



WIOA FINAL RULES CONTAIN FEW SHIFTS

**BIGGEST YOUTH NEWS AROUND PROCUREMENT,
"SCHOOL" DEFINITION, FORCED EXIT**

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JULY 6, 2016

On June 30, the Departments of Labor and Education (DOL and ED, respectively) released final rules to implement the Workforce Innovation and Opportunity Act (WIOA). WIOA was signed by President Obama on July 22, 2014; these rules represent final revisions to rules proposed in April 2015 in a Notice of Proposed Rulemaking (NPRM). Each of the rules and many agency resources and summaries may be found [here](#).

WHEN DO THE RULES GO INTO EFFECT?

The Final Rules for WIOA Titles I and III (covering state planning, the one-stop system, Youth and Adult activities, and the Wagner-Peyser Act) will take effect 60 days after publication in the *Federal Register*, which is expected sometime in July. The Final Rules for Titles II and IV (the Adult Education and Family Literacy Act and the Rehabilitation Act) take effect 30 days after their publication in *Federal Register*, which is also expected soon. However, new WIOA State Plans and WIOA's performance accountability system went into effect on July 1 – so all providers need to be collecting data in accordance with the new performance accountability system now.

WHAT ARE THE BIGGEST HIGHLIGHTS OF THE FINAL RULES?

Regarding the youth provisions of WIOA, we've identified a few highlights in our initial analysis of the Final Rules:

- In a change from the NPRM, the Final Rule allows local WDBs (Workforce Development Boards) to choose to provide some youth activities directly, rather than procuring all of them.
- High-school equivalency and dropout re-engagement programs are now added to the list of programs not considered "school" for the purpose of ISY (in-school youth) vs. OSY (out-of-school youth) status.
- The Departments, maintained the 90-day threshold for "forced exit" across WIOA programs, even for OSY.
- DOL provided additional emphasis on youth committees, "encouraging" local WDBs to establish them (the NPRM simply noted that WDBs may "choose to establish" them).
- DOL clarified that OSY status does not change after program entry, eliminating potential disincentives to enroll OSY participants in school.
- In a bit of non-news, DOL did not offer any additional support for self-attestation in the rules, but did (as it did on several issues) commit to provide "further guidance" in this area.

These highlights – and the other provisions summarized in this document – show that the agencies largely followed recommendations that NYEC made in response to the NPRM, including to equivalency and re-engagement

programs to the list of programs that do not count as “school,” to consider additional allowances for self-attestation, and to encourage a strong role for youth standing committees. One major disappointment and departure from NYEC’s recommendations is the 90-day “forced exit” provision: NYEC argued forcefully to allow for a longer window before participants had to be exited from programs, or to allow for program-specific exit windows. Future analyses will more deeply compare NYEC’s recommendations with the Final Rules.

A more detailed summary of highlights follows, drawing mostly on direct quotes from the preambles to the DOL Final Rule and DOL-ED Joint Final Rule. Direct links to each of the rules are at the end of this document.

YOUTH SERVICES IN THE ONE-STOP SYSTEM

Youth Services Procurement. “The Final Rule clarifies that the grant recipient/fiscal agent has the option to provide some or all of the youth workforce investment activities directly themselves rather than entering into a grant or contract to provide the activities” (p. 380, DOL Final Rule). This, as the Department of Labor itself says in the preamble to the new regulations, is “the most significant change between the NPRM and the Final Rule” in the youth subtitle of WIOA. The preamble goes on to summarize:

“This section clarifies that youth activities may be conducted by the local grant recipient and that only when the Local WDB chooses to award grants or contracts to youth service providers, such awards must be made using a competitive procurement process in accordance with WIOA sec. 123. While this revision represents a significant change in that it provides Local WDBs with flexibility in determining which WIOA youth services to procure, the Department expects Local WDBs to continue to contract with youth service providers to provide the program elements that youth service providers are best positioned to offer participants based on prior success in serving youth.” (p. 335, DOL Final Rule)

It further clarifies: “A Local WDB could choose to procure competitively all youth program elements or it could choose to competitively procure a few of the youth program elements, and provide the remaining program elements themselves.” (p. 382, DOL Final Rule)

Access to Youth Services in One Stops. While “the Departments encourage as much physical presence [at one-stop centers] of partner staff persons that [sic.] is feasible” (p. 323, Joint Final Rule), virtual access to one-stop partners is acceptable if it meets the definition of a “direct linkage.” The Departments define “direct linkage” as:

- “(i) A ‘direct linkage’ means providing direct connection at the one-stop center, within a reasonable time, by phone or through a real-time Web-based communication to a program staff member who can provide program information or services to the customer.
(ii) A ‘direct linkage’ cannot exclusively be providing a phone number or computer Web site or providing information, pamphlets, or materials.” (p. 779, Joint Final Rule)

The Final Rule also clarifies that at one-stop centers there must be the “physical presence of at least one Title I program staff member at all times of operation” (p. 323, Joint Final Rule).

STANDING YOUTH COMMITTEES

In response to concerns about the fate of youth councils under the former WIA, DOL clarified that local WDBs may maintain current youth councils as standing youth committees – or have the WDB take on the role of the standing youth committee, create a new standing youth committee, or maintain no youth committee (p. 336, DOL Final Rule). In another change, the Final Rule now “encourages” local WDBs to establish standing youth committees rather than the language in the NPRM, which simply noted that “a Local WDB may choose to establish a standing committee” (p. 337, DOL Final Rule). Finally, DOL added disability organizations and “local education entities” to the list of possible standing youth committee members (p. 339, DOL Final Rule).

