

To: Indiana's Workforce System

From: Indiana Department of Workforce Development (DWD)

Date: May 28, 2024

Subject: DWD Policy 2023-18
WIOA Negotiations and Sanctions

Purpose

The purpose of this policy is to provide local workforce development boards (within this guidance, referred to as local WDBs, LWDBs, or local areas) and other stakeholders an outline of the negotiations, performance accountability, and sanctions requirements for the Workforce Innovation and Opportunity Act (WIOA) Title I Adult, Dislocated Worker, and Youth Programs.

Rescission

DWD Policy 2018-02 *State Performance Metrics*

References

- WIOA Section 116
- 20 CFR 677.155, 677.190, 677.210, 677.225, and 679.350
- TEGL 11-19, Change 1 *Negotiations and Sanctions Guidance for the Workforce Innovation and Opportunity Act (WIOA) Core Programs*
- TEN 24-23 *Effectiveness in Serving Employers Final Rule Publication Notice*
- *Workforce Innovation and Opportunity Act Effectiveness in Serving Employers Performance Indicator*, 89 FR 13814 (Feb. 23, 2024)

Definitions

Actual levels of performance. The outcomes reported on the regional Annual Performance Report (regional version of the ETA-9169) for each primary indicator of performance for each core program.

Adjusted levels of performance. The levels of performance determined by adjusting the negotiated levels of performance at the end of the program year to reflect actual participant characteristics and economic conditions for the local area, based on the re-estimations modeled by the local statistical adjustment model (LSAM).

Adjustment factor. A positive or negative difference that will be added to the negotiated level of performance to determine the adjusted level of performance. The adjustment factor is the difference between the estimated levels of performance predicted by the LSAM based on pre-program year estimates and the levels of performance re-estimated by the LSAM after the close of the program year based on the actual participant characteristics and economic conditions.

Expected levels of performance. The levels of performance proposed by the local area to DWD for each primary indicator of performance for each core program.

Individual indicator score. The proportion of actual level of performance out of the adjusted level of performance for a single primary indicator of performance for a single program.

Negotiated levels of performance. The levels of performance mutually agreed upon by the local area and DWD for each primary indicator of performance for each core program.

Overall state indicator score. The average of the individual indicator scores for a single performance indicator across all core programs.

Overall state program score. The average of the individual indicator scores for a single core program across all five primary indicators of performance.

Content

Background

Section 116 of WIOA establishes performance accountability measures that apply across the core programs to assess the effectiveness of the state and local areas in achieving positive outcomes for individuals served by WIOA programs. The performance accountability system is critical in assessing the effectiveness of programs, with the goal of ensuring that individuals served attain the skills needed to succeed in the 21st century economy.

After the state completes its performance negotiations process with the United States Department of Labor (USDOL), DWD facilitates the negotiation process between the state and each local area. As the Governor's designated administrative entity for WIOA, DWD, in conjunction with the Governor's Workforce Cabinet (GWC), works with local areas to negotiate and reach agreement on local levels of performance based on the state negotiated levels of performance. This process involves local WDBs and their respective Regional Chief Elected Official (RCEO), with agreement reached on levels of performance for two program years at a time. This must be completed no later than **September 30th** in each year in which state negotiations occur.

Performance Indicators

Each local area is subject to the same primary indicators of performance for the core programs of WIOA Title I that apply to the state. The six primary indicators of performance for WIOA Title I Adult, Dislocated Worker, and Youth programs are:¹

1. **Employment Rate 2nd Quarter after Exit:** The percentage of participants who are in unsubsidized employment during the second quarter after exit from the program.
2. **Employment Rate 4th Quarter after Exit:** The percentage of participants who are in unsubsidized employment during the fourth quarter after exit from the program.

¹ 20 CFR 677.155.

3. **Median Earnings 2nd Quarter after Exit:** Median earnings of participants who are in unsubsidized employment during the second quarter after exit from the program.
4. **Credential Attainment within Four Quarters after Exit:** The percentage of those participants enrolled in an education or training program (excluding those in on-the-job training [OJT] and customized training) who attained a recognized postsecondary credential or a secondary school diploma, or its recognized equivalent, during participation in or within one year after exit from the program.
 - a. For Adults and Dislocated Workers: A participant who has attained a secondary school diploma or its recognized equivalent is included in the percentage of participants who have attained a secondary school diploma or recognized equivalent only if the participant also is employed or is enrolled in an education or training program leading to a recognized postsecondary credential within one year after exit from the program.
5. **Measurable Skill Gains:** The percentage of participants who, during a program year, are in an education or training program that leads to a recognized postsecondary 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. Depending upon the type of education or training program, documented progress is defined as one of the following:
 - a. Documented achievement of at least one educational functioning level of a participant who is receiving instruction below the postsecondary education level;
 - b. Documented attainment of a secondary school diploma or its recognized equivalent;
 - c. Secondary or postsecondary transcript or report card for a sufficient number of credit hours that shows a participant is meeting the State unit's academic standards;
 - d. Satisfactory or better progress report towards established milestones such as completion of OJT, completion of one year of an apprenticeship program, or similar milestones from an employer or training provider who is providing training; or
 - e. Successful passage of an exam that is required for a particular occupation or progress in attaining technical or occupational skills as evidenced by trade-related benchmarks such as knowledge-based exams.
6. **Retention with the Same Employer²:** Percentage of participants with wage records who exit from WIOA core programs and were employed by the same employer in the second and fourth quarters after exit.³ This definition specifically measures retention in unsubsidized employment.⁴

DWD has not established any additional performance criteria at this time.

