June 9, 2015

The Honorable Thomas E. Perez
Secretary of Labor
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

The Honorable Sylvia M. Burwell
Secretary of Health and Human Services
U.S. Department of Health and Human Services
2100 Independence Avenue, S.W.
Washington, D.C. 20201

The Honorable Arne Duncan
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

Dear Secretaries Perez, Burwell and Duncan,

On behalf of the nation’s mayors, thank you for the opportunity to comment on the Workforce Innovation and Opportunity Act (WIOA) Notice of Proposed Rulemaking (NPRM) RIN 1205-AB73 implementing Title I and Title III of WIOA; and NPRM RIN 1205-AB74 “Joint Rule for Unified and Combined State Plans, Performance Accountability, and the One-Stop System Joint Provisions.”

We recognize that WIOA reflects the need to better coordinate among multiple funding streams and across multiple education, and workforce development programs. As mayors, we want to ensure that WIOA implementation truly addresses the needs of local and regional business, and serves to connect workers with opportunities for careers in in-demand industry sectors and occupations. Mayors play a key role in shaping the economic development framework in cities, and we appreciate the greater flexibility under WIOA for local areas to innovate in developing, convening and implementing industry and sector partnerships as we work to build a successful local workforce system.

We strongly support the objectives of WIOA and look forward to working with the Departments of Labor, Education, and Health and Human Services to support successful implementation of the law. Accordingly, we respectfully submit the following comments which reflect both where we believe the draft rules have addressed our concerns regarding regulatory guidance, as well as those areas where we believe additional regulatory clarification is necessary.
With regard to NPRM RIN 1205-AB73, The U.S. Conference of Mayors’ (USCM) comments focus on six key areas under WIOA Title I: 1) the Governor’s consultation with local elected officials (LEOs) in designation of regions; 2) transition from the Workforce Investment Act of 1998 (WIA) to WIOA; 3) provisions related to implementation of youth services; 4) selection of a one-stop operator(s) and career services provider(s); and 5) the performance measures.

In the section on NPRM 1205-AB74, we provide comments on the proposed rules relating to performance accountability, access to and timeliness of data, as well as the need for data sharing at 20 CFR sections 677.240 and 677.190, along with the requirements attendant to the selection of a one-stop operator at 20 CFR 678.605.

The U.S. Conference of Mayors Comments on NPRM RIN 1205-AB73

1. Designation of Local Workforce Investment Areas (LWIAs)/Regions

WIOA creates an opportunity for state and local leaders to rethink, reshape and expand workforce systems to better serve business and improve education and workforce opportunities for workers. City leaders must now act regionally, nationally and globally, and the “new mayor” needs to work with a coalition of industry and education leaders to create regions where elected leaders and economic developers “collaborate to compete.” In furtherance of this objective, we appreciate that Sections 679.130, 679.210 and 679.230 require that the designation of local workforce investment areas and regions include consultation with more than one local elected official (LEO), and with local boards, but we remain concerned that the process does not include consultation representing the largest and smallest city in any given LWIA for balanced representation. In order for elected officials in any region to set a bold agenda on economic development, a key priority of the required coalition building has to be that all LEOs believe their interests are represented. Once a true coalition is established, with every voice heard and at the table, mayors can then truly work together to encourage industry growth, as opposed to competing against one another for existing jobs, which is a zero sum game for the region.

A secondary concern is related to the shifting nature of regions and the vagaries of continuing agreements among disparate political bodies whose interests are not always aligned. True consultation is not established unless the LEOs are provided a proposal requiring sign-off. USCM believes that a more clearly defined consultation process is necessary to create buy-in and foster the kind of collaboration required to build and strengthen a region.

2. Transition from WIA to WIOA

Section 503 of WIOA provides the Secretary of Labor with the authority to take such actions as he determines to be appropriate to provide for the orderly transition from the WIA to WIOA. The Department’s actions in providing transition guidance as requested in our letter dated February 19, 2015 is greatly appreciated and has been very helpful
as the system begins to convert from the requirements of WIA to the innovations of WIOA.

3. Impact of the Shift in WIOA to Out-of-School Youth

USCM would like to commend the U.S. Department of Labor (US DOL) for providing the transition guidance related to the new WIOA requirement that at least 75 percent of youth funding available to local areas be spent on workforce investment services for out-of-school youth. Allowing local areas to gradually increase expenditures on out-of-school youth through June 30, 2016 will assist the workforce system in easing out of its in-school programs while shifting their focus to the out-of-school youth population. USCM also applauds the decision to define out-of-school youth to include youth who are enrolled in a General Education Development (GED) class. This will allow states and localities to more easily align and coordinate services to youth with the Adult and Family Literacy Education programs under WIOA Title II. We would like to suggest that the US DOL also consider defining youth in “drop-out prevention” programs and similarly titled programs to be categorized as out-of-school. Youth in these programs are no longer attending traditional high schools, but with intervention may still be able to get a traditional high school diploma. This is a desired result and is in line with the intent of the legislation.

