

<b>EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210</b>	<b>CLASSIFICATION</b> WIOA
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	<b>DATE</b> February 6, 2020

**ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 11-19**

**TO:** STATE WORKFORCE AGENCIES  
STATE WORKFORCE ADMINISTRATORS  
STATE WORKFORCE LIAISONS  
STATE AND LOCAL WORKFORCE BOARD CHAIRS AND DIRECTORS  
STATE LABOR COMMISSIONERS  
STATE LMI DIRECTORS

**FROM:** JOHN PALLASCH /s/  
Assistant Secretary

**SUBJECT:** Negotiations and Sanctions Guidance for the Workforce Innovation and Opportunity Act (WIOA) Core Programs

- Purpose.** Through this guidance, the U.S. Departments of Labor and Education (Departments) delineate the process for negotiating levels of performance, as required by section 116(b)(3)(A)(iv) of the Workforce Innovation and Opportunity Act (WIOA). This guidance also provides explanation of the two instances in which a state may be sanctioned for performance failure or for failure to report (section 116(f) of WIOA). Section 116 of WIOA, its implementing regulations, and this guidance govern how the Departments will determine when it is necessary to sanction a state, which is statutorily required by WIOA.<sup>1</sup>
- Action Requested.** Distribute this information to the appropriate state and local staff. Please make this information available to the appropriate program, reporting, performance accountability, and technical staff.

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<sup>1</sup> This guidance is a statement of the Departments' policy regarding the Workforce Innovation and Opportunity Act. Other than statutory and regulatory requirements included in this document, the contents of this guidance do not have the force and effect of law. This document is intended only to provide clarity regarding existing requirements under the applicable law or agency policies.

<b>RESCISSIONS</b> None	<b>EXPIRATION DATE</b> Continuing
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### **3. Summary and Background.**

Summary – This letter provides guidance on the requirements for reaching agreement on the *negotiated levels of performance* and the application of sanctions for the states<sup>2</sup> outlined in section 116 of WIOA and its implementing joint regulations in 20 CFR part 677 and 34 CFR parts 361 and 463. This guidance supplements the guidance provided by the Departments in “Performance Accountability Guidance for WIOA Title I, Title II, Title III, and Title IV Core Programs,” issued December 16, 2016 and updated August 17, 2017, and “WIOA Annual Performance Report Submission,” issued September 11, 2017.<sup>3</sup>

Background – WIOA establishes performance accountability indicators and performance reporting requirements to assess the effectiveness of states and local areas in achieving positive outcomes for individuals served by the workforce development system’s six core programs.<sup>4</sup>

Under section 116(b)(2)(A) of WIOA, there are six primary indicators of performance for which each of the state’s core programs must negotiate targets with its respective Federal agency:

- The percentage of program participants who are in unsubsidized employment during the second quarter after exit from the program (for the title I Youth program, the indicator is the percentage of program participants in education or training activities, or unsubsidized employment, during the second quarter after exit);
- The percentage of program participants who are in unsubsidized employment during the fourth quarter after exit from the program (for the title I Youth program, the indicator is the percentage of program participants in education or training activities, or unsubsidized employment, during the fourth quarter after exit);
- The median earnings of program participants who are in unsubsidized employment during the second quarter after exit from the program;

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<sup>2</sup> As stated in 20 CFR § 677.150(d), 34 CFR § 361.150(d), and 34 CFR § 463.150(d), the negotiations and sanctions process only applies to states as defined in sec. 3(56) of WIOA – each of the several states of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. It does not apply to the outlying areas as defined in sec. 3(45)—American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, and the Republic of Palau.

<sup>3</sup> See Attachment 5 – References.

<sup>4</sup> 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.

- The percentage of program participants 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, provided that a program participant who obtains a secondary school diploma or its recognized equivalent is included in the percentage of program participants who have attained a secondary school diploma or its 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 (this indicator does not apply to the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III);
- 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 toward such a credential or employment (this indicator does not apply to the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III); and
- The effectiveness in serving employers. The Departments determined that the Effectiveness in Serving Employers indicator will be measured as a shared outcome across all six core programs within each state to ensure a holistic approach to serving employers. The Departments will continue piloting approaches for measuring this indicator for the first two years of PY 2020-2023 Unified or Combined State Plans. Therefore, states are not required to submit an expected level of performance for the Effectiveness in Serving Employers indicator for PY 2020 and PY 2021. However, core programs are expected to collect data and select one agency to report joint results for this indicator for PY 2020 and PY 2021 as they did for PY 2016-2019 plans.

WIOA requires the Governor of each state to submit a Unified or Combined State Plan that includes a four-year strategy for the state’s workforce development system and to submit a modification to that plan after two years (sections 102(c) and 103(b)(1) of WIOA). The *expected levels of performance* for each primary indicator of performance for each core program must be included in the initial submission of a Unified or Combined State Plan and in the required two-year modification of the plan (section 116(b)(3)(A)(iii) of WIOA). The approved Unified or Combined State Plan and the required two-year modification must reflect two years of *negotiated levels of performance* (section 116(b)(3)(A)(iv) of WIOA).

