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ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER WIOA NO. 8-15 OPERATING GUIDANCE for the WORKFORCE INNOVATION AND OPPORTUNITY ACT (referred to as WIOA or the Opportunity Act)

TO: STATE WORKFORCE AGENCIES
STATE WORKFORCE ADMINISTRATORS
STATE WORKFORCE LIAISONS
STATE AND LOCAL WORKFORCE BOARD CHAIRS AND DIRECTORS

FROM: GERRI FIALA /s/ for PORTIA WU
Assistant Secretary

SUBJECT: Second Title 1 WIOA Youth Program Transition Guidance

- 1. Purpose.** To provide guidance and planning information to states, local workforce areas, and other recipients of Workforce Innovation and Opportunity Act (WIOA) Title I youth formula funds on the activities associated with the implementation of WIOA.

WIOA was signed into law on July 22, 2014. WIOA is designed to help job seekers access employment, education, training, and support services to succeed in the labor market and to match employers with the skilled workers they need to compete in the global economy. WIOA supersedes the Workforce Investment Act of 1998 and amends the Wagner-Peyser Act and the Rehabilitation Act of 1973, as amended (Rehabilitation Act). In general, the Act took effect on July 1, 2015, the first full program year after enactment, unless otherwise noted.

The Departments of Labor and Education proposed a set of regulations for implementing WIOA through the posting of five Notice of Proposed Rulemaking (NPRMs) documents. These NPRMs were open for public comment until June 15, 2015, and both Departments received several hundred comments. The Federal agencies now are reviewing, analyzing, and considering the comments received. The final WIOA rules will be issued in 2016.

In order to continue implementation prior to the final rule, the Department is issuing a series of WIOA Operating Guidance documents in the form of Training and Employment Guidance Letters (TEGLs). These Operating Guidance documents on WIOA will inform the workforce system on how to begin the important planning and organizational work necessary to comply with the WIOA statutory requirements. The Operating Guidance TEGLs will

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provide a framework for program activities until the regulations are finalized. This TEGL is one in a series of WIOA Operating Guidance.

2. **References.** See Attachment.
3. **Background.** Title I of WIOA outlines a broad youth vision that supports an integrated service delivery system and provides a framework through which states and local areas can leverage other Federal, state, local, and philanthropic resources to support in-school youth (ISY) and out-of-school youth (OSY). Title I of WIOA affirms the Department's commitment to providing high-quality services for all youth and young adults beginning with career exploration and guidance, continued support for educational attainment, opportunities for skills training in in-demand industries and occupations, such as pre-apprenticeships or internships, and culminating with a good job along a career pathway, enrollment in postsecondary education, or a Registered Apprenticeship. All of the Department's youth-serving programs continue to promote evidence-based strategies to assist in achieving high-levels of performance, accountability, and quality in preparing young people for the workforce.

On March 26, 2015, the Department published TEGL No. 23-14 providing guidance on WIOA youth program transition. This issuance is the second of two TEGLs that address key provisions in WIOA and provides guidance to assist states and local areas in transitioning to WIOA youth program implementation.

With the shift under title I of WIOA to expend at least 75 percent of funds on OSY, the Department expects the cost per participant under WIOA to increase as many OSY require more intensive and costly services. Consequently, fewer participants might be served under the WIOA youth program due to the more intensive and costly services for the increased emphasis on the OSY population.

