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ADVISORY: **TRAINING AND EMPLOYMENT GUIDANCE LETTER WIOA NO. 9-17 OPERATING GUIDANCE for the WORKFORCE INNOVATION AND OPPORTUNITY ACT (WIOA)**

TO: STATE AND LOCAL STAKEHOLDERS IN THE WORKFORCE INNOVATION AND OPPORTUNITY ACT
STATE WORKFORCE AGENCIES
STATE WORKFORCE ADMINISTRATORS
STATE WORKFORCE LIAISONS

FROM: ROSEMARY LAHASKY
Deputy Assistant Secretary

SUBJECT: Negotiating Performance Goals for the Workforce Innovation and Opportunity Act (WIOA) Title I Programs and the Wagner-Peyser Act Employment Service as amended by Title III of WIOA, for Program Years (PYs) 2018 and PY 2019

1. **Purpose.** To inform States of the guidelines for the negotiation process for the WIOA title I programs (Adult, Dislocated Worker, and Youth) and the Wagner-Peyser Act Employment Service program, as amended by title III of WIOA, for PY 2018 and PY 2019. Once negotiated levels are agreed upon by each State and the U.S. Department of Labor (DOL), Employment and Training Administration (ETA), they will be incorporated into the State Unified or Combined Plan. This guidance also provides information on the negotiations process for the Adult Education and Family Literacy Act programs under title II of WIOA and the Vocational Rehabilitation program as amended by title IV of WIOA for PY 2018 and PY 2019.

2. **References.** See Attachment II.

3. **Background.** WIOA significantly advances the strategic alignment of workforce development programs, with particular emphasis on aligning the six "core programs" administered by DOL and the U.S. Department of Education (ED) (collectively referred to throughout this guidance as the Departments). The six core programs are the Adult, Dislocated Worker, and Youth programs, authorized under WIOA title I and administered by DOL; the Adult Education and Family Literacy Act (AEFLA) program, authorized under WIOA title II and administered by ED; the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III and administered by DOL; and the Vocational Rehabilitation (VR) program authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV and administered by ED. Such alignment is advanced through mechanisms such as Unified State Plans, which require the States to develop one

strategic plan for the core programs; Combined State Plans, which may include certain additional partner programs; and the alignment of performance accountability provisions for WIOA core programs.

As required by WIOA, the Departments jointly developed aligned definitions of the primary indicators of performance and created an initial statistical adjustment model. These performance accountability provisions were finalized through the *WIOA Joint Rule for Unified and Combined State Plans, Performance Accountability, and the One-Stop System Joint Provisions Final Rule*, published August 19, 2016, at 20 CFR Parts 676, 677, and 678 and 34 CFR Parts 361 and 463. They were further interpreted in the WIOA Common Performance Reporting information collection, OMB Control Number 1205-0526, approved by the Office of Management and Budget on June 30, 2016; as well as in Training and Employment Guidance Letter (TEGL) 10-16, Change 1: *Performance and Accountability Guidance for Workforce Innovation and Opportunity Act (WIOA) Title I, Title II, Title III, and Title IV Core Programs.*

Under section 116(b)(2)(A) of WIOA, as well as in the statute's implementing regulations at 20 CFR 677.155, there are six primary indicators of performance:

- **Employment Rate – 2nd Quarter After Exit:** The percentage of program participants who are in unsubsidized employment during the second quarter after exit from the program (for title I Youth, the indicator is 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);

- **Employment Rate – 4th Quarter After Exit:** The percentage of program participants who are in unsubsidized employment during the fourth quarter after exit from the program (for title I Youth, the indicator is 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);

- **Median Earnings – 2nd Quarter After Exit:** The median earnings of program participants who are in unsubsidized employment during the second quarter after exit from the program;

- **Credential Attainment:** The percentage of those participants enrolled in an education or training program (excluding those in on-the-job training (OJT) and customized training) who attain 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 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 its recognized equivalent only if the participant is also employed or enrolled in an education or training program leading to a recognized postsecondary credential within one year after exit from the program;

- **Measurable Skill Gains:** The percentage of program 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, toward such a credential or employment; and

- **Effectiveness in Serving Employers:** Effectiveness of the core programs in serving employers.

