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TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 9-08

TO: ALL STATE WORKFORCE AGENCIES
ALL STATE WORKFORCE ADMINISTRATORS
ALL STATE WORKFORCE LIAISONS

FROM: BRENT R. ORRELL /s/
Deputy Assistant Secretary

SUBJECT: Negotiating Performance Goals for the Workforce Investment Act Title IB Programs and Wagner-Peyser Act Funded Activities for Program Year 2009

1. Purpose. To inform states of the guidelines for negotiating Workforce Investment Act (WIA) Title IB performance and customer satisfaction goals and performance levels for the Wagner-Peyser Act funded activities for Program Year (PY) 2009, including the option to extend PY 2008 negotiated goals for PY 2009. These performance goals, once they are agreed upon between the state and the Employment and Training Administration (ETA), will be incorporated into the State's Strategic Plan for the WIA and Wagner-Peyser Act.

2. References. WIA Section 136; WIA regulations at 20 CFR Part 666 and Part 661; Training and Employment Guidance Letter (TEGL) No. 7-08, "Instructions for Workforce Investment Act and Wagner-Peyser Act State Planning and Waiver Requests for Year Five of the Strategic Five-Year State Plan (PY 2009)" TEGL No. 9-07, "Revised Incentive and Sanction Policy for Workforce Investment Act Title IB Programs"; TEGL No. 17-05, "Common Measures Policy for the Employment and Training Administration's (ETA) Performance Accountability System and Related Performance Issues"; and TEGL No. 11-01, "Guidance on Revising Workforce Investment Act State Negotiated Levels of Performance."

RESCISSIONS TEGL 19-06	EXPIRATION DATE Continuing
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3. Background. The information in this Guidance Letter supersedes and rescinds previously issued guidance related to performance negotiations in TEGL 19-06, "Negotiating Performance Goals for the Workforce Investment Act Title IB Programs and Wagner-Peyser Act Program for Program Years 2007 and 2008." The intent of this guidance is to clarify the performance measures for which states will be held accountable in PY 2009, provide an outline of the negotiation process, and provide descriptions of tools available for use during the negotiation process. The negotiation process across the system has been improved by the consistent use of these tools to do the required analysis, which are available as attachments to this guidance, as well as through ETA's performance Web site at:

<http://www.doleta.gov/performance/guidance/negotiating.cfm>.

4. Changes to the Negotiation Process. In general, the process for this current round of negotiations will not change much from the processes used in PY 2007 and PY 2008. Negotiations will continue to take place between the states and the corresponding ETA regional offices, and specific guidance regarding contacts and timeframes will be provided to the states by the appropriate regional office (the actual process steps are described in more detail in Section 7.C of this guidance). As was the case for the last round of negotiations, states will be required to establish PY 2009 performance levels for the Wagner-Peyser Act component of the State Plans at the same time they negotiate performance levels for the WIA Title IB programs. One option for PY 2009 is that states may extend their negotiated PY 2008 goals for an additional year. States that choose this option must notify their appropriate Regional Administrator no later than April 15, 2009.

5. Methodology for Assessing Performance Against Negotiated Levels. For both the WIA Title IB and the Wagner-Peyser Act programs, the upper bound of the performance range will be the negotiated level of performance for the measure, while the lower bound of the range is 80% of the negotiated level of performance. Performance on an individual measure will be interpreted based on the outcome's position relative to the two boundaries for a measure as follows:

- **Exceeds** - when the actual performance achieved against an individual performance measure is in excess of 100% of the negotiated level of performance for the measure;
- **Meets** - when the actual performance achieved against an individual performance measure falls in the range of 80 to 100% of the negotiated level of performance for the measure; and,
- **Fails** - when the actual performance achieved against an individual performance measure is less than 80% of the negotiated level of performance.

For example, if a state negotiates a 90.0% goal for the employment retention rate measure, the state would:

- **Exceed** the goal if the actual performance level achieved was greater than 90.0%;
- **Meet** the goal if the actual performance level achieved was greater than or equal to 72.0% and less than or equal to 90.0%; and,
- **Fail** the goal if the actual performance level achieved was less than 72.0%.

