the program;*

The youth program may not be well served by the use of the common exit, since it would delay reporting on these two measures for an indefinite period of time. Such a delay in reporting program outcomes does not contribute to effective program management. Thus, the WIOA youth program does not necessarily benefit in the performance system by using common exit.

Recommendation:

The Department should:

- A. Encourage co-enrollment but should not require that all funding streams used to support the co-enrollment strategy use a common exit.
- B. Continue to encourage co-enrollment and the reporting of co-enrollment in the reporting system.
- C. Instruct state and locals as to how areas identify participants who are co-enrolled on the participant record.
- D. Allow local programs to have the flexibility to use either “program exit” or “common exit” to exit participants from WIOA core programs in a manner that maximizes service to the participant and performance of the funding stream.
- E. Explore ways to work with the states to use the MIS and reporting systems to track co-enrollment in a way that maximizes the performance across the WIOA core funding streams.

Section 681.550 Are Individual Training Accounts permitted for youth participants?

We support this proposed rule. It is important to include specific service strategies that take into account the needs of youth age 18 - 24, which can be served through multiple funding streams.

Section 681.580 What are follow-up services for youth?

The proposed rule appropriately places a priority on follow-up services and provides a number of options for local areas. However, in some limited instances, the most conscientious attempts at follow-up fall short, due to the inability to locate young people, a young person’s relocation outside of the local area, or a youth’s unwillingness to participate in follow-up activities. In these instances, exemptions or waivers should be allowed for areas that (1) fail to connect with former participants after ninety days, despite showing ongoing concerted efforts, and /or (2) experience instances in which a youth refuses the service during the exiting process.

Section 681.610 How will local Workforce Innovation and Opportunity Act youth programs track the work experience priority?

20% Minimum Work Experience Expenditure. A number of local areas are effectively developing and leveraging dollars for youth work experiences from private, non-profit and

public sources which, in some cases, substantially exceed 20% of their local WIOA allocations. In cases where alternative local funding sources can cover some or all of the costs of work experience for eligible youth – e.g. for wages, worksite development, curricula and training, and/or program delivery and oversight, we believe that local areas should have the flexibility to count these sources towards the 20% expenditure rate. In this way, local areas which can leverage other dollars could use their WIOA funds to enroll more youth and/or to provide services over a longer period of time. Of course, these leveraged funds would be tracked and reported to document that local funding levels reach the equivalent of 20% of the WIOA youth allocation, and only actual expenditures – as opposed to in-kind – should be allowable.

Section 681.640 What does education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster mean?

We support the proposed rule, which reiterates program element included in WIOA. Integrated education and training has been shown to help youth and adult learners obtain college credits, learn occupational skills and achieve basic skill gains more quickly than when they are enrolled in traditional adult education and/ or workforce training programs separately. It is also a strategy that can prove effective to accelerate progress and skill attainment for out-of-school youth.

Section 681.700 What is the connection between the youth program and the one-stop service delivery system?

Brandeis and Strumpf support collaboration with WIOA youth programs and the one-stop service delivery system. Through WIA, the one-stop system was often not youth or young adult friendly. WIOA makes improvements to ensure that youth and young adults are afforded an appropriate level of quality services available through one-stops. In addition to the activities and connections outlined in the proposed rule, we recommend the Department also strongly encourage staff development and training for one-stop operators and staff to build their capacity in serving youth and young adults, especially those requiring multiple and intensive services.

Section 681.710 Do Local Boards have the flexibility to offer services to area youth who are not eligible under the youth program through the one-stop centers?

Many youth who are ineligible to be served in the youth funding stream may in fact be long-term unemployed, or part-time low wage workers, with other barriers that may fall within the priority of service for the WIOA adult funding stream. We recommend that local boards be required to assure that there is equitable access to employment and training support through the one-stop system for young adults age 18 to 24, and not just refer them to the youth system.

Part 677 – Performance Accountability Under Title I of the Workforce Innovation and Opportunity Act

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

The definitions distinguish between “participants” (who are counted in performance measures) and “reportable individuals” (who are not counted in performance measures). Brandeis and Strumpf support this distinction because it allows for appropriate initial activities prior to meaningful engagement in a core program.

