



California Indian Manpower Consortium, Inc.

*The CIMC Movement: Creating Positive Change for Native Communities*

June 15, 2015

RE: Workforce Innovation and Opportunity Act (WIOA) Notice of Proposed Rulemaking (NPRM) RIN 1205-AB73 (Docket No. ETA-2015-0001)

The California Indian Manpower Consortium (CIMC) is pleased to submit the following comments regarding the Workforce Innovation and Opportunity Act (WIOA) Notice of Proposed Rulemaking (NPRM) RIN 1205-AB73 (Docket No. ETA-2015-0001), implementing Title I, Part 684 – Indian and Native American (INA) Programs.

We support the opportunities and innovation of WIOA, and we look forward to working with the Department of Labor and Education – as well as other federal agencies responsible for the administration of partner programs – to support the successful implementation of the law. The NPRMs released in April 2015 are a critical step towards achieving successful implementation, and we respectfully note areas in the draft rules that we believe need additional regulatory clarification, guidance and consideration.

**RIN1205-AB73-681.260** defines “high poverty area” for the purposes of the special rule for low-income youth in WIOA. This proposed language is ambiguous and we recommend a revision to the proposed language which is more precise and eliminates the ambiguity in the term “tribal area”.

Recommended language: A youth who lives in a high poverty area is automatically considered to be a low-income individual. A high-poverty area is a Census tract, a set of contiguous Census tracts, an American Indian Reservation, Oklahoma Tribal Statistical Area (as defined by the US Census Bureau), Alaska Native Village or Alaska Native Regional Corporation Area, Native Hawaiian Homeland Area or county that has a poverty rate of at least 30 percent as set every five years using American Community Survey 5-Year data.

**RIN1205-AB73-684.130** includes the definitions as they apply to the INA programs and the recommended revision to the proposed language is more precise, referencing specific terms as defined by the US Census Bureau. In the Native American Supplemental Youth Services program the definition should relate specifically to poverty rates for the Native American population as that is the target population for this program. Poverty rates for the total population of all races are not relevant for purposes of this particular program.

Recommended language: For purposes of programs under this part, a *High-poverty area* means a Census tract, a set of contiguous Census tracts, an American Indian Reservation, Oklahoma Tribal Statistical Area (as defined by the US Census Bureau), Alaska Native Village or Alaska Native Regional Corporation Area, Native Hawaiian Homeland Area or county where the poverty rate for the American Indian, Alaska Native or Native Hawaiian population is at least 30 percent as set every five years using ACS 5-Year data.

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**RIN 1205-AB73-684.110** states that the INA programs will be administered to maximize the Federal commitment to support the growth and development of INAs and their communities as determined by representatives of such communities. In addition, it states that the Department of Labor will follow the Congressional declaration of policy set forth in the Indian Self-Determination and Education Assistance Act (ISDEAA), as well as the Department of Labor's American Indian and Alaska Native policies. Furthermore, it should be noted that the regulations in this part were not intended to abrogate the trust responsibilities of the Federal government to federally-recognized tribes in any way; however, language was not included such as in WIA that the Department of Labor will utilize staff who have a particular competence in this field to administer these programs see (WIA sec. 166(h)).

We concur with the administration of the INA programs consistent with ISDEAA at 25 U.S.C. 450a, as well as the Department of Labor's American Indian and Alaska Native policies. We strongly recommend inclusion of language that would require the Department of Labor to utilize staff with a particular competence in the federal policies which have tribal implications and address the government-to-government relationship between the United States and Indian tribes.

**RIN 1205-AB73-684.410** limits inclusion of federally-recognized tribes who do not have a land base, although they have legal jurisdiction to receive supplemental youth services funding. This limitation fails to recognize the unique history of California Indians and will adversely impact the federally-recognized tribal communities that do not yet have land in trust but have been eligible for funding and have received services under prior workforce legislation.

The unique history of California Indians is well documented yet not well known in the public consciousness (see, e.g., *Advisory Council on California Indian Policy Final Reports and Recommendations to the Congress of the United States pursuant to Public Law 102-416*). This history includes explicit state and federal policies of extermination of Native populations, treaties unratified by the U.S. government and kept under seal for more than 50 years, and the forced labor and slavery of the Native population. Tribes were forced from their land, and had little recourse due to the Land Claims Act of March 3, 1851 (9 Stat. 631). The eventual allocation of lands for Indians was not for the Indians' benefit, but for the ease of military control of Native populations. (see "Four Reservations Act" of April 13, 1864, 13 Stat. 39). Even the limited land base for tribes in California was diminished by the General Allotment Act of 1887. Many tribes without land were removed to small parcels, frequently known as "Rancherias" which generally did not provide sufficient land to support the population. With the California Rancheria Termination Act of 1958, and with amendments in 1964 (Public Law 85-671), even the majority of these small Rancherias were distributed to individuals or sold off, and the federal recognition of the many tribes was terminated. Only through numerous court cases were the majority of these tribes able to regain their federal recognition. (see *Tillie Hardwick v. United States*). However, although many California tribes won back their federal recognition (i.e., had their government-to-government relationship restored), most did not have their tribal land returned. To this day, numerous tribes in California do not have a land base.