4. **Definitions of Terms Related to Performance Negotiations.** These terms align with the WIOA Joint Rule.

   - **Expected levels of performance** are the levels of performance for each primary indicator of performance for each core program submitted by the State in the initial submission of the WIOA Unified or Combined State Plan (State Plan) prior to negotiations.

   - **Negotiated levels of performance** are the levels of performance for each primary indicator of performance for each core program, agreed to by the State and the Secretary of Labor and the Secretary of Education (the Secretaries) prior to the start of the program year. These negotiated levels of performance must be incorporated into the Unified or Combined State Plan.

   - **Adjusted levels of performance** are the negotiated levels of performance after being revised at the end of the program year using the statistical adjustment model (see below). The statistical adjustment model is run before the program year and after the close of the program year to account for actual economic conditions and characteristics of participants served. The difference between the projected levels of performance, estimated by the Departments, before and after the program year will yield an adjustment factor. The adjustment factor will be added to the negotiated level of performance to determine the adjusted level of performance.

   - **Actual results** are the results reported by a State for each primary indicator of performance for each core program. Actual results will be compared to the adjusted levels of performance at the close of the program year to determine if the State failed to meet the adjusted levels of performance.

   - **Baseline indicators** are certain primary indicators of performance that will be used as baseline data to inform the process to determine the negotiated levels of performance in future program years. States will not propose an expected level of performance for baseline indicators in the State Plan submission for PY 2018 and PY 2019 and will not need to come to agreement with the Departments on negotiated levels of performance. The selection of a certain primary indicator of performance for the designation as a baseline indicator is based on the likelihood of a State having adequate data with which to make a reasonable determination of an expected level of performance and such a designation may vary across core programs. While the Departments will not use baseline

indicators in performance calculations and baseline indicators will not be used to determine if a State failed to meet its adjusted levels of performance for purposes of sanctions, States must collect and report data for all primary indicators of performance, including those that have been designated as "baseline." The performance data reported by States for baseline indicators will serve to support negotiations and to continue to build and refine the statistical adjustment model in future years.

- **Statistical Adjustment Model**, required by WIOA sec. 116(b)(3)(viii), and established by the Departments, is an objective statistical regression model to be used to make adjustments to the State negotiated levels of performance for actual economic conditions and the characteristics of participants served at the end of the program year. It also is a key factor to be used in arriving at mutual agreement on State negotiated levels of performance.

5. **The Negotiation Process for PY 2018 and PY 2019.** WIOA sec. 116(b)(3)(A)(iv)(II), and the implementing regulations at 20 CFR 677.170, mandate that States will reach agreement with the Departments on negotiated levels of performance for each of the primary indicators of performance for each of the core programs. States and Federal partners will negotiate goals for all non-baseline indicators for both PY 2018 and PY 2019, the third and fourth years of the State Plan. These negotiated levels are to be submitted as modifications to the State Plan.

   The primary indicators of performance to be negotiated for PY 2018 and PY 2019 for core programs are:
   - Title I Adult, Dislocated Worker, and Youth programs: indicators for employment in the second quarter after exit, employment in the fourth quarter after exit, median earnings in the second quarter after exit (for title I Adult and Dislocated Worker programs only), and credential attainment rate;
   - Title II Adult Education and Family Literacy program: indicator for measurable skill gains (to be negotiated with ED); and
   - Title III Wagner-Peyser Employment Service: indicators for employment in the second quarter after exit, employment in the fourth quarter after exit, and median earnings in the second quarter after exit.

   Please note that no levels of performance will be negotiated for the Vocational Rehabilitation State grant programs for PY 2018 and PY 2019.