Section 677.150(a) Participant

According to the proposed rule, a participant is “a reportable individual who has received staff-assisted services after satisfying applicable programmatic requirements for the provision of services, such as eligibility determination.” The two exceptions are for Vocational Rehabilitation (VR), where a participant is an individual who has an individualized Plan for Employment and has begun to receive services, and for Adult Education and Family Literacy Act (AEFLA) programs, where a participant has completed at least 12 contact hours.

Title I Youth is not explicitly mentioned in 677.150(a). However, the preamble states that “for WIOA youth, reportable individuals who are determined eligible, receive an assessment, and receive a program element (a staff-assisted service) would be considered participants, and, thus, be included in performance calculations.”

We would note that receiving an assessment under the proposed rule could be (but should not be) considered a staff-assisted service, which puts the definition in the rule in conflict with the general definition in the preamble. To remedy this, we urge the Department explicitly to include the content in the definition from the preamble in the proposed rule, without “(a staff-assisted service),” to read:

For WIOA youth, a participant is a reportable individual who is determined eligible, received an assessment, and received a program element.

We recommend removing “a staff-assisted service” because it is not defined in the statute or regulations and can be misleading when providing needed upfront navigation, assessment, and counseling services to youth.

With regard to all programs, we urge the departments to clarify that receiving an assessment is not a staff-assisted service for any programs. If it were a staff-assisted service, there would be inappropriate disincentives to provided needed assessments to reportable individuals. We believe that participant status should not be triggered by receiving an assessment.

Section 677.150(c) Exit

For all programs except for Vocational Rehabilitation, the Departments propose defining “exit” as the last date of service, meaning that the individual has not received any services for 90 days and there are no future services planned. For this definition, “service” does not include self-service, information-only activities, or follow-up services. Brandeis and Strumpf appreciate the

Departments' efforts to use one consistent definition, because this common measurement context can promote shared accountability.

We are also pleased that "exit" cannot be triggered if future services are planned. This could be used to support longer, planned interventions like youth programs with multiple components or career pathways with on ramps and off ramps to employment and training. Programs should be able to flag in their records that future services are planned.

In some cases, youth who were receiving services will stop receiving services due to personal or family hardships and/or life changing events such as pregnancy or incarceration, among other reasons. As stated earlier in our comments, if programs document these events in participants' records and expect the participants to return to continue their plan of service (even if they have no specific future service planned), we suggest that a "hold status" should be available to stop the exit clock until the hardship has passed. It should be a part of state monitoring to look at who is on hold and for what reasons, to ensure that the hold provision is not being used inappropriately to delay exit and impact performance measurement.

With regard to the 90 day threshold for determining exit we suggest that the Departments consider extending it to 120 days. Out-of-school youth often cycle in and out of services before getting on a consistent track to completing services due to a variety of reasons, and may be inactive for longer than 3 months before being reengaged.

Common Exit

The Departments have considered a common exit-based definition that requires an individual to have completed all programs in order to officially exit from the system. In many cases, we strongly support the concept of a common exit, or cross-program exit. Such an approach will facilitate co-enrollment and career pathways, strategies that are important for low-income, lower-skilled individuals. Common exit and co-enrollment should also increase both access and comprehensive service delivery that results in sustained employability for youth. Measuring events in the same way is also a step toward greater shared accountability.

For these reasons, we recommend that the Departments consider a cross-program definition of exit that is available, but not required, in situations where:

- 1) Services are being provided through multiple programs under a plan of service, and
- 2) Procedures are in place to provide information on participants that are receiving services under multiple programs and the status of those services.