The NPRM provides additional clarification regarding when it is required to document “economically disadvantaged” for out-of-school youth. Regardless of socio-economic status, youth who have dropped out of high school are on a downward trajectory. Recognizing this has been a long time coming and is greatly appreciated. We would like to suggest that youth in a GED program be clearly defined as “high school drop outs,” as this would then preclude the necessity of determining those youth as economically disadvantaged. Doing this will also align with Adult and Family Education and Literacy and we believe is in accordance with the intent of Congress for this population.

The U.S. Conference of Mayors Comments on NPRM RIN 1205-AB74

1. Selection of the Local Board as the One-Stop Operator

There are many different one-stop governance models around the country. Economics, available performing providers, cultural differences, and experience with the different models and options are among some of the many variables contributing to the choice of one-stop operator. The ability of a local board that wants to operate a one-stop to be able to compete or to justify a sole-source procurement, in a totally neutral and conflict-free procurement environment, would be very difficult. More clarity than is currently provided through the NPRM is requested so that LEO’s and local boards can easily comply with the requirements where the local board wants to operate a one-stop.

Under WIA, local governmental units/local boards were able to deliver core and intensive services to participants, as long as the one-stop staff was in different departments or units than the staff providing support to the workforce investment boards. The preamble to the NPRM implies that this practice can continue as the statute
does not state that “career services” must be competitively procured only “contracted.” It is respectfully recommended that the final regulations clearly state that local governmental units that employ staff who deliver the equivalent of career services, many of whom are subject to collective bargaining, can continue to provide these services. Clarifying the options for the delivery of career services, so that they are aligned with the ability of local governmental units/boards to deliver framework services for youth, will greatly assist in assuring compliance, while not disturbing existing staff who perform direct services.

2. Performance Accountability and Monitoring/Data Collection and Data Systems

We applaud the numerous changes to data and performance accountability measures in WIOA from WIA that are designed to improve cross-program data and create a system of shared accountability. Specifically, we appreciate that Section 677.150 of the NPRM promulgates common definitions, timelines and calculation methodologies across all programs covered by the unified and combined planning process; and that Section 677.155 identifies the primary indicators of performance that states must include in their unified and combined plans; and that the indicators are aligned, the same and do not vary across regulations.

We remain concerned, however, about access to and timeliness of the data. Access to wage data is extremely limited or non-existent for many local areas. Currently none of the core partners have access to the official wage record. Nevertheless, it is a key element in the determination of whether a core partner, local area, region and/or state have met their performance metrics. Holding boards and partners responsible for meeting performance without access to this key data element needs to be corrected.

Another critical, and not a new concern, is the ability to get data timely. By the time actual data becomes available, if an area is failing a measure, it is too late to make the program adjustments necessary to meet the measure. As the performance measures determine whether a local area and/or region may continue to be designated, access to and timely information is critical.

Critical to providing better customer service and self-monitoring success -- with respect to the performance metrics -- is the ability to share information across funding streams, at least among the core partners and education, which is vital. Sharing information in order to better coordinate, avoid duplication and align services is imperative. Currently, participants are inundated with “release of information” forms so agencies can exchange information regarding services received. This is done on a one-by-one basis and it often takes a long time to get the information. Providing guidance that requires state agencies, including education, to share information about common customers will help states and localities plan better, provide better customer service, avoid duplication and make course corrections quickly and efficiently. We respectfully submit that these issues have not been adequately addressed in the NPRM.

Finally, many if not all states and localities carry some individuals in their caseloads for long periods of time. This happens for many reasons. The USCM respectfully requests that the final guidance, with respect to determining who will be included in the
calculation of performance, provide additional categories for neutral exits than was the case under WIA. This is particularly a concern as the WIOA measures apply to individuals enrolled under WIA, which employed a totally different calculation methodology to determine whether the measures were met. This will remain a concern under WIOA, which focuses priority on those most in need of services, or who have barriers or disabilities that may interfere with their ability to complete or continue in a program, which would not be covered by the current list of neutral exits.

In our letter dated February 19, 2015, we recommended using the first two years of WIOA to set a baseline for negotiation of the performance measures to encourage and foster the integration intended by Congress in the creation of core programs. This recommendation was not addressed in the NPRM. We believe an established benchmark is critical to ensure congressional intent is accomplished and recommend it be included in the regulations.

Thank you for the opportunity to submit these comments, as we work together to implement WIOA in cities, moving our nation’s workforce system forward into the 21st Century.

Sincerely,

Tom Cochran
CEO and Executive Director