4. **Resolution of Apparent Conflict between TEGL No. 23-14 and TEGL No. 38-14.** TEGL No. 23-14 and TEGL No. 38-14 contain language that appear to conflict. TEGL No. 23-14 states that "ISY and OSY expenditure rates are tracked and reported based on a specific program year's (PY) allotment. For the PY 2014 WIA youth allotment, including unobligated PY 2014 funds carried over to PY 2015, the 30 percent OSY expenditure minimum will still apply." TEGL No. 38-14 states that "PY 2013 and PY 2014 state and local formula funds that have not been obligated by grantees in PY 2013 and PY 2014 (i.e., "carry-in" funds) will become subject to WIOA, effective July 1, 2015. This means that the funds will assume the requirements of those portions of WIOA that are effective July 1, 2015." The language in TEGL No. 38-14 does not apply to the OSY expenditure requirement for PY 2014 funds. All PY 2014 funds carried over to PY 2015 still retain the 30 percent OSY expenditure minimum as stated in TEGL No. 23-14.
5. **Eligibility.** WIOA Section 129(a)(1) provides new eligibility criteria for the WIOA youth program. To be eligible to participate in the WIOA youth program, an individual must be an OSY or an ISY.

Under WIOA section 129(a)(1)(B), an out-of-school youth (OSY) is an individual who is:

- (a) Not attending any school (as defined under State law);
- (b) Not younger than 16 or older than age 24 at time of enrollment. Because age eligibility is based on age at enrollment, participants may continue to receive services beyond the age of 24 once they are enrolled in the program; and
- (c) One or more of the following:
 - (1) A school dropout;
 - (2) A youth who is within the age of compulsory school attendance, but has not attended school for at least the most recent complete school year calendar quarter. School year calendar quarter is based on how a local school district defines its school year quarters;
 - (3) A recipient of a secondary school diploma or its recognized equivalent who is a low-income individual and is either basic skills deficient or an English language learner;
 - (4) An individual who is subject to the juvenile or adult justice system;
 - (5) A homeless individual, a runaway, an individual who is 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, or an individual who is in an out-of-home placement;
 - (6) An individual who is pregnant or parenting;
 - (7) An individual with a disability;
 - (8) A low-income individual who requires additional assistance to enter or complete an educational program or to secure or hold employment. (WIOA Section 129(a)(1)(B).)

Under WIOA section 129(a)(1)(C), an in-school youth (ISY) is an individual who is:

- (a) Attending school (as defined by State law), including secondary and postsecondary school;
- (b) Not younger than age 14 or (unless an individual with a disability who is attending school under State law) older than age 21 at time of enrollment. Because age eligibility is based on age at enrollment, participants may continue to receive services beyond the age of 21 once they are enrolled in the program;
- (c) A low-income individual; and
- (d) One or more of the following:
 - (1) Basic skills deficient;
 - (2) An English language learner;
 - (3) An offender;
 - (4) A homeless individual, a homeless child or youth, a runaway, in foster care or has aged out of the foster care system, a child eligible for assistance under sec. 477 of the Social Security Act, or in an out-of-home placement;
 - (5) An individual who is pregnant or parenting;
 - (6) An individual with a disability;
 - (7) An individual who requires additional assistance to complete an educational program or to secure or hold employment. (WIOA Section 129(a)(1)(C).)

Eligibility Changes. There are a number of significant changes in eligibility from WIA to WIOA. The pool of individuals that meet the eligibility as an OSY has significantly increased due to three changes: 1) increased age eligibility allows youth through age 24 to be

eligible as an OSY, 2) only two categories of OSY (categories (c)(3) and (c)(8) above) require low income for eligibility, and 3) those of compulsory school age who have not attended school in the most recent school year quarter, are considered OSY. In addition, for purposes of title I of WIOA, the Department does not consider providers of Adult Education under Title II of WIOA, YouthBuild programs, and Job Corps programs to be “schools.” Therefore, WIOA youth programs may consider a youth to be OSY for purposes of WIOA youth program eligibility if they are attending Adult Education provided under Title II of WIOA, YouthBuild, or Job Corps.

Low-Income Individual Definition. There are also significant additions to the definition of “low-income individual” for the title I WIOA youth program. Under WIOA, a youth who receives or is eligible to receive a free or reduced price lunch under the Richard B. Russell National School Lunch Act, is considered low-income. In addition, a youth living in a high-poverty area is automatically considered to be a low-income individual. The Department received a number of comments on the proposed definition of a youth living in a high-poverty area contained in the NPRM, and will provide a definition for a youth living in a high-poverty area in the final regulations for the WIOA youth program. The final regulations for WIOA will further define a “youth living in a high-poverty area” based on the public comments. Until final regulations are published and effective, States and local areas may define a “youth living in a high-poverty area.”

