

**COMMENTS ON PROPOSED RULES FOR IMPLEMENTING PROVISIONS OF THE
WORKFORCE INNOVATION AND OPPORTUNITY ACT OF 2014**

**Submitted by the Migration Policy Institute's
National Center on Immigrant Integration Policy
June 15, 2015**

The Migration Policy Institute's National Center on Immigrant Integration Policy is pleased to submit these comments on the Notices of Proposed Rulemaking (NPRM) published to implement the Workforce Innovation and Opportunity Act (WIOA) of 2014. Our comments address provisions contained in the U.S. Department of Education's NPRM titled Programs and Activities Authorized the Adult Education and Family Literacy Act (AEFLA) (RIN 1830-AA22; Docket No. ED-2015-OCTAE-0003); the Department of Labor's NPRM implementing Title I and Title III of WIOA (RIN 1205-AB73; Docket No. ETA-2015-001); and the Joint Rule for Unified and Combined State Plans, Performance Accountability, and One-Stop System Joint Provisions published by the departments of Labor and Education (NPRM RIN 1205-AB74; Docket No. ETA-2015-0002).

We appreciate the extraordinary efforts staff and leaders in the departments of Labor and Education have made thus far to implement the wide-ranging and complex provisions of the new law. Adult English language, education, family literacy, civics and training services offered through WIOA will be critical in facilitating the linguistic, economic and civic integration of our country's almost 20 million immigrants and refugees over age 16 who are Limited English Proficient (LEP) and the roughly 11 million adult immigrants and refugees who lack a high school diploma or equivalent.¹ Though the needs for adult education and training services that result from Federal immigration and refugee policies dramatically outpace Federal investments to address them, WIOA's programs and the state partnership and investments they require nevertheless provide the central policy and program framework for these crucial services in communities across the United States.

The law's implementation will therefore greatly impact prospects for the linguistic, economic and civic integration of our country's tens of millions of foreign-born residents. Accordingly, our comments focus on aspects the NPRMs where we believe the U.S. Departments of Labor (DOL) and/or Education (ED) have proposed regulations that overlook opportunities or unduly limit prospects for immigrants and refugees to be equitably served under the law.

**A. Programs and Activities Authorized by the Adult Education and Family Literacy Act
RIN 1803-AA22**

1) Skill gains relevant to the Family Literacy program's stated definition must be developed and integrated into the law's performance accountability system.

Research and analysis conducted by MPI's National Center on Immigrant Integration Policy and others have documented the over-representation of immigrants and refugees among low-income, low-

¹ MPI tabulations of the U.S. Census Bureau's 2013 American Community Survey

educated and/or Limited English Proficient (LEP) parents of young children.² Federal, state and local governments in the U.S. are mobilizing as never before to improve access and quality in early childhood education and care (ECEC) provision in order to close gaps in Kindergarten readiness and improve long-term education and career success for at-risk children. The central role of parents in partnering with ECEC providers in these efforts is universally acknowledged.

Family literacy and other parent-focused adult education programs can play a critical role in helping immigrant and refugee parents gain cultural, systems and child development knowledge that is essential in building their skills to navigate local ECEC systems and support their young children's healthy cognitive and socio-emotional development and school readiness. These programs are also essential in helping immigrant and refugee parents gain basic English language and literacy skills that will allow them to communicate with ECEC providers, most of whom do not speak the languages of immigrant-background children and families.³ Many also seek to improve the economic prospects of families they serve, providing parents with a range of consumer protection, financial literacy and career information and guidance supports.

Though the words Family Literacy have been retained in the title of the legislation and a definition of the program is plainly stated there and in the NPRM, including in Section 463.1 (*"Assist adults who are parents or family members to obtain the education and skills that— (1) Are necessary to becoming full partners in the educational development of their children; and (2) Lead to sustainable improvements in the economic opportunities for their family;"*) the NPRM fails to set expectations of measures or indicators relevant to the program's legal definition or discuss incorporation of these into the performance accountability system.