Additional information on the process for setting these levels of performance is provided below.

#### **4. Negotiations and Sanctions Guidance.**

##### **Definitions of Terms**

Below, the Departments provide clarification about the various terms relevant to the process of establishing levels of performance under WIOA section 116(b):

- **Expected levels of performance** are the levels of performance proposed by the state in the initial submission of the Unified or Combined State Plan and in the required two-year modification of the Unified or Combined State Plan prior to negotiations (WIOA section 116(b)(3)(A)(iii)) for each primary indicator of performance for each core program;
- **Negotiated levels of performance** are the levels of performance mutually agreed to by the state and the Department for each respective program. The negotiations process must be based on four factors described in section 4 of this guidance. These *negotiated levels of performance* must be incorporated into the approved Unified or Combined State Plan and the approved two-year modification of that Plan (WIOA section 116(b)(3)(A)(iv)) for each primary indicator of performance for each core program;
- **Adjusted levels of performance** are levels of performance determined by adjusting the *negotiated levels of performance* at the end of the program year to reflect actual characteristics of participants served and the actual economic conditions experienced using the *statistical adjustment model* (see below) (WIOA section 116(b)(3)(A)(vii));
- **Actual level of performance** is the outcome reported by a state on the Statewide Performance Report (ETA-9169 OMB No. 1205-0526) for each primary indicator of performance for each core program (section 116(d)(2) of WIOA). *Actual levels of performance* will be compared to the *adjusted levels of performance* at the close of the program year to determine the state's performance success or failure;
- **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 of performance predicted by the *statistical adjustment model* prior to the start of the program year and the levels of performance re-estimated by the *statistical adjustment model* after the close of the program year. This calculation will yield a positive or negative difference, which will be used as the *adjustment factor* for the program year;
- **Individual indicator score** is the proportion the *actual level of performance* represents of the *adjusted level of performance* for a single performance indicator for a single program. It is calculated by dividing the *actual level of performance* achieved by the *adjusted level of performance*;
- **Overall state program score** is the average of the *individual indicator scores* for a single WIOA core program across performance indicators;
- **Overall state indicator score** is the average of the *individual indicator scores* for a single performance indicator across WIOA core programs; and

- **Statistical adjustment model** is an objective regression model used to estimate levels of performance and *adjusted levels of performance*. Before the program year, the *statistical adjustment model* determines estimates that are used as a factor in the negotiations process. After the program year, the estimates derived from the *statistical adjustment model* are applied to the actual economic conditions and characteristics of participants served to determine the adjustment factor (WIOA section 116(b)(3)(A)(viii)). Economic conditions include differences in unemployment rates and job losses or gains in particular industries. Characteristics of participants include, but are not limited to, 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 *statistical adjustment model* also takes into account other factors that, through empirical support, are determined to have an effect on predicting state outcomes.

### **The Negotiations Process Overview**

WIOA section 116(b)(3)(A)(iv) requires that states reach agreement with the Departments on levels of performance for each primary indicator of performance for each of the core programs. The Departments call these agreed-upon levels “*negotiated levels of performance*,” and they must cover the first two program years of the Unified or Combined State Plan. States also are required to reach agreement with the Departments on *negotiated levels of performance* for each of the primary indicators of performance for each of the core programs for the third and fourth years of the Unified or Combined State Plan. These *negotiated levels of performance* must be incorporated into the Unified or Combined State Plan during the required two-year modification of a plan (WIOA section 116(b)(3)(A)(iv)). Attachment 3—“WIOA Negotiations/Performance Process”—illustrates the process for negotiations and determining performance success or failure, which is detailed later in this guidance. The primary indicator for the effectiveness in serving employers has not yet been defined. For this reason, the negotiations process described below does not include this indicator. States should continue to report performance on the pilot measures described in the joint performance accountability guidance (“Performance Accountability Guidance for Workforce Innovation and Opportunity Act (WIOA) Title I, Title II, Title III, and Title IV Core Programs,” DOL TEGL 10-16, change 1, OCTAE PM 17-2, and RSA TAC 17-01 dated August 2017) until this indicator is defined.

