



*Edmund G. Brown Jr.,
Governor*



State of California
Health and Human Services Agency

Office of the Director
721 Capitol Mall
Sacramento, CA 95814
(916) 558-5800 VOICE
(916) 558-5806 FAX
(916) 558-5807 TTY

Adele Gagliardi, Administrator
Office of Policy Development and Research
U. S. Department of Labor
200 Constitution Avenue NW, Room N-5641
Washington, D.C. 20210

June 9, 2015

Dear Ms. Gagliardi:

RE: Docket No. ETA-2015-0002
RIN 1205-AB74 and RIN 1830-AA21
Unified and Combined State Plans, Performance Accountability and the
One Stop System Joint Provisions

The California Department of Rehabilitation (CDOR) welcomes the opportunity to provide comment on the Notices of Proposed Rulemaking (NPRMs) to facilitate innovative changes to the workforce development system and maximize opportunities for all individuals with disabilities, in accordance with the Workforce Innovation and Opportunity Act (WIOA).

In developing comments, CDOR sought input from individuals eligible for our services, the State Rehabilitation Council and other advisory bodies, employers, provider organizations, and our employees. The CDOR identified several areas in which the proposed regulations align with, or further, the goals and purposes of the Rehabilitation Act of 1973 (Act), as amended by WIOA. In addition to these areas, however, CDOR identified a few areas that must be modified to meet the legal requirements of the Administrative Procedure Act and provide flexibility to allow California to create an innovative program to meet the unique needs of each individual with disability and the needs of each local area across our diverse State.

General Comments Regarding 361 Subpart D

WIOA amended the Act to require the submission of a unified or combined State Plan. The proposed regulations within 361 Subpart D refer to additional requirements that will be imposed but that will be issued at a later time. These include references to,

“joint planning guidance, in 361.105 and 361.140, “others [assurances] deemed necessary by the secretaries” in 361.105, and “planning guidelines,” in 361.130.

It is important for any rule to comply with the federal Administrative Procedure Act (APA). Any “statement of general or particular applicability and future effect designed to implement, interpret or prescribe law or policy or describing the organization, procedure or practice requirements of an agency...” is a rule as defined by Title 5 United States Code section 551(4). All rules must follow the formal procedures outlined in the APA to become effective.

In addition to future guidance not satisfying the APA, establishing the guidance, or standards, for the State Plan into regulation will provide clarity, save time, and ease the administrative burden on States in complying.

The APA requires a public comment period for regulations. The CDOR maintains that the right of the public to participate in the rulemaking process, particularly those who will be most impacted by regulations, is essential to developing sound public policy.

Definition of Exit From Program [34 CFR 361.150]

WIOA establishes performance accountability measures that apply across the core programs, which include the vocational rehabilitation program, to assess the effectiveness in achieving positive outcomes for individuals served by those programs. These new indicators include reporting on individuals who exit from the core programs.

Proposed 34 CFR 361.150(c) defines “Exit from Program,” using a program-exit approach, rather than a common-exit approach, in which a participant may have multiple program exits, depending on the number of State core programs the participant is engaged in.

The regulation should permit either a program-exit or common-exit approach, as identified in the State Plan. While existing data systems may pose obstacles for States to track participants across core programs under a common-exit approach at this time, a common-exit approach may be ideal at a later time. Allowing each State to identify either a program-exit approach or common-exit approach in the Unified or Combined State Plan, will provide States with the flexibility to demonstrate accountability in light of data systems that may be joined later.

Effectiveness in Serving Employers [34 CFR 361.155]

WIOA amendments establish performance accountability measures that apply across the core programs, which include the vocational rehabilitation program, to assess the effectiveness in achieving positive outcomes for individuals served by those programs. These new indicators include reporting on the effectiveness of the core programs in serving employers.

Proposed 34 CFR 361.155(d)(6) provides that the indicator measuring the effectiveness in serving employers will be developed in the future. The NPRM identifies three possible approaches and requests comment. The approaches are: (1) measure employee retention rates tied to the employment they obtained after receiving WIOA services; (2) measure the repeat or retention rates for employers' use of the core programs; and (3) measure the number or percent of employers that are using the core program services out of all employers represented in an area or State served.

How these approaches measure the effectiveness of the core programs in serving employers may differ greatly and one single approach may not accurately reflect the effectiveness of all core programs. In order to accurately measure the effectiveness of each core program, States should be allowed to adopt, in the Unified or Combined State Plan, the approaches to be utilized to measure each core program. Alternatively, a shared indicator that is based on a combination of the three approaches discussed in the NPRM would be preferable, in which a vocational rehabilitation program would be measured against or compared to another vocational rehabilitation program, not other Workforce system core partners. It should also be noted that none of the approaches take into account the pre-placement or up front employer engagement that occurs before a participant is hired. Our vocational rehabilitation program provides a number of services to businesses that would not be captured in these approaches, including disability awareness and education, information on reasonable accommodations, targeted recruiting, and technical assistance and guidance.