While whole percentages are used in this example, it should be noted that this is simply because 80% of the negotiated 90.0% happens to be exactly 72%; actual performance results should not be rounded to a whole number. Negotiated performance levels and results are stated to the tenth of a percent. States may continue to use additional distinctions to differentiate performance within the **Meets** category.

These three categories align with WIA regulations (http://www.doleta.gov/performance/guidance/laws_regs.cfm):

666.220(b)(3) The state exceeded the state negotiated levels of performance for title I, the levels of performance under title II and the levels for vocational and technical programs under Carl D. Perkins Vocational and Technical Education Act. (WIA sec. 503(b));

666.230(a)(2) The extent to which the negotiated levels of performance were exceeded; and

666.240(d) Only performance that is less than 80 percent of the negotiated levels will be deemed to be a failure to achieve negotiated levels of performance.

Please note that for purposes of WIA incentive grant eligibility, a state must meet at least **90** percent of the negotiated level for each applicable WIA performance measure to be considered eligible for an incentive.

6. Applicable Performance Measures for the PY 2009 Performance Negotiation Process. The negotiation process will focus on establishing agreed-upon levels of performance for 20 performance measures for the WIA and Wagner-Peyser programs. The 20 performance measures include 17 WIA indicators of performance (15 Adult, Dislocated Worker, and Youth program measures and two customer satisfaction indicators) and three Wagner-Peyser performance measures.

For those states that have requested a waiver to report against the WIA Adult and Youth common performance measures only, and have received approval to do so in accordance with the waiver authority granted to the Secretary at WIA section 189(i)(4), the negotiation process will focus on establishing a total of nine agreed-upon levels of performance for the WIA Adult, Dislocated Worker and Youth programs and three agreed-upon levels for the Wagner-Peyser program. For these waiver states, the three

Adult common measures will be applied separately to the WIA Adult and Dislocated Worker programs, and the three Youth common measures will be applied to the WIA Youth program. The table below summarizes the performance measures involved in the negotiation process.

Applicable Performance Measures

WIA Measures (Majority of States)				Common Measures (Waiver States)			Wagner-Peyser Measures (All States)
Adult	Dislocated Worker	Youth	Customer Satisfaction	Adult	Dislocated Worker	Youth	
Entered Employment Rate	Entered Employment Rate	Older Youth Entered Employment Rate	Participant American Customer Satisfaction Index	Entered Employment Rate	Entered Employment Rate	Placement in Employment or Education	Entered Employment Rate for Total Exiters
Employment Retention Rate	Employment Retention Rate	Older Youth Employment Retention Rate	Employer American Customer Satisfaction Index	Employment Retention Rate	Employment Retention Rate	Attainment of a Degree or Certificate	Employment Retention Rate for Total Exiters
Employment and Credential Rate	Employment and Credential Rate	Older Youth Credential Rate		Average Six Months Earnings	Average Six Months Earnings	Literacy and Numeracy Gains	Average Six Months Earnings for Total Exiters
Average Six Months Earnings	Average Six Months Earnings	Older Youth Earnings Change Younger Youth Skill Attainment Rate Younger Youth Diploma or Equivalent Rate Younger Youth Retention Rate					

The source documents with the definitions and related reporting specifications for the applicable performance measures follow:

- **The 17 WIA performance measures** - TEGL No. 17-05, “Common Measures Policy for the Employment and Training Administration (ETA) Performance Accountability System and Related Performance Issues” (<http://wdr.doleta.gov/directives/attach/TEGL17-05.pdf>); and the Workforce Investment Act Annual Report: General Reporting Instructions and ETA Form 9091, Revised 2006 (<http://www.doleta.gov/Performance/guidance/WIA/WIA-Annual-Report-Specifications-Expires-02282009.doc>);