Recommendation:

- To address the need for establishment of skill gain measures that will allow Family Literacy programs that are conducted for the purposes described in WIOA to be integrated appropriately into the law's performance measurement system (presumably under Indicator 5: Measurable Skill Gain), we suggest that the Department of Education immediately empanel an expert working group to assist in the development of such measures.

2) State authority to determine the extent to which Integrated English Literacy and Civics Education services will include workforce training must be maintained and appropriate skill gain measures must be developed.

Subject to the appropriations process from year to year, the EL-Civics program, which WIOA codifies in the Integrated English Literacy and Civics Education (IELCE) program, was designed (in words taken from the Department of Education's website) to "increase access to English literacy programs in which civics education takes place; these civics programs emphasize contextualized instruction on the rights and responsibilities of citizenship, naturalization procedures, civic participation, and U.S. history and

² Maki Park and Margie McHugh, *Immigrant Parents and Early Childhood Programs: Addressing Barriers of Literacy, Culture, and Systems Knowledge* (Washington, DC: Migration Policy Institute, 2014), <http://www.migrationpolicy.org/research/immigrant-parents-early-childhood-programs-barriers>.

³ Maki Park, Margie McHugh, Jeanne Batalova, and Jie Zong, *Immigrant and Refugee Workers in the Early Childhood Field: Taking a Closer Look* (Washington, DC: Migration Policy Institute, 2015), <http://www.migrationpolicy.org/research/immigrant-and-refugee-workers-early-childhood-field-taking-closer-look>.

government to help students acquire the skills and knowledge they will need to become active and informed parents, workers, and community members.”

Section 463.33 of the Department of Education’s proposed regulations essentially repeats WIOA’s definition of the IELCE program, stating that the program’s services “shall include instruction in literacy and English language acquisition and instruction on the rights and responsibilities of citizenship and civic participation, and may include workforce training.” However, the Department’s definition of the program takes a decidedly more restrictive turn in Section 463.70 (What is the Integrated English Literacy and Civics Education program?) stating that program’s educational services **must** be delivered in combination with integrated education and training services (emphasis added). Language eliminating the discretion of states is used again in Section 463.73.

Adoption of this restrictive approach will prevent states from using these program funds to support a range of important integration goals for immigrants and refugees who may not need or desire workforce training—for example, refugees requiring early linguistic and civic integration support, those who are self-employed or small business owners, mothers who do not work outside the home who seek language and literacy development, and those seeking to prepare for naturalization (elderly immigrants in particular). With over 13 million lawful permanent residents in the US seeking to make their way along the pathway to citizenship, and potentially millions of others with legitimate learning goals that do not include or rely on workforce training, states’ authority should not be limited in deciding how to best leverage these funds to achieve a range of linguistic, economic and civic integration goals for their immigrant and refugee residents.

In addition, the Department has failed to discuss in its proposed regulations how essential elements of IELCE services will be measured and incorporated into WIOA’s performance measurement system. Along with English instruction, the law calls for IELCE services to enable adults “to acquire the basic and more advanced skills needed to function effectively as parents, workers, and citizens in the United States” and provide “instruction on the rights and responsibilities of citizenship and civic participation”. To ensure that the full complement of services envisioned under the law is implemented, measures (and interim measures) of skill gains for these areas will need to be established.

Recommendations:

- The law’s clear statement that IELCE services may, rather than must, include integrated educate and training services should be upheld, and the Department should empanel an expert working group to assist in developing measures of skill gains that will allow the full range of civics-focused skills described in the law to be reflected and valued in program measures.

3) Additional issues related to provisions addressing demonstrated effectiveness, English Language Acquisition and how it leads to postsecondary education and work, and integrated education and training.

Our organization lacks the capacity to comment on the full scope of the proposed rules; however we hereby endorse the comments submitted by the National Council of State Directors of Adult Education on the range of issues cited immediately above.

