NATIONAL ASSOCIATION OF STATE WORKFORCE AGENCIES

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February 10, 2015

The Honorable Thomas E. Perez
Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Dear Secretary Perez:

Since enactment of the Workforce Innovation and Opportunity Act (WIOA) in July 2014, the National Association of State Workforce Agencies (NASWA) has sought to assist states with the implementation of this new law. Through surveys, meetings, conference calls, and other means of assessing states' implementation challenges, NASWA has developed recommendations to USDOL for WIOA implementation.

The major implementation recommendations expressed by member states on WIOA are attached and sorted alphabetically. NASWA also takes this opportunity to forward detailed recommendations on the WIOA performance accountability provisions (developed by a workgroup of NASWA members) and additional state-specific comments on WIOA implementation (by DOL Region).

Despite these implementation challenges, state workforce agencies are fully committed to implementation of WIOA. We have been working closely with your senior leadership team and with other Intergovernmental Organizations to address many of these issues.

Thank you for the opportunity to submit these recommendations and our members look forward to further discussion with you and the leadership team at USDOL.

Sincerely,

Scott B. Sanders
Executive Director

Enclosure

NASWA Recommendations to USDOL on Implementation of WIOA
February 10, 2015
(In alphabetical order)

Introduction

On July 22, 2014, the Workforce Innovation and Opportunity Act (WIOA) was signed into law by President Obama as Public Law 113-128. The new law was passed by both the House and the Senate on an overwhelmingly bipartisan basis. WIOA is the first legislative reform of the public workforce system in more than 15 years, since the Workforce Investment Act (WIA) of 1998.

WIOA includes "core" programs such as: (1) Adult, Dislocated Worker and Youth formula Programs administered by the US Department of Labor (USDOL); (2) the Adult Education and Literacy programs administered by the Department of Education (ED); (3) Wagner-Peyser Employment Service program administered by USDOL; and (4) programs under the Rehabilitation Act that provide services to individuals with disabilities administered by the ED.

The majority of WIOA provisions becomes effective on July 1, 2015, the first full program year after enactment. The WIA performance accountability section remains in effect for PY 2015, with the new WIOA performance accountability provisions taking effect at the beginning PY 2016.

While NASWA strongly supported the enactment of WIOA, the topics below reflect major areas of concern where further clarification is needed. It also includes recommendations on how the U.S. Department of Labor and the Department of Education should address the Notice of Proposed Rulemaking (NPRM) and subsequent regulations. The NPRM has been delayed from its original date of January 2015 to the spring of 2015.

Recommendations

Eligible Training Provider List
Section 122 of WIOA requires states to establish criteria, information requirements, and procedures regarding the eligibility of training providers to receive funds. To facilitate this, Section 116(d)(4) outlines the performance information that must be included in a report by eligible training providers. Providers are required to provide performance information on all individuals engaging in the program, not just those receiving training services funded by WIOA.

Many states faced considerable challenges in implementing the eligible training provider lists (ETPL) and consumer reports requirements of WIA. As a result, it will take states a considerable amount of time and resources to fully meet WIOA's requirements in this area. Perhaps more importantly, many states are greatly concerned that the "all students" reporting requirements for the ETPL will greatly reduce the number and variety of programs available to WIOA customers.

> *NASWA recommends states be given as much flexibility as possible in implementing these WIOA requirements. States must be given the ability to craft a solution that meets their particular situation and that minimizes the burden on training providers.*
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> *NASWA recommends the Secretary strongly consider giving states an additional two years to implement these requirements. During this time, USDOL should launch an intensive technical assistance effort for states. This effort should be based on the effective strategies used by the small number of states that have had some success in developing ETPL performance reports. USDOL should consider offering additional funding to states on a competitive basis to work together to develop the IT infrastructure needed to meet these requirements.*

NASWA recommends the Secretary work with states to actively monitor the impact of these requirements on the number and variety of training programs available to customers.

Otherwise, Section 122 of WIOA provides Governors and local boards adequate discretion in implementing eligible training provider requirements, except for the following two concerns.

Section 122(b)(2) requires a provider of training services to submit appropriate, accurate, and timely information to the State with respect to participants receiving training services under this subtitle in the applicable program. This requirement imposes an unnecessary burden on a training provider because most case management systems already capture and validate this information as part of case management, and collecting this information from providers compromises the accuracy, validity and consistency of the information.