- **The WIA Youth program common measures** - TEGL No. 17-05, “Common Measures Policy for the Employment and Training Administration (ETA) Performance Accountability System and Related Performance Issues” (<http://wdr.doleta.gov/directives/attach/TEGL17-05.pdf>); TEGL No. 17-05, Change 1, “Common Measures Policy for the Employment and Training Administration (ETA) Performance Accountability System and Related Performance” (<http://wdr.doleta.gov/directives/attach/TEGL/TEGL17-05c1.pdf>); and the Workforce Investment Act Annual Report; General Reporting Instructions and ETA Form 9091, Revised 2006 (<http://www.doleta.gov/Performance/guidance/WIA/WIA-Annual-Report-Specifications-Expires-02282009.doc>); and
- **The three Wagner-Peyser program performance measures** - TEGL No. 17-05, “Common Measures Policy for the Employment and Training Administration (ETA) Performance Accountability System and Related Performance Issues” (<http://wdr.doleta.gov/directives/attach/TEGL17-05.pdf>); and the ETA 9002 and VETS 200 Data Preparation Handbook, ET Handbook No. 406 released in February 2006 (<http://www.doleta.gov/Performance/guidance/WIA/ET-406-Handbook-Expiration-022809.pdf>).

As was the case in PY 2007 and PY 2008, all states will continue to collect and report against the three Youth common performance measures for the entire Youth population (Older and Younger Youth combined) in PY 2009. However, ETA will not consider performance against these measures in the incentive award and sanctions determinations for states that are accountable for outcomes on the 17 WIA measures. The exception is for states that have received an approved waiver to implement and report against the “WIA common measures only.” These states will negotiate levels of performance for the Youth common measures and ETA will use these measures in the incentive and sanctions determinations.

Please note that for purposes of WIA incentive and sanctions determinations, the applicable performance measures are listed in TEGL 9-07, “Revised Incentive and Sanction Policy for Workforce Investment Act Title IB Programs” (<http://wdr.doleta.gov/directives/attach/TEGL09-07.pdf>).

States should also be aware that the Veterans’ Employment and Training Service (VETS) intends to issue separate guidance on negotiating PY 2009 veterans’ performance targets with State Workforce Agencies. This negotiation of specific levels of performance for veterans will include: 1) performance targets for veterans served by the Wagner-Peyser Employment Service; and 2) grant-based performance targets for veterans served through the Jobs for Veterans state grants.

7. Reaching Agreement on State Performance Levels. States should use negotiated levels of performance to drive continuous improvement and enhanced customer satisfaction. In proposing performance targets for both the WIA Title IB and Wagner-

Peyser programs, states should negotiate their goals within the context of integrated service delivery, priority of service, economic conditions, customers served, and workforce solutions that contribute to the regional economic competitiveness of their state and sub-state areas.

A. Customers to Be Served

The customers served by the local area may have a significant impact on outcomes, depending on the type of services, including entrepreneurial training, length of services, and other factors unique to the population.

ETA encourages states to serve those individuals with barriers to employment and individuals more at-risk of not connecting to the labor market, including those who were formerly incarcerated, the homeless, veterans, individuals with disabilities, and out-of-school youth. States should bring appropriate information to the negotiation process that demonstrates either their past performance in serving these populations and/or their current strategy for serving these populations.

ETA will consider adjusting performance targets to accommodate states currently serving a significant number of at-risk individuals who need higher levels of service to achieve a positive labor market outcome. States that have ongoing initiatives for serving at-risk individuals may work with their respective Regional Administrator to negotiate appropriate goals for PY 2009. During the negotiation process, states must provide data to support adjustments of goals based on numbers of at-risk individuals currently being served.

When negotiating the Youth goals, states should be aware that ETA's strategic vision for youth services includes a focus on serving the neediest youth, especially out-of-school youth, including youth in foster care, youth in the juvenile justice system, children of incarcerated parents, and migrant youth, as well as youth with disabilities and Native American youth. States that transition to serving a higher percentage of these more difficult to serve populations should take into account the populations being served when proposing performance levels for the Youth measures. Serving a greater percentage of the neediest youth may impact outcomes. If states are serving a greater percentage of the neediest youth, they should provide data that shows how outcomes are impacted by serving this population.