ENTRY, EXIT, AND PARTICIPATION

Entry and Status. The Final Rule clarifies that “age is based on time of enrollment and as long as the individual meets the age eligibility at time of enrollment he or she can continue to receive WIOA youth services beyond the age of 24” (p. 340, DOL Final Rule). Similarly, “ISY [in-school youth] or OSY [out-of-school youth] status determination occurs when a youth enrolls into the WIOA Youth Formula Program and does not change as the youth moves through the program,” (p. 345, DOL Final Rule) thus eliminating any disincentive to enroll a youth in school. Also, , while DOL clarifies that there is no concept of self-service in the WIOA Youth programs, a young person need not be considered a participant until “after the youth is determined eligible, the youth receives an objective assessment, and the youth participates in 1 of the 14 program elements” (pp. 376-7, DOL Final Rule).

Self-Attestation. The Final Rule provides no further clarification or allowance for use of self-attestation in the rules themselves, though the

Department does note in the preamble that previous guidance has allowed for self-attestation in the collection of some data elements. As it does in several sensitive places, DOL says it will “provide further guidance” on documentation requirements (p. 378, DOL Final Rule).

“Forced Exit.” In a disappointing decision, the Final Rule maintains the 90-day forced exit if no services have been delivered and none anticipated outlined in the NPRM:

“Comments: Some commenters suggested the Departments revise the definition of “exit” at § 677.150(c) to lengthen the proposed 90-day period of no services to 120 days, citing the challenges of sporadic engagement in services in which youth cycle in and out of services. In such cases, service delays can extend an exit beyond the 90 days. One commenter suggested doubling the 90-day window to 180 days. Other commenters suggested shortening the 90-day period.

“Departments’ Response: Although the Departments recognize that out-of-school youth, among other examples, may be a population that is difficult to engage in continuous services, the Departments have concluded that it is important to maintain consistency across all core programs regarding the definition of exit. The 90-day period has a basis in historical application. Under WIA, the DOL-administered programs and the AEFLA program under title II used 90 days of no service as a benchmark for determining when services had ended. Similarly, prior to WIOA the VR program closed an individual’s service record after services had ended and the individual had maintained employment for 90 days.” (pp. 154-5, Joint Final Rule)

NYEC and others argued for an extension of this period to at least 120 days, since 90 days (or even 120 days) may create a barrier to serving disconnected youth who cycle in and out of services as life circumstances affect their ability to engage in services.

Follow-Up Services. “The Department has added language to the regulatory text to §681.580(c) clarifying that follow-up services must be provided to all participants for a minimum of 12 months unless the participant declines to receive follow-up services or the participant cannot be located or contacted” (p. 424, DOL Final Rule).

Co-Enrollment and Career Pathways. Regarding facilitating co-enrollment and access to career pathways for young people, DOL “intends to provide additional guidance and technical assistance” but decided that more regulatory language was not needed (pp. 392 and 389, DOL Final Rule).

DEFINITION OF "SCHOOL"

Equivalency Programs and Re-Engagement Programs ≠ "School".

"Based on the recommendation of commenters, the Department has added high school equivalency programs and dropout re-engagement programs as additional types of programs in §681.230 that are not considered 'schools' for the purposes of determining [in- or out-of-] school status" (p. 345, DOL Final Rule). However, "the Department did not incorporate the term 'alternative school' into the definition of an OSY because alternative school is a general term that may encompass many different types of programs" (p. 354, DOL Final Rule).

School Attendance. As in other areas, rather than providing clarification, "The Department will provide further guidance around 'attending' and non-credit granting courses, continuing education classes, and one community college course" (p. 344, DOL Final Rule).

HIGH-RISK POPULATIONS AND HIGH-POVERTY AREAS

Eligibility for High-Risk Youth. The Department made a number of changes and clarifications to eligibility determinations for youth in high-risk populations:

- "The Department does not interpret WIOA to require individuals in the juvenile justice system or foster care system to drop out of school in order to be eligible to receive WIOA youth services. Nor is it the Department's intent to have youth leave school in order to receive WIOA youth program services" (p. 346, DOL Final Rule).
- DOL added a new eligibility criterion to capture older adolescents who are former wards of the state but have not "aged out": "an individual who has attained 16 years of age and left foster care for kinship guardianship or adoption" (p. 346, DOL Final Rule).
- "[T]o make the regulation easier to understand, the Department separated foster care youth and homeless and runaway youth into two separate eligibility categories" (p. 347, DOL Final Rule).
- "For OSY, low income is not an eligibility requirement for serving youth with a disability. For ISY with disabilities, low-income eligibility requirements exist. However, for ISY with disabilities, WIOA sec. 3(36)(A)(vi) provides that the income level for eligibility purposes is based on the individual's own income rather than his/her family's income" (p. 349, DOL Final Rule).

High-Poverty Areas. “The regulation text was changed to reflect a poverty rate of at least 25 percent as set every 5 years using American Community Survey 5-Year data. Local areas must decide how to combine census tracts into larger contiguous areas and the weighted average of the poverty rates of the census tracts in each contiguous area to meet the threshold” (p. 366, DOL Final Rule). DOL decided against using Title I eligibility as a factor.

DIRECT LINKS TO THE RULES

A direct link to the Joint Final Rule, which governs state planning, the one-stop system and other shared elements of the nation’s job-training infrastructure, is [here](#). The DOL-only rules, related to WIOA Title I and III programs, is [here](#). The Final Rule for WIOA Title II adult-education provisions is [here](#). The Final Rule for the Vocational Rehabilitation program is [here](#). A separate joint final rule for miscellaneous and technical provisions is [here](#).

FOR MORE INFORMATION...

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