NASWA recommends states be granted flexibility to capture this information in the manner that best balances validity of data and efficiency of process, rather than strictly from training providers.

Section 122(b)(4)(B) allows training providers to receive initial eligibility for only 1 fiscal year for a particular program, while Section (c)(2) provides for biennial review and renewal of eligibility.

NASWA recommends the regulations clarify the end of initial eligibility and the beginning of the biennial review and renewal period.

Information Systems

WIOA includes new information systems provisions related to performance accountability, fiscal and management accountability, intake and case-management, shared registration, and accessibility for persons in remote areas and individuals with disabilities. WIOA also requires greater integration of workforce and education programs, to be supported by more integrated management information systems across the programs. NASWA members report implementation of these technology changes and upgrades will be challenging due to constrained budgets, the high costs of IT projects, and the fast implementation timetable, and that states and local partners need more information, technical support, and expertise.

NASWA recommends establishing a workgroup of federal, state and local partners to support implementation of these provisions in line with current budgets and information systems capabilities in the states, and to make recommendations for federal technical assistance activities to support state and local partners.

One Stop Infrastructure Funding

Under WIA, many states and localities struggled to implement efficient and equitable One-Stop resource sharing policies for the required partner programs. WIOA expands the number of One-Stop partners and includes new provisions related to infrastructure funding. Some states will face additional challenges working with new and existing partners that have not contributed financial or other resources in support of One-Stop infrastructure.

NASWA recommends the Secretary provide states and their local partners with technical assistance and information on best practices and solutions as they implement the infrastructure funding provisions of WIOA.

NASWA recommends the coordination of technical assistance and policy guidance at the federal level among all federal agencies that fund required One-Stop partners.

One-Stop Procurement

WIOA includes conflicting provisions (Sections 107 and 121) related to requirements to competitively procure One-Stop operators. Many states and local partners will face major challenges if these provisions are interpreted to require a competitive procurement process in every case; for example, cases in which operators were competitively-procured prior to the Act's implementation date. States report the potential for significant staff layoffs and turnover if a new operator is chosen, which could frustrate timely implementation of WIOA, result in delivery of services by untrained staff, and create other risks. States have also mentioned challenges resulting from existing long-term contracts for facilities, One-Stops that are currently located in state-owned buildings to reduce costs, and potential costly new investments in supplies and infrastructure.

NASWA recommends that in providing guidance, the Secretary provide state and local partners the maximum flexibility possible to designate and certify One-Stop operators.

NASWA recommends states have the authority to allow their boards to set a policy for grandfathering competitively-procured and high-performing operators, to reduce some of the risks and costs associated with the competitive procurement provisions.

NASWA recommends states and localities have the flexibility to take transition costs into account when weighing proposals under a competitive procurement process.

In states where the state or other government entity currently is the One-Stop operator, the government agency overseeing the competitive process may want to apply to be the One-Stop operator under WIOA.

NASWA recommends the Secretary provide guidance and technical assistance to help states develop a cost-efficient competitive procurement process that will meet federal standards. Also, as part of this guidance, clarification is needed on how a consortium of required partners can competitively bid.

Performance Accountability

NASWA's Performance Measurement Workgroup of the Employment and Training Committee developed a set of recommendations on the WIOA performance accountability provisions. These detailed recommendations, which are attached, reflect the limitations of the performance measures for program management and improvement, and NASWA's concerns that the performance accountability system is structured to focus on avoiding low performance, rather than promoting innovation and performance improvement at every level of the system, even among already high-performing entities. Here is a summary of the recommendations.