   For ETA-administered programs the PY 2018 and PY 2019 negotiation process will proceed as outlined below:
   - Each State will submit expected levels of performance in its WIOA Unified or Combined State Plan two-year modification based on the State's analysis of factors that may affect performance. Expected levels of performance must be stated to the nearest tenth of a percent (XX.X%) or to the nearest whole dollar for median earnings. When the State submits the expected levels of performance to ETA, the State must confirm that it has made the expected levels of performance available to the public for review and comment.

For instructions on plan submission, see TEGL 6-17, *Modification Requirements for Workforce Innovation and Opportunity Act (WIOA) Unified and Combined State Plans.*

- After State Plan submission, the State is required to reach agreement with the respective Departments on negotiated levels of performance for the indicators for the two years covered by the State Plan modification (i.e., PY 2018 and PY 2019) for each of the core programs under WIOA sec. 116(b)(3)(A)(iv)(II). The factors that will be taken into account during the negotiation process are described in detail in section 6 of this guidance. In addition to these factors, the Departments will use the statistical adjustment model as a tool in the negotiation process to modify the State's expected levels of performance to help reach agreement on the negotiated levels of performance, as appropriate.

- For the WIOA title I programs (Adult, Dislocated Worker, and Youth) and the Wagner-Peyser Employment Service program, the State will negotiate its performance with the appropriate ETA regional office. As part of the negotiation process, the State will be asked to provide a narrative rationale for the methodology behind its expected levels of performance, considering the factors identified in WIOA sec. 116(b)(3)(A)(v) and further described in section 6 of this guidance.

  The regional office will review the analyses used by the State to develop the expected levels of performance and work with the State to set mutually agreed-upon levels of performance. These are the negotiated levels of performance. Regional offices will take into account the factors outlined in WIOA sec. 116(b)(3)(A)(v) described in section 6 and those addressed by the State in their methodology.

- Once negotiated levels of performance are agreed upon, the State must incorporate the negotiated levels of performance into its Unified or Combined State Plan.

Determining Success in Meeting Levels of Performance: The adjusted levels of performance, as defined above, will be used to determine performance success or failure. Determinations of financial sanctions due to performance failure based on adjusted levels of performance for any overall State program score, overall indicator score, or single indicator will not occur until at least two full years of WIOA outcome data have been reported and used in the statistical adjustment model in the negotiation process.

It should be noted that the Departments will not engage in mid-plan or mid-year renegotiations. Any changes in economic conditions during the two-year period will be accounted for in the application of the statistical adjustment model at the end of the program year.

Transition Provisions for Baseline and Negotiated Indicators of Performance: The data and information that currently are available for each primary performance indicator vary across indicators and also across the core programs. To ensure the continued transition to the performance accountability system in sec. 116 of WIOA, for PY 2018 and PY 2019, the Departments will continue to use the transition authority under sec. 503(a) of WIOA to

designate certain primary indicators of performance as "baseline" indicators in the State Plan modification submission.

Baseline indicators, by core program title, include:

- Title I: Measurable Skill Gains and Median Earnings (Median Earnings is baseline for the Youth program only);
- Title II: All primary indicators of performance EXCEPT Measurable Skill Gains;
- Title III: Credential Attainment Rate and Measurable Skill Gains (Title III programs are not required to report on these indicators);
- Title IV: All primary indicators of performance; and
- All WIOA Title Programs: Effectiveness in Serving Employers (outcomes on this indicator to be shared across core programs).

For PY 2018 and PY 2019, States are expected to report data as mandated by WIOA. While some of these measures may be baseline, a State may be subject to sanctions for failure to submit its WIOA annual report timely or completely.

Use of the Statistical Adjustment Model in the Negotiation Process: Under WIOA, the statistical adjustment model, established by the Secretaries, will be used to ensure that the negotiated levels of performance are based on the actual economic conditions and characteristics of participants. Select labor market factors in the model include differences in unemployment rates and job losses or gains in particular industries. Characteristics of participants include indicators of poor work history, lack of work experience, lack of educational or occupational skills attainment, dislocation from high-wage and high-benefit employment, low levels of literacy or English proficiency, disability status, homelessness, ex-offender status, and welfare dependency. The Departments emphasize the critical importance of the statistical adjustment model in the performance negotiation process under WIOA in addition to acknowledging that the model will be refined with ongoing use and application using pertinent data.