B. Proposed Rule Implementing Titles I and III of WIOA RIN 1205-AB73

1) Provisions for verification that the priority of service has been equitably implemented must be established.

Immigrants and refugees who are LEP and/or who have less than a high school education have historically had great difficulty accessing Title One-funded training services. LEP individuals appear to have been particularly disenfranchised—reports for the most recent program year indicate that less than 1.5 percent of those served with Title One training funds were LEP (excluding individuals served in Puerto Rico).⁴

Fortunately, WIOA contains numerous provisions stating, and the NPRM affirms, that services for youths and adults who are English Learners are expected to be provided as part of Title One services. Most importantly, the law includes “basic skills deficient” individuals as a priority population for use of Title One adult funds [WIOA sec. 134(c)(3)(E)], and the basic skills deficient definition clearly encompasses English learners. WIOA’s Title One also includes “individuals who are English language learners, individuals who have low levels of literacy, and individuals facing substantial cultural barriers” in its definition of individuals with a barrier to employment; requirements to target services to such individuals is threaded across the title. These various provisions centrally orient the wide range of immigrant and refugee adult learning needs in Title One’s delivery system—regardless of whether an individual is a low- or highly-educated English Learner—and also recognize the importance of addressing cultural barriers that may affect an individual’s ability to succeed in the workforce.

However, when the NPRM turns to implementing the priority of service and barrier to employment definitions via state plan requirements, there is little in the way of clear direction or accountability for ensuring these individuals are equitably reflected in the state’s unified or combined plan. For example, Section 679.560(b)(21) merely states that state plans should provide “the direction given by the Governor and the Local Board to the one-stop operator to ensure priority for adult career and training services will be given to recipients of public assistance, other low-income individuals, and individuals who are basic skills deficient consistent with WIOA 134(c)(3)(E) and § 680.600.” Section 680.600 provides little additional or relevant direction on this matter, adding mainly that “States and local areas must establish criteria by which the one-stop operator will apply the priority under WIOA sec. 134(c)(3)(E). Such criteria may include the availability of other funds for providing employment and training-related services in the local area, the needs of the specific groups within the local area, and other appropriate factors.”

Given that the priority of service is such a central feature of the law’s approach to allocating services, and given the limited number of individuals who can be served due to scarce resources, it is essential to ensure that the priority of service is, in fact, implemented with a high degree of fidelity by state and local entities.

Recommendation:

- The Department of Labor should require that state and local planning efforts utilize the most current Census and administrative data available to develop estimates of each priority service population in their planning efforts, and update these data year to year. These data should be utilized in federal reviews of state plans to ensure that system designs and projected investments are equitably targeted to service-priority populations; they should also be used to

⁴ Social Policy Research Associates, PY 2013 WIASRD Data Book (Washington, DC: Office of Performance and Technology Employment and Training Administration U.S. Department of Labor, 2015).

benchmark system performance in actual implementation of the priority of service from year to year.

2) The Department should require that state plans include provisions for access by LEP individuals to all Title One-funded services.

As noted earlier, the record of LEP individuals being provided access to Title One intensive or training services is remarkably poor, with the share of exiters who were LEP ranging from 1.8 to 1.5 percent over the past five years. Given this weak record and the new priority of service that encompasses English learners, particular attention must be paid to ensuring that state and local WIOA partners understand and comply with the federal government’s legal prohibitions against national origin discrimination in the delivery of federally-funded services, and that they equitably use Title One funds to meet the language learning, education and training needs of LEP individuals.

Recommendations:

- At a minimum the Department of Labor should require that state plans include provisions for access by LEP individuals to all Title One-funded services. If any Title One-funded programs in a state or locality are not expected to explicitly provide access to LEP individuals, the Department should require that the state or locality demonstrate how it is complying with federal anti-discrimination provisions and providing equitable access to Title One services for LEP residents.
- The Department should also undertake prominent technical assistance, monitoring and enforcement efforts related to federal national-origin discrimination prohibitions.