When negotiating goals for the Adult program, states proposing new efforts to increase access to services for special populations that may face significant barriers (such as veterans, older workers, individuals with disabilities, migrant or seasonal farm workers, Indian and Native Americans, or Temporary Assistance for Needy Families (TANF) recipients), should provide data to show how these new efforts will impact WIA Adult, WIA Dislocated Worker and Wagner-Peyser Act outcomes. ETA supports efforts that will help states better tap into a wider pipeline of available workers. Available performance data indicate that the workforce investment system's

employment and training programs have positive impacts on individuals' employment, including traditionally underserved populations. ETA expects states to document how outcomes are impacted by changes in the mix of participants served.

Efforts to expand services to at-risk populations are consistent with the WIA legislation. Section 101(13) of WIA defines eligible youth as a low-income individual between the ages of 14 and 21 who is deficient in basic literacy skills, a school dropout, homeless, a runaway or foster child, pregnant or parenting, an offender, or an individual who requires additional assistance to complete an educational program or hold employment. Section 112 (b)(17)(A)(iv) requires that the State Plan describe how the state will serve the employment and training needs of dislocated workers (including displaced homemakers), low-income individuals (including recipients of public assistance), individuals training for nontraditional employment, and other individuals with multiple barriers to employment (including older individuals and individuals with disabilities). Section 134(d)(4)(E) requires that priority shall be given to recipients of public assistance and other low-income individuals for intensive services and training services.

For future negotiations, ETA invites states to suggest mechanisms for expanding services to at-risk populations within our current performance framework. Suggestions should be emailed to: ETAperforms@dol.gov.

B. Tools for Proposing Levels of Performance

The following tools and process guidelines provide a uniform framework for states to use to set performance goals. Following these guidelines should make coming to agreement on final performance levels easier. The state and the ETA Regional Administrator must negotiate and agree to final performance levels no later than June 30, 2009.

Prior to proposing levels of performance for the applicable performance measures to the appropriate Regional Administrator to begin the negotiation process, as discussed further in Part C of this section (and **Attachment I**), states should review and make use of the following resources/tools to ensure that they have considered these factors in determining a proposed level and that there is a sound rationale for the proposed levels of performance:

I. *Past performance.* States should use historical, annual performance information (PY 2005-2008) to inform projected levels of performance for PY 2009. Recent quarterly performance results should also be used to inform the performance path the state is following. The Wagner-Peyser funded activities began reporting against the common performance measures in PY 2005 and now have three full years of data on which to base future performance projections. The Department anticipates that states will submit proposed levels of performance that reflect continuous improvement and additional experience, and show increases over the prior years' performance levels. However, it is recognized that performance levels may vary, up or down, based on economic factors that are beyond the state's

control. While states should have ready access to their own historical performance information, various tools and resources are available to examine states' historical performance data, including state by state files of the data (www.doleta.gov/Performance/results/wia_national_performance.cfm); the Federal Research and Evaluation Database (www.fred-info.org); VETS' performance data (<http://www.dol.gov/vets/vetoutcomes/index.htm>) and Bureau of Labor Statistics (BLS) data for employment, industries, counties, average earnings, etc. (www.bls.gov/cew/home.htm). When using BLS data as a guide, states should carefully consider the timeframes covered by BLS employment and wage information, and the relative time periods in which WIA and Wagner-Peyser exiters enter employment and obtain post-program earnings.

II. *Government Performance and Results Act (GPRA) goals.* Throughout the performance negotiation process, states should be aware of the preliminary GPRA goals the Department established through PY 2010. These goals may or may not be revised upon completion of a study currently under way to determine the effects of the business cycle on program performance. If the GPRA goals are to change, they will be revised in time for the FY 2010 Congressional Budget Justification, at which time they will also be shared with the regional offices. The regional offices will use the GPRA goals as one of several benchmarks by which to gauge their states' proposed performance levels in the context of these national system goals. The GPRA is an important mechanism by which Congress, and the Office of Management and Budget evaluate the success of Federal programs, including those operated by states and localities. The preliminary GPRA performance goals for the Department's WIA Adult and Dislocated Workers, and Wagner-Peyser programs are listed in **Attachment II**; more information is available at: <http://www.doleta.gov/Performance/goals/gpra.cfm>.