The initial statistical adjustment model was developed based on historical data reported by States against the Workforce Investment Act of 1998 (WIA) performance measures, which were used as a proxy for WIOA data. WIOA data were reported by the States for PY 2016 in October 2017; however, due to the timing of the data availability, limited performance outcomes were available. Therefore, DOL will continue to use this model, populated with WIA proxy data, in negotiations with the States on their PY 2018 and PY 2019 expected levels of performance for the following four indicators for WIOA title I and title III programs, as applicable: 1) Employment Rate – 2nd Quarter After Exit; 2) Employment Rate – 4th Quarter After Exit; 3) Median Earnings – 2nd Quarter After Exit; and 4) Credential Attainment Rate. The statistical adjustment model will be updated and refined as WIOA outcome data become available for use in future negotiations.

The statistical adjustment model will provide two major functions in performance negotiations and assessment. First, it is one of the factors used when reaching agreement with the States on the negotiated levels of performance. It is used to account for the expected economic conditions and the expected characteristics of participants to be served in the State

and/or local areas. Second, it will be applied at the close of a program year to the negotiated levels of performance to adjust for actual economic conditions experienced and actual characteristics of participants.

DOL will utilize the targets generated from the statistical adjustment model in its negotiation process with the States for the non-baseline indicators for this State Plan modification.

Local Performance Negotiations: In addition to the State negotiated levels of performance, States must work with local workforce development areas to establish performance goals for WIOA title I programs. The local board, the chief elected official, and the Governor must negotiate and reach agreement on local levels of performance based on the State negotiated levels of performance. In negotiating the local levels of performance, the local board, the chief elected official, and the Governor must make adjustments for the expected economic conditions and expected characteristics of participants to be served in the local area, using the statistical adjustment model developed at the Federal level as a tool. The statistical adjustment model must be used at the end of the program year to adjust negotiated local levels of performance in order to reflect the actual economic conditions experienced in the local area and the characteristics of participants served. DOL has developed the framework for an objective statistical adjustment model that satisfies the WIOA requirements at the state level. States must use this model and adapt it to their needs at the local level.

6. **Reaching Agreement on State Performance Levels.** The WIOA Unified or Combined State Plan modifications submitted by March 15, 2018, should contain expected levels of performance for the non-baseline primary indicators of performance; this information is the first step in the negotiation process. Negotiated levels of performance must be agreed upon no later than **June 30, 2018.**

   The local board, the chief elected official, and the Governor must negotiate and reach agreement on local levels of performance based on the States negotiated levels of performance no later than **September 30, 2018**. The State must notify its DOL Regional Office that negotiations are complete.

   Negotiation Factors: In reaching agreement on the negotiated levels of performance, States and the Secretary of Labor shall take into account the following factors in WIOA sec. 116(b)(3)(A)(v):

   1. *How the levels involved compare with the State adjusted levels of performance established for other States;*

   States may use annual WIA performance information (PY 2007-2015) and PY 2016 WIOA performance information to inform the determination of expected levels of performance for PY 2018 and PY 2019. States also may use recent quarterly performance results to support projected performance and service populations.

   Although States should have access to their own historical performance information, various tools and resources are available to examine all States' performance data, including State by

State files (www.doleta.gov/Performance/results/wia_national_performance.cfm); DOL's Clearinghouse for Labor Evaluation and Research (CLEAR) (http://clear.dol.gov/); and VETS' performance data (http://www.dol.gov/vets/vetoutcomes/index.htm). Bureau of Labor Statistics (BLS) data includes employment, industries, counties, and average earnings (www.bls.gov/cew/home.htm). When using BLS data, or any data source, as a guide, States should be careful to consider the timeframes covered by employment and wage information and the relative time periods in which program exiters entered employment and obtained post-program earnings. For example, when looking at unemployment rates for a given geographical region, it is important to align the time period to the lagged timing of the indicator target being established.