3) Federal and local refugee administrative structures should be connected to state and local plan development processes.

About 60,000-70,000 refugees are resettled in the United States each year via a partnership between the Federal government and non-governmental organizations. These individuals have fled from their home countries and demonstrated a well-founded fear of persecution should they return; nine refugee resettlement agencies work with affiliates in almost 200 communities across the U.S. to resettle these individuals and put them on a path to self-sufficiency. In the early decades of the resettlement program refugees came primarily from a few source countries or regions of the world—for example Southeast Asia or the Former USSR. Over the past 10-15 years however, refugees have come in smaller groupings from a very diverse range of countries and ethnic groups.

As a result, today’s refugees speak a wide range of languages; not infrequently these are “low-incidence” languages, meaning there are very few proficient speakers in the U.S., which can make it more difficult and/or expensive to hire translators and interpreters with these language skills. Many may have gaps in their underlying levels of native-language and English literacy or low levels of schooling—yet, many are at the other end of the spectrum, holding advanced degrees and professional certifications they obtained abroad. And some may suffer health and mental health difficulties due to the trauma and privations they have experienced.

While immigrants share many of these same characteristics, the infrastructure across the different levels of governments devoted to supporting refugees’ resettlement and success is unique. Given WIOA’s priority of service for individuals who are basic skills deficient and its inclusion of individuals who are English learners, have low literacy or face cultural barriers in its definition of those with barriers to employment, it is essential to ensure that the capacities and know-how of state refugee program

coordinators and refugee service provider networks be more formally and fully integrated with WIOA planning and service provision efforts at the state and local levels. This will help to ensure both that the law's service priority provisions can be implemented, and also ensure that the most cost-effective service partnerships are formed to address the complex needs of this priority population.

Recommendations:

- The Department should include reference to the need for expertise in serving linguistically and culturally diverse populations in its discussion of Part 679 proposals addressing the Statewide and Local governance provisions of WIOA.
- Similarly, the Department should include references to expertise and capacities for serving refugees and linguistically and culturally diverse populations in its discussions of One-Stop providers and expectations of education and training providers more broadly.
- In implementing measures to ensure that the law's provisions related to service priority and targeting of services to individuals with barriers to employment are met, the Department should require that pertinent data from State Refugee Coordinators on education and skill levels and potential cultural or other barriers be taken into account in state and local planning processes. In addition, many state and local governments have established offices of immigrant (or immigrant and refugee) affairs in order to promote more coordinated approaches to integrating and serving their newcomer communities. Given the demographic transformation of many parts of the U.S. in recent decades, the Department should encourage WIOA stakeholders to turn to such entities for relevant data, policy and program insights, and newcomer community connections as the law is implemented.

C. Joint Rule for Unified and Combined State Plans, Performance Accountability and the One-Stop System Joint Provisions
DOL RIN 1205-AB74
ED RIN 1830-AA21

We share the concern of many in the adult education and training fields that the design of the combined state performance accountability system will lead WIOA-funded programs and system designers to serve those better able to meet the law's outcome measures, rather than those most in need of services.

We also share the concern that the system's six performance indicators overwhelmingly privilege work-related and post-secondary transition and attainment outcomes. In mirror fashion they discount the goals and outcomes of vast numbers of adult learners, placing in financial jeopardy states and programs that seek to serve lower-level adult learners—many, if not most of whom, may be immigrants and refugees.

Though some states may accept these risks and equitably serve lower-skilled immigrant and refugee adult learners—setting their performance expectations under several of the six measures at appropriately low levels, and strongly defending these in negotiations with the secretaries of Labor and Education—the prospects for low-educated and LEP immigrants and refugees receiving needed services under WIOA appear gloomy at this time.

We believe the Departments should take several critically important steps to set a more productive balance in the tensions between setting strict expectations for post-secondary and employment outcomes and serving those with high needs and barriers. Doing so can spark the types of productive

innovation and system coordination long hoped for by reformers in both the adult education and workforce training fields.