Determination of School Status. Determination of whether a youth participant is an OSY or ISY is made at the time of program enrollment. Once the school status of a youth is determined, that school status remains the same throughout the youth’s participation in the WIOA youth program for purposes of reporting against the OSY expenditure requirement. For example, if a youth is determined to be an OSY at time of enrollment and subsequently re-enters high school or enrolls in postsecondary education, that youth is still considered an OSY for purposes of the OSY expenditure requirement throughout their participation in the WIOA youth program.

As discussed in TEGL 38-14, “Operational Guidance to Support the Orderly Transition of Workforce Investment Act Participants, Funds, and Subrecipient Contracts to the Workforce Innovation and Opportunity Act, on July 1, 2015,” all WIA youth participants who were still enrolled in the WIA Youth Program as of June 30, 2015 must be grandfathered into the WIOA youth program, even if the participant would not otherwise be eligible for the WIOA youth program. Local youth programs are not required to complete an eligibility re-determination if the participant has been determined eligible and enrolled under WIA (prior to July 1, 2015). The school status of a youth enrolled under WIA remains the same school status when they get grandfathered into WIOA (post-July 1, 2015). For example, if a youth was determined OSY under WIA, and is in school on July 1, 2015, when they become a WIOA youth program participant, they are still considered OSY for purposes of the OSY expenditure requirement.

Under the WIOA youth program eligibility requirements, the term “school” refers to both secondary and postsecondary school. Therefore, an individual attending either secondary

school or postsecondary school is considered ISY. The term “school dropout” refers to an individual who has dropped out of high school and not completed their high school diploma or equivalent. The term “school dropout” does not include individuals who have dropped out of postsecondary education.

As stated in TEGL No. 23-14, “the 75 percent expenditure rate is a minimum requirement; therefore, states and local areas may spend up to 100 percent of their local area youth funds on OSY if they choose.” However, states and local areas should keep in mind the requirement in WIOA Section 129(c)(3)(B) that each eligible provider of a program of youth workforce investment activities shall ensure that an eligible applicant who does not meet the enrollment requirements of the particular program or who cannot be served shall be referred for further assessment, as necessary, and referred to appropriate programs. States and local areas must ensure that those eligible youth, including ISY, that are not enrolled in the program are appropriately referred to alternative programs, if available.

Additional Assistance Barrier. One of WIOA’s eligibility criteria for ISY is “an individual who requires additional assistance to complete an educational program or to secure or hold employment.” For OSY, this criterion is similar, but the provision has slightly changed from WIA, as WIOA has added the phrase “to enter”: “an individual who requires additional assistance to enter or complete an educational program or to secure or hold employment.” The state and/or local area must establish definitions and eligibility documentation requirements for these criteria. In cases where the State Board establishes State policy on these criteria, the State Board must include the definition in the State Plan. In cases where the State Board does not establish a policy, the Local Board must establish a policy in their local plan, if using these criteria. Policies established at the state or local level should be reasonable, quantifiable, and based on evidence that the specific characteristic of the youth identified in the policy objectively requires additional assistance. For example, “reading below grade level” is an example of an evidence-based, quantifiable characteristic; whereas, “low GPA” is an example of a policy needing more specificity. The policy would be improved if the characteristic were more specific and quantifiable, such as a youth with a GPA below a specific threshold.