It is with this history in mind that the proposal to limit the ability of tribes, tribal consortia, and tribal non-profits to receive funding is problematic. Federally-recognized tribes without a land base in California should not be prevented from receiving funding and/or offering supplemental youth services to their members. Exclusion of the California tribal communities within the service areas will have discriminatory effects upon these federally-recognized tribes without a land base in California.

**RIN 1205-AB73-684.460** states that the performance accountability measures applicable to the Native American supplemental youth services program includes the primary indicators of performance described in WIOA 116(b)(2)(A), the same performance indicators for the State formula programs **and** in addition to those six performance measures, the Secretary of Labor, in consultation with the Native American Employment and Training Council, **must** develop a set of performance indicators and standards that is in addition to the primary indicators that are applicable to the INA program under this section.

There are several overbearing issues which must be taken into consideration before imposing these performance measures on the INA supplemental youth services programs. The first issue is the inability and the cost in collecting data for performance indicators. The performance reporting system (Bear Tracks) currently used by INA grantees is not a web-based application and has a number of limitations. The current platform does not provide the level of data security that updated web-based applications provide. If Bear Tracks is not modernized, the Department will have increased difficulty supporting the grantees because the existing application has reached its limitations while the Department continues to invest in new technology and at some point the old technology used by INA grantees will no longer interact with the new technology and will no longer be supported. The current Microsoft Access platform does not allow the Department to obtain real-time data across the INA grantee community; it is anticipated that to total cost may exceed over \$1,000,000 to update. Additionally, training will be necessary for the INA grantees on a nationwide basis. These resources would need to be appropriated by the Department.

The second issue is the INA grantee funding levels. The Department of Labor currently allocates 1 ½ percent from the amount appropriated to the states to fund the Native American youth programs (see WIOA section 127(b)(1)(A)). In PY 2014, the appropriation for the state youth formula program was \$820 million, however, only \$8.3 million was allocated to Native American grantees to operate youth programs (funding level excludes \$4 million transferred to the Department of the Interior for Public Law 102-477 INA grantees). The median funding amount for Native American youth grants for PY 2014 is \$30,000 compared to \$9.4 million for state youth formula grants.

INA youth grants range from \$950 to \$2.7 million (median grant size is less than \$30,000 and there are only two grantees who receive funding over a million dollars. In fact, 88% of the INA youth grants are less than \$100,000 and two-thirds of the grants are less than \$50,000). Given this disparity in funding between the INA youth grants and the state grants, it is not reasonable or practical to require the same level of service and effort in collecting performance data for the INA youth program given the size of the grants.

The third issue is that most INA grantees operate summer employment programs only. Due to the small amount of youth funding that INA grantees receive, the majority of the programs operate summer employment programs for high school aged youth, which is not conducive to meeting the state performance indicators. The six youth performance measures and the issues each measure poses are noted as follows:

**RIN 1205-AB73-684.460(1)** The percentage of program participants who are in education or training activities, or in unsubsidized employment, during the second quarter after exit from the program will depend on the definition of what an “*education or training*” activity is. This will be dependent upon whether or not “High School” is considered “education” or not considered an “education” activity. In order to determine if youth met the “*unsubsidized employment*” part of this measure, INA grantees would have to follow up with participants to determine if they are employed in the second quarter after exit. Since the INA youth program currently does not have the ability to do wage matching through the Wage Record Interchange System (WRIS), this will increase the burden of the INA program staff to require more tracking and follow up of participants.

**RIN 1205-AB73-684.460(2)** The percentage of program participants who are in education or training activities, or in unsubsidized employment, during the fourth quarter after exit from the program will pose the same issues as noted in the prior paragraph (684.460(1)).

**RIN 1205-AB73-684.460(3)** The median earnings of program participants who are in unsubsidized employment during the second quarter after exit from the program is highly an unlikely outcome as the majority of the youth are high school aged youth who will return to high school in the fall and not likely obtain unsubsidized employment in the second quarter. Therefore, most INA will be excluded from this measure which may not affect performance negatively or positively. However, for INA youth that did

obtain unsubsidized employment, INA grantees would have to follow up with participants to determine if they are employed similar to tracking and follow up for education and training activity.

**RIN 1205-AB73-684.460(4)** The percentage of program participants who obtain a recognized post-secondary credential, or a secondary school diploma or its recognized equivalent (subject to WIOA sec.116(b)(2)(A)(iii)) during participation in or within one year after exit from the program is highly unlikely for the INA youth as most participate in summer employment activity and return to high school in the fall. The exception would be youth returning to high school in the fall as seniors and graduating in the spring. INA programs will not have many youth meet this measure. For the employment part of this measure, the same challenge noted previously with regards to the wage matching remains an issue.

