

The Workforce Innovation and Opportunity Act: A Guide for Community Colleges

October 2014

Overview

On July 22, 2014, President Obama signed the Workforce Innovation and Opportunity Act (WIOA) (P.L. 113-128) into law, concluding the reauthorization of the Workforce Investment Act (WIA) approximately 11 years after it was originally scheduled to be done. WIOA overwhelmingly passed both chambers of Congress, a bipartisan finish to a process that was often hindered by partisanship.

WIOA does not radically restructure the federal workforce development system. Such a result was unlikely with all the interests involved and the need for bipartisan appeal to pass Congress. WIOA is, essentially, an attempt to improve aspects of the current system that had not been seen to be working effectively. Better alignment between aspects of the system was a goal that stakeholders shared coming into this process. Proposed solutions to this problem ranged from large-scale program consolidation, embodied by the House-passed SKILLS Act, to revisions to the programs that keep them largely intact, as was done in legislation passed by the Senate HELP committee. In the end, the Senate approach largely carried the day, though 15 programs, mostly currently unfunded, were eliminated.

WIOA's centerpiece to build a better aligned workforce system is a more holistic approach to the programs, especially the Title I occupational education programs and the Title II adult basic education program. There are numerous instances where WIOA either requires or facilitates better coordination between these programs, including participant co-enrollment. WIOA subjects all of the core programs in the bill, including vocational rehabilitation as well as Wagner-Peyser employment services, to the same accountability measures, replacing the current patchwork of different measures.

Importantly, WIOA also updates the statute to reflect the fact that a postsecondary credential is increasingly necessary to attaining a middle class lifestyle. WIOA makes a variety of changes to steer the system away from a "job-first" mentality to a structure that emphasizes obtaining a "recognized postsecondary credential" (a newly-defined term). This starts with the purposes of the act as expressed at the beginning of the statute.

The following is a summary and analysis of provisions in the bill that are most relevant to community colleges. It is not an exhaustive summary of the bill. As detailed below, WIOA contains positives and negatives for community colleges, but the balance should tilt toward a more favorable community college experience with the workforce system. As with any

federal program that is largely implemented at the state and local level, the statute itself can only do so much to ensure this outcome. A lot depends on the relationships between the stakeholders on the ground. Furthermore, subsequent regulations and guidance from the U.S. Department of Labor (DOL) are needed to resolve ambiguities in the bill. Several of those instances are discussed below.

Workforce Boards and Plans

Makeup of State and Local Workforce Development

Boards: As part of the shift in nomenclature from "workforce investment" to "workforce development," the state and local boards that govern the system are now called "workforce development boards." WIOA reduces the required members of the boards, most notably by not requiring that lead officials of the mandatory partner programs (e.g., postsecondary Perkins Act programs) be members. As was the case under WIA, the board provisions are a floor, and not a ceiling. They spell out who must be on the board, but additional individuals may be included. At both levels, WIOA continues to require that the boards be comprised of a majority of business representatives and chaired by one of those representatives. There is also new language specifying that business board members must come from industries that offer high quality, work-relevant training and development in in-demand industry sectors. At least 20% of the boards must be representatives of the workforce (which must include labor organizations). The balance of the required state board membership is government representatives, which must in turn include the lead state officials with primary responsibility for the core programs, and local elected officials. The government category may include several other representative types, including state agency officials responsible for education programs, such as chief executive officers of community colleges, and other institutions of higher education. Under WIA, representatives of groups that have experience in the delivery of workforce investment activities, including community college CEOs, are a required component of the state board.

WIOA continues the required representation of education and training providers on the local boards, though in reduced numbers. Each board must include a representative of Title II adult education providers and a representative of "institutions of higher education providing workforce investment activities (including community colleges)." Current law provides for "representatives" from these and other categories. As under WIA, where there are multiple possible representatives in these categories in any given area,

the representative is to be nominated by the relevant local providers in each area. The local boards also are required to include representatives of an economic and community development representative, the state employment service, and a vocational rehabilitation program. States and local areas may use alternative entities, including pre-existing state workforce development boards, that are substantially similar to the board described in this bill.

The board provisions are a mixed bag for community colleges. On the one hand, the state board training providers, including community college CEOs, have shifted from required to optional membership on the boards. On the other hand, the requirement that the lead state officials of the core programs be members of the board should usher in a significant number of state community college leaders that oversee the title II adult education and literacy programs.