III. *National Distribution of WIA and Wagner-Peyser Performance Outcomes.* ETA has utilized states' previously submitted annual performance data to provide information on the national averages and distribution of performance outcomes. These benchmarks serve as estimates that states and regions can refer to when setting goals to achieve continuous improvement. **Attachment III** presents WIA and Wagner-Peyser outcomes for the past seven program years (table 1) and the national distribution of performance outcomes for the past three program years (table 2).

IV. *Average Six Months Earnings for WIA Adult and WIA Dislocated Worker Programs.* **Attachment IV** presents this information by state for the past six Program Years using state WIA Annual Report data.

V. *Estimates of Six Months Average Earnings by State Using BLS-Quarterly Census of Employment and Wages (QCEW) Program Data.* The QCEW is a cooperative program involving the BLS and the State Workforce Agencies that produces a comprehensive tabulation of employment and wage information for workers

covered by state Unemployment Insurance (UI) laws and federal workers covered by the Unemployment Compensation system. The QCEW contains data on the number of establishments, monthly employment, and quarterly wages, by North American Industry Classification System (NAICS) industry, by county and by ownership sector for the entire United States. At the state and local levels, the QCEW program publishes employment and wage data down to the 6-digit NAICS industry level. The QCEW data can serve as a resource to assist states in placing the results achieved under the average earnings measure for the WIA programs and Wagner-Peyser funded activities within the context of the average earnings for the overall workforce. **Attachment V** presents an estimate of this information by state for the past five years and **Attachment VI** provides additional information on the methodologies used to develop these estimates and details on the data's coverage and limitations. As noted earlier, states should carefully consider the timeframes covered by BLS wage information, and the relative time periods in which WIA and Wagner-Peyser exiters enter employment and obtain post-program earnings.

VI. *Estimates of the effects of economic and demographic variables and other factors.* WIA section 136(b)(3)(A)(iv) (see http://www.doleta.gov/performance/guidance/laws_regs.cfm) addresses additional factors, such as differences in economic conditions, characteristics of participants, and services to be provided, that should be considered in the negotiation process. Consider the following additional detail on these and other factors:

- **Attachment VII** provides estimates of how various economic and demographic variables may impact outcomes. Please note that these estimates are based on national-level data, and do not necessarily reflect the economic conditions and client base unique to a state. Therefore, these estimates are not hard and fast reasons for adjusting performance goals up or down. Instead, they are provided as an example of how a state might analyze its own data in order to propose goals that take into account the characteristics of individuals served and economic conditions in the state. In applying these variables, it is also important to recognize that the different performance measures may not be affected by the same variable in the same way because of the lag associated with the calculation of some of the performance measures. For example, a given state's economy could project no job growth for 2009, which could have a strong effect on the negotiated entered employment rate for PY 2009, but a lesser effect on the employment retention and six month average earnings measures for PY 2009, because the individuals included in those measures for PY 2009 reporting purposes would have been employed prior to the start of calendar year 2009 for the most part. **Attachment VIII** contains a description of the time periods during which individuals will have to have exited program services to be included in the different performance measures. This

attachment will assist states in their analysis of the impact of a given variable on the different measures against which the state will be negotiating levels for PY 2009 (and including in their WIA Annual Report submissions for PY 2009).

- o States that have Workforce Innovation in Regional Economic Development (WIRED) regions should consider how the additional investment and reshaping of talent development strategies within those regions impact overall performance, particularly individuals served. To the extent possible, negotiations should reflect projected impacts of the WIRED strategies.

C. Process for Reaching Agreement on State Performance Levels

The process for reaching agreement on state performance levels includes the following steps, as outlined in the attached timeline (**Attachment I**):

- I. After conducting their own analysis of factors that may affect performance, as discussed above (in Part A of this section), states will propose levels of performance for each of the applicable performance measures for PY 2009 by submitting these proposed levels to the Regional Administrator serving the state. Proposed performance levels should be stated to a tenth of a percent (XX.X%) and must be submitted to the appropriate Regional Administrator no later than April 15, 2009; however, regional offices will work with states to begin the negotiation process prior to that date and in parallel with the planning process in order to ensure that final levels are agreed upon by June 30, 2009.

