

SOP 24-04 Change 2
WIOA Negotiations and Sanctions
Standard Operating Procedures
Grow Southwest Indiana Region 11
Approval Date: 6/28/2024
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Review Date: 7/16/2026

Purpose

To provide local workforce development boards, and other stakeholders an outline of the negotiations, performance accountability, and sanctions requirements for the Workforce Innovation opportunity Act (WIOA) Title I Adult, Dislocated Worker, and Youth programs.

Change 2 Summary

This policy has been updated to provide additional clarification on local performance and negotiations for the Effectiveness in Serving Employers indicator based on TEGL 07-25.

Rescission

DWD Policy 2023-18 Change 1 *WIOA Negotiations and Sanctions*
Region 11 SOP 24-04 Change 1 *WIOA Negotiations and Sanctions*

References

- WIOA Section 116
- 20 CFR 677.155, 677.190, 677.225, and 679.350
- TEGL 11-19, Change 2 *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)
- TEGL 10-16, Change 3 *Performance Accountability Guidance for Workforce Innovation and Opportunity Act (WIOA) Core Programs*
- TEGL 07-25 *Modification Requirements for Workforce Innovation and Opportunity Act (WIOA) State Plans for Programs Years (PYs) 2026 and 2027*

Definitions

Actual levels of performance are 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 are the levels determined by adjusting the negotiated level 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-estimation modeled by the local statistical adjustment model (LSAM).

Adjustment factor is 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 or performance predicted by the LSAM based on the 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 are the levels of performance proposed by the local area to DWD for each primary indicator of performance for each core program.

Individual indicator score is 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 are mutually agreed upon by the local area and DWD for each primary indicator of performance for each core program.

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

Content

Background

Section 116 of WIOA established 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 ensures that individuals served attain the needed skills to succeed in the 21st century economy.

- The state completes its performance negotiations process with the United State Department of Labor (USDOL).
- DWD and State Workforce Development Board (SWDB) facilitates the negotiation process between the state and each local area to reach agreement on local levels of performance based on the state negotiated levels of performance.
- Local WDBs and the RCEO reach agreement 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 that apply to the state. The six primary indicators of performance for WIOA Title I Adult, Dislocated Worker, and Youth are:

Employment Rate 2nd Quarter after Exit is the percentage of participants who are in unsubsidized employment during the second quarter after exit from the program.

Employment Rate 4th Quarter after Exit is the percentage of participants who are in unsubsidized employment during the fourth quarter after exit from the program.

Median Earnings 2nd Quarter after Exit are the median earnings of participants who are in unsubsidized employment during the second quarter after exit from the program.

Credential Attainment within Four Quarters after Exit is 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.

- Under this primary indicator, the attainment of a secondary school diplomas or its recognized equivalent is included **only** if the participant is employed or is enrolled in an education or training program leading to a recognized postsecondary credential withing one year after exit from the program (this indicator does not apply to the Employment Service program).

Measurable Skill Gains is 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. Documented progress is defined as one of the following:

- Documented achievement of at least one education functioning level of a participant who is receiving instruction below the postsecondary education level.
- Documented attainment of a secondary school diploma or its recognized equivalent
- Secondary or post-secondary transcript or report card for a sufficient number of credit hours that shows a participant is meeting the State unit's academic standards.
- Satisfactory or better progress report towards established milestones such as completion of OJT, completion of one year of an apprenticeships program or similar milestones from an employer or training provider who is providing training; or

- 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.

Effectiveness in Serving Employers (ESE) is the percentage of program participants in unsubsidized employment and were employed by the same employer in the second and fourth quarters after exit. For the six core programs, this indicator is a statewide indicator reported by one core program on behalf of all six core programs in the state.

- The ESE final rule requires states to report the indicator as a shared indicator across the six WIOA core programs. Therefore, DWD and the local areas must agree to a single, shared level of performance for the WIOA Adult, Dislocated Worker, and Youth programs in the local area. The single shared level will be used to assess the one shared ESE results for all WIOA Title I programs in the local area. For PYs 2024 and 2025, baseline data will be reported by DWD. For all other primary indicators of performance, each WIOA Title I program will have individual negotiated levels of performance and will be assessed as individual programs.

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

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 linear regression model that will provide an estimate for each primary indicator of performance in each local area based on past performance, participant demographics, and economic conditions. This model 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. 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 estimate that were modeled by the LSAM.
- Submission of Attachment A to policy@dwd.in.gov no later than August 1 of the year of the negotiations will provide DWD with the local expected levels of performance for each primary indicator of performance in each core program (WIOA Adult, WIOA Dislocated Worker, and WIOA Youth). It is 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.
- With local area estimates, DWD and the local area will then negotiate the levels of performance based on the following four negotiations 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 assessment 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 individual indicator score. The individual indicator scores will be used to determine 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.
- 3) The overall indicator score falls below 90% for that single measure for the program year.

Example:

	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 or receipt of their performance assessment. DWD will follow up with the local area and provide additional technical assistance if needed.

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, DWD may also request USDOL to provide technical including but not limited to:

- Assistance in the development of the performance improvement plan
- The development of a modified local or regional plan or
- 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. 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
- Take such other significant actions as the Governor determines are appropriate.

Appealing a Reorganization Plan

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
- 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 will 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-ET Region 5 Office prior to the program year that negotiations are implemented.

Attachments

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

Effective Date

Immediately

End Date

Upon rescission

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 1st of the year of negotiations.

Attachment B
Performance Action Plan Template
(fillable form available)

Region:

Performance Period:

Missed Performance Indicator(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):
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:
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.
4. Provide a timeline for improving performance including key milestones:

LWDB Chair Printed Name:_____

LWDB Chair Signature:_____ Date:_____

Chief Elected Official Printed Name:_____

Chief Elected Official Signature:_____ Date:_____