At the more important local level, the language requiring representation of higher education (including community colleges) is similar to that in current law, so community college CEOs should continue to have a strong claim to a local board seat, although the requirement is now specifically for a representative from this category. Required membership for mandatory partner programs, now eliminated, was another entrée to the local boards for community colleges. As noted, WIOA's provisions continue to allow for additional members on boards not required by the act.

Board Functions: The functions of the state board are greatly expanded compared to previous law. The core functions remain the same, including developing a state plan (now a unified plan as described below), developing formulas for the intrastate distribution of funds, and overseeing the performance accountability system. Many of the additional functions of the board relate to increasing alignment between the core programs and other partner programs and disseminating information on best practices and other activities. The state board is to review and provide comment on the state plans of all the one-stop partner programs in order to provide strategic leadership and foster alignment between programs. State boards are charged with developing guidance on ways to remove barriers to greater coordination among system programs, the development of career pathways (a newly defined term in WIOA), and innovative workforce strategies. The boards would also identify and disseminate information on best practices related to the effective operation of one-stop centers and effective local boards. State boards would also be charged with developing policies relating to the appropriate roles and contributions of one-stop partner programs to the operation of one-stop centers.

The local board will continue to be in charge of developing a local (or regional) plan, selecting one-stop operators and training providers through the eligible provider list, and other functions. As with the state board, WIOA augments the local board's functions to make them more strategic, place a greater emphasis on employer engagement, and lead to the development of career pathways. A new requirement is for local boards to coordinate activities with and among area education and training providers, including board review of applications to provide adult education and literacy programs. The local boards are also tasked to carry out analyses of the economic conditions and the knowledge and skills needed in the area.

Unified State Plan: One of the principal ways WIOA encourages greater alignment between programs is by replacing the Title I-specific state plan with a unified state plan that covers all core programs. A state may also opt to file a combined state plan that encompasses the core programs plus one or more other specified programs, including Perkins CTE programs. States would file to the U.S. secretaries of labor and education a 4-year (rather than the current 5-year) plan. The plan has been overhauled to be much more of a strategic document than under WIA. There is increased emphasis on strategic planning and increased program alignment, both among the core programs and with other workforce development programs that do not fall under the plan. "Strategic planning elements" are laid out separately from "operational planning elements." There is an emphasis on concurrently providing occupational and adult education services to individuals who need both, and on implementing career pathways. The operational elements of the plan also emphasize coordination, as well as assessment of the core and partner programs. The plan must detail how the lead state agencies will align and integrate workforce and education data. Notably, the plan must also detail "how the State's strategy will engage the State's community colleges and area career and technical education schools as partners in the workforce development system..."

Local and Regional Plans

Like its state counterpart, the local plan would be greatly augmented, and in similar ways. Plans would be for 4 years, with required reviews after 2 years. Here, too, the bill emphasizes greater collection and analysis of local economic data in plan formation, implementation of career pathways, dual enrollment in more than one of the core programs, employer engagement, and entrepreneurial skills.

States are required to identify regions in the state, and in any region that encompasses two or more local areas (which may be in different states), those local boards must engage in regional planning and coordinated service delivery. These boards must submit regional plans to the state.

Performance Accountability

WIOA establishes a single set of accountability measures to assess the performance of all the core programs, a break from WIA, which had different indicators for each. They are generally similar to the current performance indicators. WIOA lays out six primary indicators of performance for programs serving adults and three for youth programs. The first four of the adult indicators are the same in concept as the WIA indicators, but differ in their particulars.

1. The percentage of program participants who are in unsubsidized employment during the second quarter after exit from the program. (WIA: entry into unsubsidized employment)
2. The percentage of program participants who are in unsubsidized employment during the fourth quarter after exit from the program. (WIA: retention in unsubsidized employment after entry into employment)
3. The median earnings of program participants who are in unsubsidized employment during the second quarter after exit from the program. (WIA: earnings received in unsubsidized employment 6 months after entry into employment).
4. The percentage of program participants who obtain a recognized postsecondary credential, or a secondary school diploma or its recognized equivalent (but only if they have obtained employment or are enrolled in a postsecondary program within one year of exiting the program), during participation in or within one year after exit from the program. (WIA: attainment or a recognized credential relating to achievement of educational or occupational skills)
5. The percentage of program participants who, during a program year, are in an education or training program that leads to a recognized postsecondary credential or employment and who are achieving measurable skill gains toward such a credential or employment.
6. Indicators of effectiveness in serving employers that will be devised by the secretaries of labor and education.