2. *How the levels involved have been proposed using an objective statistical adjustment model provided by the Departments.*

WIOA sec. 116(b)(3)(A)(v)(II) requires the use of the statistical adjustment model in the negotiations process. Per 20 CFR 677.170(c), the model is to be based on the differences among States in actual economic conditions (including, among other factors, differences in unemployment rates and job losses or gains in particular industries) and the characteristics of participants, such as indicators of poor work history, lack of work experience, lack of educational or occupational skills attainment, dislocation from high-wage and high-benefit employment, low levels of literacy or English proficiency, disability status, homelessness, ex-offender status, and welfare dependency. States are encouraged to reference Attachment III for a list of data tools available to identify characteristics of the State's population and its economic trends.

3. *The extent to which the levels involved promote continuous improvement and ensure optimal return on the investment of Federal funds.*

The Department considers continuous improvement to be a critical factor in the negotiations process. The Department acknowledges that there are many ways to define continuous improvement. Continuous improvement may reflect an increase in the level of performance, a change in service strategy and delivery, or a change in the customers served. The customers served by the local area may have a significant impact on outcomes depending on the type of services provided and other factors unique to the population. WIOA emphasizes serving those individuals with barriers to employment and individuals more at-risk of not connecting to the labor market. ETA encourages States and local areas to serve individuals with barriers to employment who need higher levels of service to achieve a positive outcome; the impact of serving these customers will be accounted for in the adjusted levels of performance calculated after the program year and will not be used to determine negotiated levels of performance. Further state and local concerns about achieving program year indicators of performance outcomes is not an appropriate reason to delay enrolling a customer in the program. ETA supports efforts that will help States and local areas reach a wider variety of available workers as they expand their talent pipelines and encourages States to consider the importance of serving the youth most in need, especially out-of-school youth (including those who are dropouts, in foster care, homeless or runaways, subject to the

juvenile or adult justice system, pregnant or parenting, basic skills deficient, or English language learners).

4. *The extent to which levels involved will assist the State in meeting the performance goals established by the Secretaries of Education and Labor in accordance with the Government Performance and Results Act (GPRA) of 1993.*

Throughout the performance negotiations process, States should be aware of the GPRA goals the Departments have established and the GPRA Modernization Act of 2010. The Departments will use the GPRA goals as one of several benchmarks by which to gauge their States' proposed levels of performance in the context of these national system goals. GPRA is an important mechanism by which Congress and OMB evaluate the success of Federal programs, including those operated by States and local areas.

7. **Methodology for Assessing Actual Results against Adjusted Levels of Performance.** At the end of the program year, the negotiated levels of performance for that year will be adjusted using the statistical adjustment model, which will factor in data on the economic conditions of the State and the populations served by the program(s) during that year. This will determine the adjusted levels of performance for the program year against which the State's actual results will be compared.

For the WIOA core programs, the threshold for performance failure is 90 percent of the adjusted level of performance for the overall State program score and the overall State indicator score. The threshold for performance failure on any individual indicator for any individual program is 50 percent of the adjusted level of performance. Performance on an individual measure will be determined based on the position of the outcome (the actual result achieved) relative to the adjusted level of performance. An average of this result across all indicators for each program will establish the States' overall program score. An average of this result across all of the core programs for each indicator will be used to establish the States' overall indicator score. Further information can be found in the WIOA Joint Rule.

The overall State score across programs and indicators will ensure that the performance accountability system, as articulated in sec. 116 of WIOA, maintains alignment and integration across all core programs. This overall score, which will be set at the 90 percent threshold for the overall program and indicator scores and balanced with a 50 percent threshold on any single indicator for any individual program, will allow a State to account for mitigating factors that prevent it from achieving 100 percent of its adjusted levels of performance.