In addition, there is a new limitation in WIOA related to the “additional assistance” criterion that applies only to ISY. WIOA Section 129(a)(3)(B) states that in each local area, not more than 5 percent of the ISY assisted may be eligible based on paragraph (1)(C)(iv)(VII), which refers to the barrier for an ISY who requires additional assistance to complete an educational program or to secure or hold employment. The Department recognizes many local areas relied on the “additional assistance” criterion under WIA and the 5 percent limitation for ISY is a significant change. This may result in additional services to ISY populations with more significant barriers to employment. States and local areas must ensure that in a given program year, no more than 5 percent of ISY enrolled in the program year are eligible only based on the “additional assistance” criterion. For PY 2015, the 5 percent limitation is only based on participants who enroll on or after July 1, 2015. For example, if a local area enrolls 100 ISY during PY 2015, only 5 of those 100 youth can be determined eligible using the

“additional assistance” criterion. However, participants that were enrolled under WIA and carried into WIOA are not factored into the 5 percent “additional assistance” limitation.

Low-Income Exception. The “Additional Assistance” criterion referred to above is different from the 5 percent Low-Income eligibility exception. WIOA, like WIA, maintains a 5 percent low-income eligibility exception where 5 percent of local area participants who ordinarily would need to be low-income do not need to meet the low-income provision. Under WIA, the 5 percent low-income exception was calculated based on 5 percent of all youth participants enrolled in a given program year. However, because not all OSY are required to be low-income, the 5 percent low-income exception under WIOA is calculated based on the 5 percent of youth enrolled in a given program year who would ordinarily be required to meet the low-income criteria. For example, a local area enrolled 200 youth and 100 of those youth were OSY who were not required to meet the low-income criteria, 50 were OSY who were required to meet the low-income criteria, and 50 were ISY. In this example, the 50 OSY required to be low income and the 50 ISY are the only youth factored into the 5 percent low-income exception calculation. Therefore, in this example 5 of the 100 youth who ordinarily would be required to be low-income do not have to meet the low-income criteria based on the low-income exception.

- Youth Standing Committees.** Under title I of WIOA, Youth Standing Committees represent a new mechanism for states and local boards to coordinate area-wide youth services, assist with planning, and oversee operational programs related to youth services. With the appropriate authority from Local Boards, Youth Standing Committees can serve as architects in designing and building comprehensive youth services at the local level. The Youth Standing Committee can help to identify gaps in services and develop a strategy to use competitive selections or community partnerships to address the unmet needs of youth. Youth Standing Committees should coordinate youth policy, ensure quality services, leverage financial and programmatic resources, and recommend eligible youth service providers. In addition, single area states have the opportunity to create a State Youth Standing Committee to assist the State Workforce Board in coordinating youth services. States and local areas should keep in mind that existing Youth Councils formed under WIA can serve a critical role in helping to build their Youth Standing Committee. TEGL No. 23-14 clarifies the differences between a Youth Council and a Youth Standing Committee, and emphasizes the role that Youth Councils can play for local areas that are interested in transitioning to a Youth Standing Committee.

Further, TEGL No. 23-14 states that an existing Youth Council may be designated as the Youth Standing Committee if they fulfill the requirements of a Youth Standing Committee. This means that the committee has members of the Local Board who have the appropriate experience and expertise in youth educational and workforce development activities. If a Local Board grandfathers in an existing Youth Council as their Youth Standing Committee, the Department encourages states and local areas to review and discuss their membership to ensure that it represents the composition identified in the following paragraphs.

Membership. If a Local Board decides to form a Youth Standing Committee, the committee must include a member of the Local Board, who chairs the committee, members of community-based organizations with a demonstrated record of success in serving eligible youth, and other individuals with appropriate expertise and experience who are not members of the Local Board. The committee members appointed for their experience may bring their expertise to help the committee address the employment, training, education, human and supportive service needs of eligible youth, including out-of-school youth. Members may represent agencies such as education, training, vocational rehabilitation, health, mental health, housing, public assistance, and justice, or be representatives of philanthropic or economic and community development organizations, and employers. The Youth Standing Committee may also include parents, participants, and youth.