As under current law, a state may implement additional indicators. The secretaries of labor and education are charged with specifically defining these indicators, in consultation with various stakeholders. The local indicators for the youth, adult, and dislocated worker programs are the same as the applicable state indicators, plus any additional indicators. States will continue to work with the federal government, and local areas will work with the states, to establish target performance levels that will be included in their respective plans.

There are several important changes here from WIA. First, the indicators in the statute itself are far more precise than those found in WIA, in terms of when the snapshots are taken, who the cohorts consist of, and the fact that each of them consists of a percentage of program participants. The quarter-based timeframes in the first three indicators are intended to mesh with quarterly unemployment wage insurance records. The credential attainment indicator now refers specifically to attainment of a recognized postsecondary credential, a key element of the act's overall increased emphasis on postsecondary achievement. The new fifth indicator is complementary in a sense, as it explicitly allows states and local areas to "count" WIA participants that are in longer-term training programs, as long as they are achieving "measurable skills gains" toward a credential or employment. As usual, the devil is in the details, and how "measurable skills gains" is defined will be a critical regulatory issue. Flexibility in this definition is needed to encompass a range of possibilities including credit attainment, satisfactory academic progress, mastery of competencies, and other tools utilized by community colleges to measure progress towards a credential.

The annual state report required by WIA on its progress toward meeting the performance measures, as well as the performance of its local areas, has been expanded to three performance reports to be used by states, local areas, and eligible training providers. DOL and the Department of Education (ED) have been instructed to develop templates for these reports no later than 12 months after WIOA's enactment.

Eligible training provider performance reports must include information on each program's performance with respect to the first four of the primary indicators described above, and for all individuals (not just WIA participants) engaging in the "program of study (or the equivalent)." This is one of the more problematic provisions in WIOA, as it retains the requirement of securing employment and earnings information for non-program participants, which is still difficult for many institutions to obtain. Under WIA, a similar requirement was a factor in some colleges making none or few of their programs eligible for WIA participants, as

the burden of obtaining the necessary information was not worth the few numbers of WIA referrals to the program. While access to unemployment insurance wage records has improved, it is far from universal. Furthermore, the provision itself is self-contradictory, as it refers back to indicators that are defined in terms of WIA participant exiters, so it is unclear exactly how those indicators can and will be applied to non-WIA participants. This will be another important issue in the regulatory process.

The eligible provider reports must also indicate

- The total number of individuals exiting the program of study (time period not defined – presumably most recent program year).
- The total number of WIOA participants who received (and exited) training services through the adult and dislocated worker programs, and the average cost per participant, disaggregated by the type of entity that provided the training, during the most recent program year and 3 preceding program years.
- The number of individuals with barriers to employment served by the adult and dislocated worker programs, disaggregated by the subpopulations of those individuals, as well as race, ethnicity, sex, and age.

Most of these items seem better suited to either state or local reports, as the requirement that they each be “disaggregated by the type of entity that provided the training” makes no sense in the context of a report that is specific to a particular eligible trainer provider.

Establishment of One-Stop Delivery Systems

The establishment and operation of the one-stop system would not differ significantly from WIA, with the exception of infrastructure expenses as detailed below. WIOA establishes a slightly longer list of mandatory partners that must participate in the operation of the one-stop centers. For community colleges, the most relevant programs on this list remain Perkins Act career and technical education programs at the postsecondary level and adult basic education. Additional partners also may be named, and the list of potential additional partners has several new additions.

As is now the case, the one-stop partners are charged with entering into a memorandum of understanding (MOU) to detail how the one-stop system will be operated in the local area. The required contents of the MOU are similar too, but allow specifically for in-kind contributions from partners and contributions from philanthropies and other private entities.

There is also a requirement that MOUs be reviewed at least every 3 years.

Local areas would have two options to fund infrastructure costs:

- **Local option** – If all the partners and the local WIB and the local elected officials can come to an agreement, local areas can fund their infrastructure costs through MOUs. If there is no agreement, that area will have to use the state mechanism.
- **State infrastructure funding mechanism** – To cover the infrastructure costs of areas that are not able to come to agreement at the local level by July 1, 2016, the governor would determine the portion of such costs that would come from each of the partner programs. Governors must base these amounts on the partner programs’ proportionate use of the one-stop centers in the state and exclude the portion of funds attributable to local areas that use the local option. These funds must come from the partner program’s administrative funds, and would be capped. For Perkins and adult education, the cap would be 1.5%. The governor must establish an appeal process for a partner program to appeal its share of infrastructure spending as determined by the state. The governor would then allocate these funds to local areas that did not establish MOUs under a formula developed by the state board. Infrastructure costs means the non-personnel costs that are necessary for the general operation of the one-stop center, including rent, utilities, etc. Partner programs must determine their share of other costs of running the centers through MOUs, with guidance from the state board on each programs’ contribution.