1) Reduce creaming and advance equity by adopting provisions for verification that the law's priority of service requirements have been implemented.

Though the law attempts to point systems towards serving lesser skilled individuals, the lack of mechanisms to ensure that lower-skilled and other service-priority populations are actually or equitably served appears to be a grave design flaw in the legislation and the NPRMs.

Recommendation:

- As discussed earlier, we urge that states and localities be required to utilize the most current Census and administrative data available to develop estimates of each priority service population in their planning efforts, and update these data year to year. These data should be utilized in federal reviews of state plans to ensure that system designs and projected investments are equitably targeted to service-priority populations; they should also be used to benchmark system performance in actual implementation of the priority of service from year to year.

2) Develop and adopt skill gain measures compatible with major adult education programs authorized under WIOA.

Regardless of whether a state intends to be bold or timid in serving low-level and harder-to-serve adult learners they share the same problem: whether and the extent to which the gains of these learners can be counted under the only one of the system's six performance measures directly relevant to these students' progress—measurable skill gain.

Section 677.155(a)(1)(v) defines measurable skill gain as “the percentage of participants who, during a program year, are in an education or training program that leads to a recognized post-secondary credential or employment and who are achieving measurable skill gains, defined as documented academic, technical, occupational or other forms of progress, towards such a credential or employment.” The Departments go on to note that they are considering using this indicator to measure interim gains, mentioning specifically the example of low-skilled adults, for whom the indicator would provide an opportunity to track progress in reading, writing, mathematics and English proficiency prior to completing a high school credential and entering post-secondary education or training and employment.

The Departments specifically request comments on how interim indicators may be tracked in a standardized way, noting that documented progress could include such measures as the achievement of at least one educational functioning level of a participant in an education program that provides instruction below the postsecondary level.

Recommendations:

- The use of educational functioning level gains as interim indicators for Measurable Skill Gain strikes us as an obvious and fair approach, given the research that underpins the levels and the well-established framework that exists for assessing gains against them. Despite their drawbacks, the extensive research and design efforts to develop, pilot and implement the levels across the adult education field has provided a ready set of proven measures for accountability purposes.

- Adult education programs serve individuals with diverse learning goals as well as a wide range of underlying education and skills. WIOA recognizes and affirms these diverse learning goals—authorizing, for example, English Language Acquisition programs that lead to attainment of a secondary school diploma or equivalent and transition to postsecondary education and employment, as well as Family Literacy and Integrated English Literacy and Civics Education (IELCE) programs. The law states that Family Literacy programs will provide parents with knowledge and skills for becoming partners in children’s educational development, and IELCE programs must provide instruction on the rights and responsibilities of citizenship and civic participation. Many of the skill gains under the latter two programs would not be expected to fall under the indicator’s definition of “documented academic, technical, occupational” progress, but rather its provision for “other forms of progress”. As noted in our comments on the Department of Education’s NPRM implementing the Adult Education and Family Literacy Act, we strongly urge the Department to empanel expert working groups to assist in developing measures of skill gains that will allow the nature of instruction set forth in the law’s description of these two programs to be reflected and valued in program measures.

3) Allow provision of information in addition to wage records for performance accountability purposes.

Proposed 677.175 (a) requires states to use quarterly wage records to measure participants’ progress on several performance accountability indicators.

Recommendation:

- While searching government wage records can facilitate measurement of performance for many individuals, additional types of evidence must be allowed to account for the case of states that do not allow collection of Social Security Numbers, and for individuals who do not or cannot provide them. Other mechanisms have been used successfully to demonstrate employment outcomes in the past (whether through sampling or tracking of individual data) including phone surveys, presentation of pay stubs and self-attestation of exited students. These and similar methods should continue to be permitted.

Respectfully submitted on June 15, 2015.

For more information contact:

Margie McHugh, Director, MPI National Center on Immigrant Integration Policy

mmchugh@migrationpolicy.org

202-266-1921