Reporting Requirements [34 CFR 361.235]

WIOA did not amend the Act to require vocational rehabilitation programs to submit RSA 911 reports quarterly.

Proposed 34 CFR 361.235 requires quarterly submission of the RSA 911 reports, which is currently required annually. The new manual for the RSA 911 report was included as a supporting document in the NPRM, which indicates that the new RSA 911 will have 275 data fields on both open and closed cases, including follow-up reporting after an individual has left the vocational rehabilitation program.

The current, annual RSA 911 consists of 215 data elements relating to cases closed during the reporting period. Information on these closed cases is only reported once and no follow-up reporting is required. While there is no statute requiring four RSA 911 reports per year, the NPRM cites, as justification, a number of general statutes requiring the US Department of Education to collect and report information to Congress and the President, evaluate vocational rehabilitation programs, receive reports on compliance with indicators, conduct annual review and period onsite monitoring, and exchange data with the US Department of Labor and the Social Security Administration.

While the NPRM estimates the collection and submission of the new RSA 911 report to take 131.25 hours, this is a gross underestimate, as our staff have logged approximately 1,000 staff hours in preparing the current annual RSA 911 report. Also, of considerable concern is that no additional federal funding is available to carry out this new reporting requirement and most, if not all, vocational rehabilitation electronic record systems are not currently designed to readily collect and report the new data elements and follow-up on consumers long after case closure. Requiring three additional RSA 911 reports annually is overly burdensome on the reporting agency and inconsistent with the Paperwork Reduction Act, especially in light of the annual State performance accountability report for all core programs and the semi-annual SF 425 required of vocational rehabilitation programs. Consequently, the proposed language requiring four RSA 911 reports per year should be modified to require only one RSA 911 report, as currently required.

General Comments on Issuance of Further Guidance in 361 E

WIOA amended the Act to require vocational rehabilitation agencies to report on common performance measures.

Several regulations throughout 361 Subpart E identify additional criteria, requirements, and guidance that will be developed in the future that agencies must comply with.

These include references to, “joint guidance” in 361.160(d), 361.170(a), 361.170(e), and “guidance” in 361.185(c)(2), 361.200(b), 361.205(f), 361.235(c), and “guidelines” in 361.240(a).

As discussed above, these guidance circulars, guidelines, and joint guidance all meet the definition of a rule as defined by Title 5 United States Code section 551(4). All rules must follow the formal procedures outlined in the Administrative Procedure Act to become effective. The CDOR urges our federal partners to compile all guidance into the regulations, as required by the federal Administrative Procedure Act, to allow for the required public comment and ease administrative burdens in searching through additional documents.

361.305 (d): Definition of Access at the Comprehensive One-Stop Center

WIOA requires each core partner to make their program “accessible” at the comprehensive one-stop center in each local area.

Proposed section 361.305(d) defines the services that must be available at the comprehensive one-stop and through staff physically present or not present but available to communicate through the use of technology.

The CDOR appreciates the flexibility this regulation provides, especially because of our diverse State in terms of population areas and dominant sectors in different areas of the State. The flexibility allows DOR to construct different relationships with the one-stops in each local area depending on the needs of the area.

361.505: Authority for Separate Memorandums of Understanding between Local Boards and each One-Stop partner.

WIOA requires the Local Board to enter into one Memorandum of Understanding with all of the core partners.

Proposed regulation 361.505 creates the authority for the Local Board to enter into separate Memorandums of Understanding with each partner or groups of partners.

This regulation is contrary to the statutory language contained at 29 USC 3151(c), which requires that each Local Board enter into one Memorandum of Understanding with all of the partners. The CDOR recommends the federal agencies delete this regulation as the statute is unambiguous.

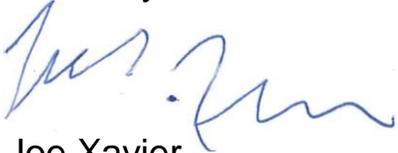
361.800: How are one-stop centers and one-stop delivery systems certified for effectiveness, physical and programmatic accessibility, and continuous improvement?

WIOA requires the local boards to assess the physical and programmatic accessibility of one-stop centers and the one-stop delivery system at least once every three years. Under WIOA, only one-stop centers that have been certified as accessible are eligible to receive infrastructure funding.

Proposed regulation 361.800 requires the assessments to include, “evaluations of how well the one-stop center ensures equal opportunity for individuals with disabilities to participate in or benefit from one-stop center services.” The proposed regulations also include a non-exhaustive list of examples one-stop centers may take to comply with the accessibility requirements.

The CDOR appreciates our federal partners’ dedication to ensure that each one-stop center and one-stop delivery system nationwide is accessible to every individual with a disability.

Sincerely,

A handwritten signature in blue ink, appearing to read "Joe Xavier".

Joe Xavier
Director