Provisions governing the designation and certification of one-stop center operators are largely the same as current law. Each one-stop system would be required to use a common one-stop delivery system identifier, essentially a national brand of sorts. The secretary of labor is tasked with developing the identifier. State boards are charged with developing criteria to be used in assessing the performance of one-stop centers.

Identification of Eligible Providers of Training Services

Many community college officials have cited the current system for determining trainer provider eligibility as a disincentive to becoming more involved in the workforce system, particularly because of subsequent eligibility requirements that required reporting of employment and

wage information for all students in a program, not just WIA participants. As noted above, access to that information via unemployment insurance wage records has improved, but is not yet universal. The impact of WIA's requirements in these areas was muted by the numerous waivers granted to states that allowed them to extend the initial eligibility period, but DOL officials have indicated that such waivers will not be forthcoming under WIOA.

WIOA potentially improves upon current law in this area. The extent of this improvement will be determined by governors, who have been given wider latitude to determine eligibility requirements under WIOA than was the case under WIA, which contains specific data elements required from training providers. Governors are directed to establish criteria, information requirements, and procedures for a training provider to be included on the eligible programs list. Where these criteria relate to outcomes, they largely refer specifically to WIA participants, though there is direction, as noted below, to take into account the wage and employment outcomes of non-WIA students in these programs. Exactly how to do that is left to the governors, so community colleges will have an opportunity to shape the details of trainer provider eligibility requirements at the state level.

In devising eligibility criteria, governors are directed to take into account a number of factors, including

- The performance of training providers with respect to:
 - The performance accountability measures and other matters for which information is required to be provided by the providers (see below).
 - Other appropriate measures of outcomes for WIA participants, and the outcomes for students in general in eligible programs with respect to employment and earnings as defined in the performance accountability indicators.
- The need to ensure access to training services throughout the state.
- Information reported to state agencies with respect to other training programs.
- The degree to which the provider's training programs relate to in-demand industry sectors and occupations.
- The licensing status of training providers, and the requirements for that licensing.
- Ways in which the criteria can encourage providers to use industry-recognized certificates or certifications.
- The ability of the providers to offer programs that lead to recognized postsecondary credentials.

- The quality of a program of training services.
- The ability of providers to provide training services to individuals who are employed and individuals with barriers to employment.
- Other factors the governor deems appropriate to ensure, among other things, that the collection of information required to demonstrate compliance with the criteria is not unduly burdensome or costly to providers.

Local areas are able to establish criteria and information requirements in addition to those established by the governor.

Providers are required to submit information with respect to WIA participants as follows:

- The performance of the provider under the performance accountability measures, and information specifying the percentage of participants who entered unsubsidized employment in an occupation related to the program, to the extent practicable.
- Recognized postsecondary credentials received by WIA participants.
- Cost of attendance, including costs of tuition and fees.
- Program completion rate.
- Other information on the criteria devised by the governor.

The bill retains the concept of initial eligibility to enable programs in in-demand and emerging industries to be quickly approved. A provider who has not previously been an eligible provider of training services needs to provide program-specific performance information based on criteria that include at least:

- A factor related to the accountability measures.
- A factor concerning whether the provider is in a partnership with business.
- Other factors that indicate high quality training services.
- A factor concerning alignment of the training services with industries projected to have potential for employment opportunities.

Initial eligibility lasts for one fiscal year. It is unclear what requirements are applicable to new programs offered by already-eligible providers, if any, or even whether initial eligibility is available for those programs. The statute's

language suggests that they are, but this will be another issue to be addressed through regulation or guidance.

The procedure for applying for eligibility is left more to the states than under WIA, which stated that applications be submitted to local boards. WIOA provides that the state-devised procedures spell out the respective roles of the states and local areas in receiving and reviewing provider applications and determining eligibility.

On-the-job training, customized training, incumbent worker training, internships, paid or unpaid work experience opportunities, or transitional employment are not subject to the requirements outlined above.

Governors are authorized to establish transition procedures under which currently eligible providers may remain eligible until the end of 2015 before they are subject to WIOA's eligibility requirements.

Adult and Dislocated Worker Employment and Training Activities

Funding

The provisions governing the distribution of funds for the adult and dislocated worker streams are largely unchanged from current law. With the governor's approval, local boards may transfer up to 100% of these funds between these two programs. WIA limited transfer authority at 30% (although it was usually increased in the appropriations process).