However, in the specific case of co-enrollment with Title I Youth, a cross-program exit may not be desirable. Applying common exits could have unintended consequences in the performance system as it relates to the WIOA Title I youth funding stream. For example, for out-of-school youth, a service delivery strategy that uses WIOA Title II funds and Title I youth funds to deliver participants to high school equivalency and sequence them to longer term postsecondary training is a powerful strategy and should be encouraged. However, since the WIOA Title I youth program has two different performance measures than the other core programs, as described below:

- (I) the percentage of program participants who are in education or training activities, or in unsubsidized employment, during the second quarter after exit from the program;
- (II) the percentage of program participants who are in education or training activities, or in unsubsidized employment, during the fourth quarter after exit from the program;

The youth program may not be well served by waiting possibly a year or more before reporting outcomes, which at that time of exit (2 quarters post training) will be based solely on employment, not enrollment in education or training. Such a delay in program outcomes also does not contribute to effective program management. Thus, the WIOA youth program does not necessarily benefit in the performance system by using common exit. This is one reason why we believe that common exit should be available, but not required, under the circumstances laid out above.

Finally, we recommend that this approach be detailed in the final rule, not be determined later in reporting instructions, so that there is stability in the definition.

Subpart A—State Indicators of Performance for Core Programs

Section 677.155 What are the primary indicators of performance under the Workforce Innovation and Opportunity Act

Employment Rate Measures

Co-enrollment and employment rate issues. The two employment rate measures are different for WIOA Title I youth, and for Title I Adult and Title II. Specifically, the Title I youth measure allows enrollment in education and training to be included in the measure, which is not allowed in the adult measures. The different performance measure is likely to work against co-enrollment. Thus, we are recommending that youth age 18 to 24, who are co-enrolled, regardless of funding stream, be subject to the same measures. This inconsistency in performance measure across WIOA core programs is a good example of the barriers to co-enrollment and cross-system alignment that the Departments have sought to address through the Performance Partnership Pilots for Disconnected Youth, and the option for flexibility might be usefully employed in this instance as well. We encourage the Department to allow local areas to seek a departmental waiver in order to resolve the issue of the funding streams having different performance expectations for the exact same population.

We strongly support the Departments’ plan to calculate both an “employment rate” for all participants in the program regardless of employment status at program entry and an “entered employment rate” for all participants who were unemployed at the time of program entry, as was collected under the Workforce Investment Act (WIA). The entered employment rate is particularly important in Title I Youth programs, because youth tend not to be employed when entering the program. However, we would not support the entered employment rate becoming an additional indicator for which goals are set.

Employer Effectiveness Measures.

The measure of effectiveness in serving employers, Proposed § 677.155(a)(1)(vi) and discussed in the Preamble on Page 20587, should be a shared or common measure or measures across

WIOA. A program-by-program approach could lead to competition and duplication among programs seeking to engage with employers.

We recommend two measures of effectiveness in serving employers.

- 1) The repeat/retention rate for employers' use of the core programs. This is one of the three options presented in the Preamble.
- 2) A measure of employer engagement in sector partnerships. We suggest the number of workers employed by businesses participating in sector partnerships. Such a measure would incentivize the formation of sector partnerships and the creation of partnerships of substantial scale.

The option discussed in the Preamble of measuring participant retention with the same employer should be dismissed. Individuals typically obtain greater increases in earnings by voluntarily switching employers than by retaining employment with the same employer.

The other option discussed by the Departments — a market penetration measure that counts any type of employer transaction — would focus the system too much on the breadth of employer involvement, rather than the depth or quality of employer involvement.

The Departments should empirically test ways of specifically defining and operationalizing the two recommended measures. Over time, the Departments may also discover better methods of measuring effectiveness in serving employers, perhaps due to improvements in technology.

Earning Measure

This indicator measures median earnings in the second quarter after participants exit from the program. States must report the median point for earnings for all program participants in unsubsidized employment in the second quarter after exit. This indicator measures earnings in the second quarter after exit

The earnings measure is new for youth. The WIOA statute and the proposed regulations encourage placement of youth upon exit in postsecondary education and training. This is strong strategy, and one that could serve to increase the numbers of youth in postsecondary education and training. Since those youth placed upon exit in education and training will most likely work part-time if at all, their inclusion in the median wage measure is likely to negatively impact performance on this measure. Areas that are highly successful in exiting youth to postsecondary education and training should not be unduly penalized and subject to sanctions. Thus, youth who are working part-time and are also in education or training activities, including postsecondary education, should be excluded from the calculation of median wage.