Communities forming Youth Standing Committees will want to think strategically about the resources, both monetary and programmatic, a potential member can bring to the table. Critical to the success of a standing committee is bringing members together who reflect the needs of the community and can help bring both planning and resource assistance, and provide links to intermediaries that broker connections between youth and networks of employers. When recruiting members, devote special attention to parents, employers, and youth to gain their perspective of what is needed for youth and how it should be delivered.

ETA is hosting a year-long webinar series called “Enough is Known for Action” focused on key WIOA youth program priorities including OSY, work experience, credentials, and youth committees. For additional information on the Youth Standing Committees webinar, refer to the “Enough is Known for Action” webinar on Youth Standing Committees found at: <https://www.workforce3one.org/view/5001513351722619099/info>. The “Enough is Known for Action” webinar series can also serve as an excellent training resource for youth committee members.

7. **Work Experience Expenditure Requirement.** Title I of WIOA includes a new requirement that a minimum of 20 percent of local area funds must be spent on work experience. As stated in TEGP No. 23-14, program expenditures on the work experience program element can be more than just wages paid to youth in work experience. Allowable expenditures beyond wages can include staff time spent identifying potential work experience opportunities, staff time working with employers to develop the work experience, staff time spent working with employers to ensure a successful work experience, staff time spent evaluating the work experience, participant work experience orientation sessions, classroom training or the required academic education component directly related to the work experience, and orientations for employers.
8. **Partner Programs.** Given that WIOA broadens the required program elements and focuses on a more difficult to serve population, partnering is even more critical under WIOA. A primary goal of WIOA is to bring together, in strategic coordination, the core programs of Federal investment in skill development. WIOA encourages further alignment and leveraging, as appropriate, of the Title II Adult Education and Family Literacy Act and the Title IV Vocational Rehabilitation program resources and policies. At a State level, the

requirement to submit a Unified State Plan or Combined State Plan will increase coordination of core programs. WIOA requires States to prepare a single plan – a Unified State Plan – for the core programs that includes the strategic vision and goals of the State for preparing an educated and skilled workforce and for meeting the needs of employers, as well as the operational elements that support the four-year state strategy. States have the option to submit a Combined State Plan, instead of a Unified State Plan, that would include, in addition to the core programs, other Federal programs with a workforce development component, such as the Temporary Assistance for Needy Families program or those funded through the Carl D. Perkins Career and Technical Education Act programs, among others. The law places a strong emphasis on accountability and improvements in program outcomes to ensure that individuals have access to high-quality services and opportunities. As such, WIOA establishes common performance measures across core programs which promote greater integration of services across core programs. In addition to planning and performance, the following strategies may also increase opportunities for the youth workforce system to partner across multiple programs in order to develop a coordinated and comprehensive service delivery system to meet the needs of both ISY and OSY.

Partnership and Collaboration Opportunities with Title II – Adult Education and Family Literacy Act (AEFLA). Title II creates a partnership among the Federal government, states, and localities to provide, on a voluntary basis, adult education and literacy activities in order to: assist adults to become literate and obtain the knowledge and skills necessary for employment and self-sufficiency; assist adults who are parents or family members to become full partners in the educational development of their children and lead to sustainable improvements in the economic opportunities for their family; assist adults in attaining a secondary school diploma and in the transition to postsecondary education and training, including through career pathways; and support English language learners in improving their English reading, writing, speaking, comprehension, and mathematics skills and acquiring an understanding of the American system of Government.

Individuals who are 16 years old or older and not enrolled in secondary school or required to be enrolled in secondary school under State law and meet the requirements of Section 203(4)(C) are eligible for Title II services. In this way, age eligibility for Title II services varies among states similar to youth eligibility criteria for OSY. Additionally, under WIOA, AEFLA expands what activities can be provided to eligible individuals. New activities include workforce preparation and integrated education and training, two activities that are prominent in the WIOA Youth program. This presents an important opportunity for Title I youth and Title II programs to coordinate to ensure successful education and employment outcomes for OSY. There are important changes in WIOA that should allow for increased alignment and coordination with WIOA Title I youth and Title II programs. Examples of where coordination can occur include:

Emphasis on low-skilled adults: Title II (AEFLA) includes requirements for states to consider a number of factors when awarding grants or contracts. Factors include whether providers are serving individuals who are most in need of adult education and literacy services, including those with low levels of literacy skills or who are English language

learners and the past effectiveness of providers in improving literacy of eligible individuals, especially with respect to individuals who have low levels of literacy.