When submitting the proposed levels, states should provide the following as support for the levels (see Part II, Section X, Subpart C, Item 1 of the Stand-Alone Planning Guidance or State Planning Guidance, or Part III, Section K, Item 1(a)(i) of the Unified Planning Guidance):

- The methodology used for developing proposed levels of performance, including a description of data sources, calculations, and additional environmental factors (such as those previously addressed in TEG 9-07, and discussed in Section 5 of this guidance.)
- How the target levels will promote continuous improvement in state performance.

When submitting the proposed levels for review, states should also include a discussion of how the proposed levels will positively impact customer satisfaction with services received and the extent to which the proposed levels ensure optimal return on investment of Federal funds. (See WIA section 136(b)(3)(A)(iii) and (iv).)

- II. The regional offices will review the analyses used by the state to develop the proposed performance levels and will work with the state to set mutually agreed-upon levels of performance. Regional offices will take into account the environmental factors addressed by the state, including current and future economic conditions. The regional offices will consider the proposed levels in light of previously negotiated goals, past performance results, and the national GPRA goals, as prescribed by the FY 2010 Congressional Budget Justification. Additionally, regional offices will consider the quality of the data presented by the state, including its relevance, source, the time period from which it is drawn, and whether the data is part of a trend or is anomalous. The negotiation process will focus on whether each performance level appears appropriate in light of statutory criteria and this guidance, and the adequacy of any information the state offers to substantiate each level. If regional offices determine through their analysis that a state could increase its proposed performance levels to more fully support continuous improvement and customer satisfaction strategies, they will negotiate with the state to obtain higher mutually agreed-upon performance levels.
- III. Once the performance levels are agreed upon, the Regional Administrator will send a letter to the state confirming the agreed-upon levels this letter constitutes a modification, incorporating these performance goals into the State Strategic Plan.

8. Inclusion of Performance Goals in State Plans. States are required to submit the *proposed* levels of performance by April 15, 2009. States can submit the proposed performance levels either with the modification request that revises the current State Plan, or with the letter requesting a one-year extension of the current State Plan, or separately to the Regional Administrator. States should note that the proposed levels of performance are subject to the same public review and comment requirements that apply to State Plans and Plan modifications. When the state submits the proposed levels to ETA, the state should confirm that it has made the proposed levels available to the public for review and comment.

States that have completed negotiations with ETA by April 15, 2009, can include their agreed-upon levels of performance for PY 2009 in the modification to the current State Plan, or with the letter requesting a one-year extension of the current State Plan.

In cases where final agreement on performance goals has not been reached until after the State Plan has been approved, the Regional Administrator's letter advising the states of the agreed-upon goals will constitute a modification to the State Plan. For subsequent revisions to performance goals during the life of the State Plan, the Regional Administrator's letter advising the state of the agreed upon goals will also constitute a modification to the State Plan. The state must ensure that the agreed-upon goals are included in the state's official copy of the State Plan, and that any published State Plan, on the state's Web site or through other forums, includes the agreed-upon goals. ETA

will incorporate these performance goals into the Regional and National Office copies of the State Plan.

9. Action Required. States are requested to distribute this information to the appropriate state and local staff.

10. Inquiries. Questions concerning this guidance may be directed to the appropriate regional office.

11. Attachments.

- Attachment I: Recommended Timeline for the Negotiation Process
- Attachment II: GPRA Performance Goals for the Department of Labor
- Attachment III: National Distribution of WIA and Wagner-Peyser Performance Outcomes
 - Table 1: National Averages of Performance Measure Outcomes, PY 2001 to PY 2007
 - Table 2: National Distribution of Performance Outcomes, PY 2005 to PY 2007
- Attachment IV: Average Six Months Earnings for WIA Adult and WIA Dislocated Worker Programs
- Attachment V: Estimates of Six Months Average Earnings by State Using BLS-QCEW Program Data
- Attachment VI: Additional Notes on BLS-QCEW Program Data
- Attachment VII: Economic and Demographic Variables
- Attachment VIII: Time Periods for Reporting Performance Information in the WIA Annual Report for PY 2008 - PY 2010