**RIN 1205-AB73-684.460(5)** The percentage of program 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 toward such a credential or employment again raises the issue of whether INA youth are included in this measure depending on the definition of what an “*education or training*” program is. Assuming INA youth are included in this measure, whether they are able to meet the measure depends on how “*measurable skills gains*” is defined.

**RIN1205-AB73-684.460(6)** The indicators of effectiveness in serving employers established under WIOA sec. 116(b)(2)(A)(iv) is not applicable to the INA programs. The WIOA provisions at 116(b)(2)(A)(iv) clearly indicates that the purpose of establishing indicators for services to employers is to “**indicate the effectiveness of the core programs in serving employers**”. The INA program is not a core program as defined at section 3 (12) & (13) of WIOA; therefore, this measure should not apply to the Native American program.

Our fourth issue is the burden of reporting and one of the only means of accomplishing this might be for INA grantees to keep participants on the program as “active participants” by not exiting them from the program until they graduate from high school. However, this would create a significant burden since grantees would have to provide some type of qualified follow up service every 90 days in order to keep participants active on the program. Given the small amount of youth funding, we need to consider whether the value of having these performance indicators is worth the burden which will be placed on the INA grantees.

Issue five is the data collection and access to UI wage records. Since five of the six youth measures have an employment component, it will be necessary to match participant records with UI wage records. Currently the INA programs do not have a mechanism to match participant social security numbers with UI wage records. This leads to the need to develop a web-based system for the INA programs in order for INA grantees to collect individual participant records and send them to ETA electronically. ETA will in turn send the records to WRIS for UI wage matching.

The sixth issue is that a regression model will need to be developed for the INA program since five of the six youth measures have an employment component, the economic conditions in a grantee’s service area needs to be factored in when establishing performance. Maintaining current regression models for the INA grantees that factor in local economic conditions is another cost both in human resources and financial resources which must be considered.

**RIN 1205-AB73-684.460(b)** states that in addition to the performance measures indicated in this section, the Secretary, in consultation with the Native American Employment and Training Council, **must** develop a set of performance indicators and standards that is **in addition** to the primary indicators for performance that are applicable to the INA program.

We respectfully propose that the Department allow the INA program to modify the definitions for the measures to better fit a summer employment program that primarily serves high school aged youth that return to high school in the fall after completing a summer employment program. In addition, include very specific language in the regulations or ETA policy that essentially states that the measures cannot be

used to determine INA grantee performance. This could be accomplished in consultation with the Native American Employment and Training Council. Lastly, continue to use the current Tribal SYS Performance Measures and Goals under WIA while the Department of Labor, in consultation with the INA grantee community and the Native American Employment and Training Council develop performance measures and/or primary indicators of performance for the INA youth programs. In the interim period, include language for a waiver as part of the four-year strategic plan to continue the current Tribal SYS Performance Measures.

**RIN 1205-AB73-684.620** outlines the performance measures at WIOA sec.116(b)(2)(A)(i) which apply to the Indian and Native American program. The six performance measures, as the INA youth performance measures, are the same as the state formula programs. The issues and concerns noted above can be restated for the INA performance measures. However, it must be stated here that these WIOA mandated "primary indicators of performance" removes the consultation with Section 166 Indian and Native American programs and the Native American Employment and Training Council to develop performance measures in accordance with the purpose and intent of Section 166. This change may violate Executive Order-13175; DOL's relationship to engage, consult and collaborate with tribal officials in the development of federal policy that have tribal implications.

WIOA increases the reporting burden for Section 166 programs by using a more complex set of measures, common with core programs. More than one-third of the Section 166 INA grantees are allocated less than \$100,000; implementation and management of the performance indicators and standards is a major concern.

ETA is not able to develop an accurate statistical regression model to establish fair and reasonable levels of performance for each indicator. Special considerations and adjustments for level of performance are problematic since there is limited, and in some cases, no statistical tribal data available that captures economic circumstances for various Indian and Native American geographic service areas. American Community Survey (ACS) data is no solution to this concern because it does not measure economic factors consistent with DOL's Bureau of Labor Statistics labor force definitions. Moreover, the level of sampling error for many tribal areas indicates the data is unreliable.

The performance indicators expand the use of wage records and program requirement to share participant records with personal identifying information. Confidentiality assurances must be provided by DOL/ETA in accordance with the Privacy Act for the protection and security of participant data and we have not been provided this assurance.

CIMC respectfully requests the Secretary consult with the WIOA Section 166 entities described in 684.200(c) and the Native American Employment and Training Council in establishing regulations to carry out this section, including regulations relating to the performance accountability measures for entities receiving assistance under this section.

CIMC acknowledges the innovation and opportunities under WIOA and looks forward to working with the Secretary, the Native American Employment and Training Council, and the Department of Labor in the implementation of the new regulations.

Thank you for your time and consideration of our concerns and comments.

Sincerely,



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