² Please note that USDOL will consider PY 2024 performance results for this metric as baseline data for the purposes of the statistical adjustment model.

³ TEN 24-23.

⁴ 89 FR 13814.

Local Area Performance Negotiation Procedure

- DWD will use the LSAM to provide information to local areas during performance negotiations and for performance assessment at the end of each program year.
- The LSAM is a set of linear regression models that will provide an estimate for each primary indicator of performance in each local area based on past performance, participant demographics, and economic conditions. Specifically, the LSAM creates coefficients for each variable used in the LSAM, where the variables represent various demographic and programmatic details of the participants as well as economic conditions of the local area. The coefficients represent how much (or little) each variable influences the final estimate of the primary indicator of performance and whether the variable has a positive (higher final estimate) or negative (lower final estimate) influence on that final estimate.
- DWD will provide a negotiation tool to the local areas. The tool will include the variables used in the LSAM, their coefficients, and the estimates that were modeled by the LSAM.
- By submitting the template in **Attachment A** to policy@dwd.in.gov no later than **August 1st** of the year of the negotiations, local areas will provide to DWD their expected levels of performance for each primary indicator of performance in each core program (WIOA Adult, WIOA Dislocated Worker, and WIOA Youth). Local areas are encouraged to include LWDB members on their negotiation teams. The LWDB and the RCEO are required to approve the proposed goals and participate in the negotiation process.⁵ Starting with the expected levels of performance provided by the local areas, the local areas and DWD will then negotiate the levels of performance based on the following four negotiation factors:
 1. How the proposed levels compare with the negotiated levels established for other local areas.
 2. Adjustments based on the objective LSAM.
 3. The extent to which the levels promote continuous improvement.
 4. The extent to which the levels will assist the state in meeting performance goals established by the Government Performance and Results Act.

Note that WIOA does not specify more or less weight on any specific negotiation factor. Negotiations between DWD and the local areas must be completed by **September 30th** in each year in which state negotiations occur, and the results of the negotiations must be reported to the USDOL-ETA Regional Office.

Performance Assessment and Accountability

The LSAM will be used in the assessments of each primary indicator of performance for each core program for each local area. At the end of the program year, the LSAM will re-estimate the primary indicators of performance with the most recent available participant characteristics and economic conditions. The re-estimated amount, minus the initial estimate, creates the adjustment factor. The adjustment factor is then added to the negotiated level of performance to create the adjusted level of performance. The actual level of performance divided by the adjusted level of performance creates the

⁵ 20 CFR 677.210(c).

individual indicator score. The individual indicator scores will be used to determine performance success or failure.

Determination of Performance Success or Failure

A performance failure occurs if:

- 1) Any single individual indicator score for any single core program falls below 50% of the adjusted level of performance for the program year,
- 2) The overall program score falls below 90% for that single core program for the program year, or
- 3) The overall indicator score falls below 90% for that single measure for the program year.⁶

Below is an example chart of performance results, showing the different indicator measures and their required levels to pass.

	Q2ER	Q4ER	ME	CRED	MSG	Overall Program Score
Adult	86.0%	87.0%	102.0%	88.0%	97.0%	92.0%
DW	87.0%	89.0%	105.0%	96.0%	103.0%	96.0%
Youth	103.0%	102.0%	51.0%	99.0%	101.0%	91.2%
Overall Indicator Score	92.0%	92.7%	86.0%	94.3%	100.3%	

>=50%	Individual Indicator Score
>=90%	Overall Program Score
>=90%	Overall Indicator Score

Sanctions for Failure to Meet Adjusted Levels of Performance

The first time a local area fails to meet the agreed upon adjusted levels of performance for any of the primary indicators of performance, the local area is required to complete the Performance Action Plan Template included in **Attachment B** and submit it to policy@dwd.in.gov within 30 days of receipt of their performance assessment. DWD will follow up with the local area and provide additional technical assistance if needed.⁷

If a local area fails to meet the adjusted levels of performance agreed to for the same primary indicators of performance for the same core program authorized under WIOA title I for a second consecutive year, the local area will again be required to submit the Performance Action Plan Template included in **Attachment B** to policy@dwd.in.gov within 30 days of receipt of their performance assessment. In addition to providing technical assistance, DWD may also request USDOL to provide technical assistance including but not limited to:

- Assistance in the development of the performance improvement plan;
- The development of a modified local or regional plan; or

⁶ 20 CFR 677.190(d).

⁷ WIOA 116.

- Other actions designed to assist the local area in improving performance.