Integrated Education and Training, Workforce Preparation, and Career Pathways:

WIOA promotes the integration of adult education with occupational education and training and workforce preparation, as well as the creation of career pathways for youth in Title I WIOA Youth Programs. The definition of “career pathway” is codified in WIOA Section 3(7). Title II authorizes the use of funds for integrated education and training and workforce preparation activities. Leveraging funding between WIOA Title II and the Title I Youth Program provides an opportunity to create a service strategy that concurrently enrolls OSY in education programs combined with workforce preparation and training. Partnering with Title II programs and leveraging resources effectively can assist local areas in meeting their requirement to develop and implement career pathways by aligning the employment, training, education, and supportive services youth need. (WIOA Section 107(d)(5))

Partnership and Collaboration Opportunities with Title IV –Rehabilitation Act. WIOA emphasizes and increases the requirements for the workforce system to meet the needs of individuals with disabilities, including students and youth with disabilities. WIOA places significant emphasis on serving students and youth with disabilities by increasing work opportunities to improve workplace skills, including internships and apprenticeships. The Rehabilitation Act expands not only the population of students with disabilities who may receive certain services under the Vocational Rehabilitation (VR) program, but also the kinds of services the VR agencies may provide to students and youth with disabilities who are transitioning from secondary school to postsecondary education and employment. WIOA encourages pro-active engagement between the workforce development system and VR agencies around the strategic planning process, including the strategic vision and goals for preparing and educating all individuals served by the workforce system and for meeting the needs of employers. Examples of coordination opportunities include:

Pre-Employment Transition Services: WIOA amendments to the Rehabilitation Act require VR agencies to reserve at least 15 percent of Federal VR funds for the provision of pre-employment transition services to assist students with disabilities who need such services. Pre-employment Transition Services include: job exploration counseling; work-based learning experiences in an integrated environment in the community (including internships); counseling on enrollment in comprehensive transition or postsecondary educational programs; workplace readiness training to develop social skills and independent living; and instruction in self-advocacy, including peer mentoring; and other authorized activities (if funds are available and remaining after the required activities are provided). WIOA requires VR agencies and state and local educational agencies (LEAs) to coordinate and ensure the provision of pre-employment transition services for students with disabilities. Local workforce development boards should coordinate with VR agencies and educational agencies in serving in-school youth with disabilities and complement services provided by those agencies with WIOA services that VR agencies and LEAs are not able to provide.

State Plans: In accordance with section 101(a)(15)(A)(i)(IV) of the Rehabilitation Act, the needs of youth with disabilities must be identified through the comprehensive state-wide needs assessment, jointly conducted by the designated State unit and the State Rehabilitation Council (if the State has such a Council), and incorporated into the goals of the VR portion of the Unified or Combined State Plan. Section 101(a)(11)(C) of the Rehabilitation Act specifies that the State plan shall include descriptions of interagency cooperation with, and utilization of the services and facilities of, Federal, State, and local agencies and programs, including non-educational agencies serving out-of-school youth. State planning provides an excellent opportunity for the workforce system and VR agencies to coordinate.

Disability Standing Committees: WIOA states that local workforce development boards may have standing committees including a Youth Standing Committee (discussed in Section 5) as well as a committee focusing on individuals with disabilities. Both the Youth and Disability Standing Committees could serve as important forums to influence the ability of the workforce system to meet the needs of youth, including youth with significant disabilities. If both committees are created, the Department encourages collaboration between them to coordinate services to youth with disabilities.

9. Inquiries. All inquiries should be directed to the appropriate ETA regional office.

10. Attachments. References.