Determination of financial sanctions based on performance will occur only after two years of complete data are available for inclusion in the statistical adjustment model and after the model has been utilized to set targets for two full program years. Further information on performance assessment and the sanctions process will be issued in forthcoming guidance.

The Departments will continue to exercise their transition authority to provide that sanctions will occur only after two years of complete WIOA data are available. During this time of

transition, the Departments will still provide technical assistance to States and develop performance improvement plans with States, if necessary.

8. **Action Requested.** States are requested to distribute this information to the appropriate State and local staff.

9. **Inquiries.** Questions concerning this guidance should be directed to the appropriate regional office.

10. **Attachments.**

Attachment I:	Recommended Timeline for the PY 2018 and PY 2019 Negotiations Process
Attachment II:	WIOA Operating Guidance TEGL References
Attachment III:	Data Tools for Identifying Characteristics of Participants and Economic Conditions

ATTACHMENT I

Recommended Timeline for the PY 2018 and PY 2019 Negotiations Process

Date	Action
No later than March 15, 2018	States formally submit expected levels of performance for the non-baseline primary indicators of performance in the State Plan Modification.
March 15 through June 30, 2018	Regional offices review States' expected levels of performance and work with States to arrive at mutually agreed upon negotiated levels of performance.
No later than June 30, 2018	Regional Administrators send approval letters to States regarding the final negotiated levels of performance. States enter final negotiated levels of performance for PY 2018 and PY 2019 into State Plan portal.
No later than September 30, 2018	States complete negotiations with local workforce development boards and notify DOL Regional Office.

ATTACHMENT II

WIOA Operating Guidance References

- WIOA Sec. 116, Performance Accountability System
- WIOA Sec. 503, Transition Provisions
- *WIOA Joint Rule for Unified and Combined State Plans, Performance Accountability, and the One-Stop System Joint Provisions Final Rule*, 20 CFR Parts 676, 677, and 678 and 34 CFR Parts 361 and 463
- TEGL 10-16, Change 1: *Performance and Accountability Guidance for Workforce Innovation and Opportunity Act (WIOA) Title I, Title II, Title III, and Title IV Core Programs*
- TEGL 14-15: *Workforce Innovation and Opportunity Act (WIOA) Requirements for Unified and Combined State Plans*
- TEGL 6-17: *Modification Requirements for Workforce Innovation and Opportunity Act (WIOA) Unified and Combined State Plans*
- Required Elements for Submission of the Unified or Combined State Plan and Plan Modifications under the Workforce Innovation and Opportunity Act (OMB No. 1205- 0522)
- WIOA Common Performance Reporting information collection (OMB No. 1205-0526)
- Government Performance and Results Act (GPRA) of 1993 (Public Law 103-62; 107 Stat. 285)

ATTACHMENT III

Data Tools for Identifying Characteristics of Participants and Economic Conditions

A number of data tools are available to identify characteristics of a State's population and its economic trends, including:

- State Labor Market Information Department Websites (http://www.careerinfonet.org/select_state.asp?);
- StatsAmerica State Profiles (http://www.statsamerica.org/);
- Census Bureau Population Data (http://www.census.gov/topics/population.html);
- State Data Centers (https://www.census.gov/about/partners/sdc/member-network.html);
- Regional Economic Data (http://www.bea.gov/regional/);
- Business and Economic Data (https://www.census.gov/econ/geography.html);
- Quarterly Census of Employment and Wages historic data (http://www.bls.gov/cew/datatoc.htm);
- Demographic Narrative Profiles (http://www.census.gov/acs/www/data/data-tables-and-tools/narrative-profiles/2016/);
- Census State Demographic Profiles (https://www.census.gov/2010census/news/press-kits/demographic-profiles.html);
- Disability Data Resources (http://www.dol.gov/odep/pubs/fact/data.htm);
- Educational Attainment Profiles (http://nces.ed.gov/programs/maped/); and
- Quarterly Census of Employment and Wages data for 2012-forward (http://www.bls.gov/cew/apps/data_views/data_views.htm#tab=Tables)