If a local area fails to meet the adjusted levels of performance agreed to for the same primary indicators of performance for the same core program authorized under WIOA title I for a third consecutive program year, the state must take corrective actions.⁸ After advising Indiana's Federal Project Officer, the Governor must develop a reorganization plan that:

- Requires the appointment and certification of a new local board, consistent with the criteria in 20 CFR 679.350;
- Prohibits the use of eligible providers and one-stop partners that have been identified as achieving poor levels of performance; or
- Takes such other significant actions as the Governor determines are appropriate.

Appealing a Reorganization Plan⁹

The local WDB and RCEO may appeal the final decision of the Governor to the Secretary of Labor not later than 30 days after receiving the decision from the Governor. Any appeal of the Governor's final decision must be:

- Appealed jointly by the local WDB and the RCEO to the Secretary of Labor; and
- Must be submitted by certified mail, return receipt requested, to the Secretary of Labor using the address below.

**Secretary of Labor
U.S. Department of Labor
200 Constitution Ave. NW.
Washington, D.C. 20210
Attention: ASET**

- A copy of the appeal must also be simultaneously sent to the Governor, in care of DWD, using the address below:

**Indiana Department of Workforce Development
10 N Senate Ave
Indianapolis, IN 46204**

Upon receipt of the joint appeal from the local WDB and RCEO, the Secretary of Labor must make a final decision within 30 days. In making this determination the Secretary of Labor may consider any comments submitted by the Governor in response to the appeals. The decision by the Governor on the appeal becomes effective at the time it is issued and remains effective unless the Secretary of Labor rescinds or revises the reorganization plan under WIOA Sec. 116(g)(2)(C).

Action

Local WDBs and RCEOs must familiarize themselves with this policy to implement it appropriately during the performance negotiation process. Per TEGL 11-19, Change 1, this guidance will be made available to the USDOL-ETA Region 5 Office prior to the program year that negotiations are implemented.

⁸ TEGL 11-19, Change 1.

⁹ 20 CFR 677.225.

Attachments

- **Attachment A** – Example Local Area Performance Goal Proposal Template
- **Attachment B** – Example Performance Action Plan Template

Effective Date

Immediately.

Ending Date

Upon rescission.

Additional Information

Questions regarding the content of this publication should be directed to policy@dwd.in.gov.

Attachment A Local Area Performance Goal Proposal Template

Proposed Goals for WIOA Title I Adult, Dislocated Worker, and Youth Performance Indicators

Region:	Local Workforce Development Board Name:
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Performance Measure	Proposed Goal
WIOA Title I – Adult	
Employment Rate 2 nd Quarter After Exit	
Employment Rate 4 th Quarter After Exit	
Median Earnings 2 nd Quarter	
Credential Attainment Rate 4 th Quarter After Exit	
Measurable Skill Gains	
WIOA Title I – Dislocated Worker	
Employment Rate 2 nd Quarter After Exit	
Employment Rate 4 th Quarter After Exit	
Median Earnings 2 nd Quarter	
Credential Attainment Rate 4 th Quarter After Exit	
Measurable Skill Gains	
WIOA Title I – Youth	
Education/Employment Rate 2 nd Quarter After Exit	
Education/Employment Rate 4 th Quarter After Exit	
Median Earnings 2 nd Quarter	
Credential Attainment Rate 4 th Quarter After Exit	
Measurable Skill Gains	

Local Area Negotiation Team Members

Name:	Title:	Email Address:	Phone Number:

Primary Contact/Team Lead designated to submit proposed levels of performance on behalf of the LWDB and CEOs.

Name:	Title:	Email Address:	Phone Number:

RCEO Signature

RCEO Printed Name

RCEO Date

LWDB Chair Signature

LWDB Chair Printed Name

LWDB Chair Date

This template must be emailed to policy@dwd.in.gov no later than August 1 of the year of negotiations.

Attachment B Performance Action Plan Template

Region: Choose an item.

Period of Performance _____

Missed Performance Indicators(s):

Performance Indicator	Individual Indicator Score	Overall Indicator Score	Overall Program Score
2nd Quarter Employment after Exit			
4th Quarter Employment after Exit			
Median Earnings			
Credential Attainment			
Measurable Skills Gain			
Retention with the Same Employer			

Narrative Instructions

Respond to the items below. Responses should be well developed and include all requested information.

Note: The text box fields will expand to allow detailed responses.

1. Explain why the local area did not achieve the goal for the indicator(s):

[Click here to enter text.](#)

2. Provide a plan of action to meet the performance standards for the indicator(s) that includes specific, measurable, achievable, realistic, and time-bound (SMART) goals:

[Click here to enter text.](#)

3. Staff training is a mandatory component of addressing a missed performance indicator. Please describe when staff training will occur (specific dates, must be at least quarterly), what topics will be covered, and any technical assistance that DWD can provide to ensure effective training sessions.

Click here to enter text.

4. Provide a timeline for improving performance including key milestones:

Click here to enter text.

LWDB Chair Printed Name: _____

LWDB Chair Signature: _____ Date: _____

Chief Elected Official Printed Name: _____

Chief Elected Official Signature: _____ Date _____