Comments on NPRM RIN 1830-AA22, Implementing Programs and Activities Under Title II of WIOA

Among the key changes to Title II under WIOA is a greater emphasis on the connection between adult education programs and employment. Both state eligible agencies and adult education providers are directed to foster well-functioning connections between Title II and Title I services, as well as Title II services' connection to local education, training, and support services more broadly. Brandeis University and Strumpf Associates support the intent of these changes, and encourage the Departments of Labor and Education to continue collaborating to provide meaningful guidance to the field on the most effective means of accomplishing WIOA's mandates in this area.

In addition, WIOA for the first time establishes statutory authorization for the program now known as Integrated English Literacy/Civics Education (IEL/CE), which had previously been authorized by Congress on a year-by-year basis. We support the robust and detailed conception of IEL/CE as detailed in the WIOA statute and the NPRM, including the emphasis on connection to employment and the specific affirmation of eligibility for English Learners who have credentials from abroad.

Throughout the NPRM, the Department proposes to formalize and standardize processes that have previously been conducted outside the regulatory system. We agree, in general, with these proposals, such as the proposal in 34 CFR Part 462 regarding the Secretary's authority to approve tests suitable for use in the National Reporting System (NRS). Increased standardization allows state agencies and providers greater predictability and stability.

Brandeis University and Strumpf Associates make the following recommendations with respect to NPRM RIN 1830-AA22:

A. Process for local board review of Title II applications. WIOA section 107(d)(11) promotes coordination between a local workforce development board and adult education providers by requiring that the board review a provider's application for Title II funds before the application is submitted to the state eligible agency. Given the uncertainty that is likely to accompany any new requirement, and the fact that a given adult education provider may be working in more than one local area, we agree with proposed Sec. 463.21, which requires eligible state agencies to establish a uniform procedure to be used by Local Boards for this review.

B. Establishing "demonstrated effectiveness." We agree with the proposed mechanism at 34 CFR 463.24 allowing eligible providers to establish that they have demonstrated effectiveness through the use of past performance data. Providing past performance data is a clear and compelling measure of whether a provider is capable of meeting WIOA performance standards. We would caution that in order to ensure equality of consideration for prospective providers serving harder-to-serve participants, it would be valuable for the Department to develop guidance for state eligible agencies to take into account the characteristics of participants served by providers in considering whether or not a provider's performance is sufficient.

C. Defining career pathways for English language acquisition programs. Proposed section 463.32 provides three potential ways in which an English language acquisition program can

satisfy the requirement that the program leads to attainment of a secondary school diploma or equivalent and transition to postsecondary education and training or leads to employment. One of those proposed ways is “designing the program to be part of a career pathway.” We agree with allowing multiple approaches. However, both the WIOA statutory language and the draft regulations are unclear on how states and local boards must meet their career pathways requirements under Title I. We strongly encourage the Departments to strengthen and clarify the rules relating to career pathways implementation, including whether the term as applied under section 463.32 requires coordination with career pathways being implemented by local boards pursuant to WIOA section 107(d)(5).

D. Defining “integrated” education and training. Proposed section 463.37 defines how a program providing integrated education and training can meet the requirement that the three required program components be “integrated.” We agree with the proposed requirement that programs have a “single set of learning objectives that identifies specific adult education content, workforce preparation activities, and workforce training competencies.” We would encourage the Department to consider whether it may be appropriate to provide additional guidance to states and eligible providers on appropriate tools for measuring workforce preparation activities and workforce training competencies. Unlike adult education content, these two areas are newer curriculum elements for many providers, and it may be valuable to offer resources on how they can best be measured.

Finally, we encourage the Departments to issue additional guidance on acceptable ways to track employment outcomes for participants for whom wage-record matching is not a viable solution. Some participants served in Title II programs, though employed, will not be able to be matched with state UI records. It is important that states be provided with supplemental options to verify the employment status of such participants, to ensure that the full array of outcomes is captured. The Departments had issued such guidance in the past under WIA and it should be reissued for WIOA.