NASWA recommends that the Secretary:

1. *Create a national workgroup on performance measurement to serve as a hub for additional technical assistance, research and reforms related to performance measures and performance measurement practices;*

2. *Ensure regulations and guidance provide opportunities for state flexibility and ongoing improvements;*
3. *Emphasize operational support, technical assistance and incentives for performance improvement; and*
4. *Support state and local information technology (IT) systems through a Workforce IT Support Center modeled after the USDOL-supported Unemployment Insurance IT Support Center (ITSC).*

NASWA also developed a set of technical recommendations, including:

1. *The workforce system should be responsible for outcomes regarding those who achieve a certain level of engagement with the system and receive more than informational services, while keeping count of all customers;*
2. *Statistical models should serve as a resource for negotiations and not the only means of addressing the impact of economic and demographic factors on performance;*
3. *Acceptable thresholds for performance should be set lower for at least two years to test statistical models and allow states to implement changes under WIOA;*
4. *States should have the option to develop service-based measures and statistical models;*
5. *Sanctions should be considered when performance on a cluster of measures indicates poor performance; penalties should not apply until the second consecutive year of failure after implementation of a performance improvement plan because lags in the measures mean that by the time it is clear there is a problem with 1st year performance, most customers included in performance calculations for the next year have already exited; and*
6. *In the event the Governor's allotment is reduced due to a 2nd year failure, those funds should remain in the state to be redirected toward technical assistance to correct performance issues.*

Redirection of Youth Grant
WIOA requires States spend 75 percent of allowable youth funds on out of school youth. States understand the new emphasis in WIOA on out-of-school youth and are in the process of refocusing their programs in that direction. However, there will be a number of states who cannot meet this new requirement by July 1, 2015.

> *NASWA recommends USDOL allow a transition period or grant a waiver providing sufficient time to states to meet this requirement. The NASWA membership adopted a resolution at its annual conference in 2014 in support of a transition period or waiver for states who need additional time.*

Transition and Ongoing Funding for Statewide Activities
While Section 128 of WIOA maintains the requirement that Governors reserve up to 15 percent of program funds for statewide workforce investment activities, it is uncertain the full 15 percent as authorized under WIOA will be restored as part of the fiscal year 2016 appropriations process. States are concerned if funding remains constrained they will not be able to implement required and allowable statewide activities, which have expanded under WIOA. For example, statewide funds are used to meet the requirements for the functions of the state boards as described in Section 101, and there is a new requirement for state boards to *"develop strategies for aligning technology and data systems across one-stop partner programs."*

Transition provisions of WIOA provide that states may use up to 1 percent of the WIA allotment for fiscal year 2014 to carry out transition planning and implementation (an equal amount would be available to local entities). States are concerned because this reduces funding available for customer services and also because there is such limited funding available to implement the systemic changes envisioned by WIOA.

> *NASWA recommends USDOL ensure as much flexibility as possible be granted to states (through waivers or other means) to implement statewide activities, taking into account its estimate of the costs to states of implementing the required activities.*

NASWA is pleased that WIOA contains a provision allowing unobligated state rapid response funds, after the first program year, to be used for statewide activities for the following programs years.

> *NASWA recommends USDOL guidance allow states maximum flexibility in the use of these funds.*

NASWA is concerned that Section 116(f) of WIOA, related to sanctions for state failure to meet performance standards, will reduce the Governor's allotment for statewide activities by five percentage points if a state misses performance for a second consecutive year. Also, as discussed in the attached performance accountability recommendations, NASWA is concerned the significant lag in reporting performance on many of the outcome measures means that by the time states report even a single quarter of performance that does not meet the standards, the state will actually have failed the entire year and likely have failed the second year.

> *NASWA recommends that regulations clarify the reduction in the Governor's statewide allotment does not occur until the second consecutive year of failure after implementation of the Performance Improvement Plan.*

Unemployment Insurance

Under WIOA, local employment and training activities provided in the One-Stops must include, among other activities, "provision of information and *assistance regarding filing claims* for unemployment compensation." Most states do not have unemployment insurance (UI) claims-handling staff located in One-Stop centers, as claims-taking has increasingly become a remote operation, handled more efficiently via telephone or internet. UI administrative funding has accommodated this trend, and most states do not currently receive sufficient administrative funding to place UI staff in the One-Stops to respond to questions specific to an individual's claim. Workforce staff may assist individuals with filing a UI claim or making contact with UI staff located in call centers by providing access to resources such as public computers, fax machines and/or telephones. One-Stop center workforce development staff also provides work search oversight and reemployment services for UI claimants.

> *NASWA encourages the Secretary to implement this provision in line with current business models in the majority of states and to avoid an unfunded requirement for states to place UI staff in One-Stop centers to handle questions specific to an individual's UI claim.*