Statewide Employment and Training Activities

There are several new additions to both the required and allowable statewide activities. In addition to basic functions such as developing and disseminating the eligible provider list and overseeing the performance accountability system, the states are now required to use their funds (15% set-aside) for providing assistance to local areas in a number of ways, including coordination and alignment of data systems and the development, convening and implementation of industry sector partnerships. Notable new allowable state activities include

- Implementing innovative programs and strategies designed to meet the needs of businesses, including incumbent worker training, customized training and industry sector strategies.
- Providing career ladder and career pathway programs.
- Providing microenterprise and entrepreneurial training and support programs.

- Developing or identifying exemplary education and training programs that respond to real-time labor market analysis, utilize direct and prior learning assessment, ensure credits are portable and stackable, and that accelerate course or credential completion.

Local Employment and Training Activities

The former trio of core, intensive, and training services has been streamlined into two levels: career services and training services. Career services are basically comprised of the same activities that made up core and intensive services, with some more emphasis on the use and dissemination of labor market information. Some of the notable new additions to the list of services that may be provided include internships and work experiences that are linked to careers, financial literacy services, and English language acquisition and integrated education and training programs.

The list of training services that may be provided is also very similar to WIA. An important new element is an emphasis and explicit authorization on providing integrated services, with provisions allowing the provision of job readiness training and adult education and literacy services provided in combination with occupational training.

WIOA clearly states that a participant is not required to receive career services prior to receiving training services, thus eliminating the "sequence of services" under WIA that had limited the amount of training provided through the system. WIOA also maintains a priority on providing services to low-income individuals.

The training services provisions expand the authority for local areas to use contracts for training services rather than individual training accounts (ITAs) to cases where the local WIB determines it would be most appropriate to award a training contract in order to facilitate the training of multiple individuals in in-demand industry sectors or occupations and such contract does not limit consumer choice. There is also a new rule of construction saying that nothing in this section should be construed to preclude the combined use of ITAs and training contracts, including arrangements that allow individuals receiving ITAs to obtain contracted training services. This is an important expansion of contracting authority that should facilitate more contractual agreements between local boards and colleges, allowing for arrangements that better support the expansion of training capacity than tuition-based vouchers. In addition, there is also a provision allowing for pay-for-performance contracts, on which local areas are now authorized to spend up to 10% of their allocations for the adult and dislocated worker programs.

WIOA directs local areas to give priority consideration to programs that lead to recognized postsecondary credentials that are aligned with in-demand industry sectors or occupations or occupations in the local area. This is reflective of the statute's overall emphasis on postsecondary credentials, and a provision that community colleges should note when dealing with their local boards.

There are many additions to the list of permissible local workforce activities, several of which revolve around improving coordination between different programs and services. Others include provisions to increase business engagement, implementation of industry sector strategies, and development and delivery of innovative workforce strategies.

The governor or local board may reimburse firms for up to 75% of the cost of on-the-job training in certain instances. The normal cap is 50%. Local boards are now authorized to use up to 20% of their adult employment and training funds to pay the federal share of incumbent worker training programs. Employers must pay the remaining share, ranging at least 10% to 50% of the cost, depending on the size of the employer and other factors.

Title II - Adult Education and Literacy

The significant changes that WIOA would make to the adult education programs are largely changes that modify and expand the focus of adult education, particularly to include the transition to postsecondary education and training and employment as end goals of the activities funded by the act. Under the new accountability and planning structure, this title no longer has its own performance indicators. Instead, the programs are to be measured under the indicators laid out in Title I, which apply to all core programs. There is also a significant emphasis in this title, as there is in Title I and Title II, on coordination between adult and occupational education, including co-enrollment between the two programs.

Operationally, the program would function in much the same way as it does currently, with funds flowing from the federal level to state eligible agencies, which then award funds to eligible providers (which are largely defined as currently). One exception to this rule is that the secretary of education would receive 12% of the appropriated funds for formula awards to states for integrated English literacy and civics education, with a minimum award of \$60,000 to each state. Something similar to this has been accomplished through the appropriations process for several years.

Key WIOA Implementation Dates

July 2014	WIOA Signed Into Law
January 2015	Notice of Proposed Rulemaking Published
July 2015	Most Provisions of WIOA Take Effect (WIA Performance Accountability Measures and State and Local Plans Still in Effect for First Program Year)
July 2015	Eligible Training Providers Provisions Implemented by Governors and Boards
January 2016	Final Rules Published

For further information, contact Jim Hermes, AACC associate vice president of government relations, at jhermes@aacc.nche.edu.