The negotiations process will proceed as follows:

- As stated above, each state must submit *expected levels of performance* in its Unified or Combined State Plan and in the two-year modification of that plan. *Expected levels of performance* for the first two years of a state plan must be submitted in the initial submission of the Unified or Combined State Plan and in the initial submission of the two-year modification of that Plan, for years three and four, as

described in 20 CFR § 677.170(a) and 34 CFR § 361.170(a) and § 463.170(a). *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. States are reminded that the *expected levels of performance* proposed by states in their plan must be published for public comment prior to plan submission in accordance with state law, regulation, and policy;

- After the Unified or Combined State Plan submission, the state must negotiate and reach agreement with the respective Federal agency on the *negotiated levels of performance* for the indicators for each of the first two years of the Unified or Combined State Plan (or for the third and fourth years of the Unified or Combined State Plan during the required two-year modification process) for each of the core programs under WIOA section 116(b)(3)(A)(iv). The factors that will be taken into account during the negotiations process are described in detail below under Negotiation Factors;
- The Departments will use the *statistical adjustment model* as a tool in the negotiations process to estimate the state's levels of performance prior to the program year to help reach agreement on the *negotiated levels of performance*. The negotiation factors outlined in WIOA section 116(b)(3)(A)(v) and further described below under Negotiation Factors will be taken into account during this process; and
- Once *negotiated levels of performance* are agreed upon, the state must incorporate the *negotiated levels of performance* into the Unified or Combined State Plan and the two-year modification of that plan prior to the plan's approval (section 116(b)(3)(A)(iv) of WIOA).

### **Use of the Statistical Adjustment Model in the Negotiations Process**

As required by section 116(b)(3)(A)(viii) of WIOA, the Departments will use the *statistical adjustment model* to ensure that the impact of participant characteristics and economic conditions in the state are accounted for in determining the *negotiated levels of performance*.

The *statistical adjustment model* will provide two major functions in performance negotiations and assessment of state performance. First, it is one of the factors used when coming to agreement on the *negotiated levels of performance*. It is used to account for the economic conditions and the characteristics of participants to be served in the state and/or local areas (section 116(b)(3)(A)(v)(II) of WIOA). Second, it will be used at the close of a program year to adjust the *negotiated levels of performance* for the actual economic conditions experienced and actual characteristics of participants served (section 116(b)(3)(A)(vii) of WIOA); these are the *adjusted levels of performance*.

The Departments recognize that the use of the *statistical adjustment model* is a new requirement for the core programs and believe that it will be critically important to the WIOA performance negotiations process. As more data become available, the Departments will periodically review the model and refine it as necessary. State performance will be assessed using the iteration of the model used to negotiate the levels of performance for that program year.

### **Negotiating Levels of Performance**

Unified or Combined State Plan submissions and the two-year modifications to those plans must contain *expected levels of performance* for the primary indicators of performance (section 116(b)(3)(A)(iii) of WIOA). Submitting this information is the first step in the negotiations process. Once the *expected levels of performance* have been submitted, each core program must begin negotiations with its respective Federal agency (section 116(b)(3)(A)(iv) of WIOA). Title I WIOA and title III Employment Service programs will conduct these negotiations with their DOL-Employment and Training Administration (ETA) Regional Offices. The title II AEFLA program will conduct negotiations with the Office of Career, Technical, and Adult Education's (OCTAE) Division of Adult Education and Literacy, and the title IV VR program will conduct negotiations with the Rehabilitation Services Administration's (RSA) State Monitoring and Program Improvement Division. The agencies will review how this process applies to the Effectiveness in Serving Employers indicator, once the pilot phase is completed. Additional guidance will be provided on the process for negotiating this joint indicator.

States have access to their own historical performance information and various other tools and resources, such as data from the Bureau of Labor Statistics or U.S. Census Bureau. These tools may be used to establish the states' *expected levels of performance*. When using other resources to analyze the relationship between labor market or economic conditions and actual performance, states should consider the reference period of the resource and the timeframes associated with each of the primary indicators of performance and apply them accordingly.

### **Negotiation Factors**

In reaching agreement on the *negotiated levels of performance*, states and the Departments must apply the following factors pursuant to section 116(b)(3)(A)(v) of WIOA. Note that WIOA does not specify more or less weight on any specific negotiation factor.

1. Take into account how the levels involved compare with the *negotiated levels of performance* established for other states (section 116(b)(3)(A)(v)(I) of WIOA).

The Departments will provide the most recent performance data for all states, including previous actual, negotiated, and *adjusted levels of performance*, and will use this information throughout the negotiations process.

2. Ensure that the levels involved are adjusted using an objective *statistical adjustment model* provided by the Departments (section 116(b)(3)(A)(v)(II) of WIOA).

Before the negotiations process begins, the Departments will provide the estimated outcomes produced by the *statistical adjustment model*, including the coefficients and state specific values for each variable. This information will include levels of performance, as estimated by the Departments, to be used to inform the negotiations process. State agencies and their respective Federal agencies must negotiate using the levels of performance estimated by the model for each primary indicator of performance. These estimated levels of performance may not be altered for the purposes of negotiations, including any changes in participant characteristics or economic conditions anticipated by the state that would result in changes to the levels of performance predicted by the statistical model. Any changes in participant characteristics or economic conditions will be reflected in the model by using the actual participant characteristics and economic conditions after the close of the program year, and they will not be factored into the negotiations process.

3. Take into account the extent to which the levels involved promote continuous improvement in performance accountability measures by the state and ensure optimal return on the investment of Federal funds (section 116(b)(3)(A)(v)(III) of WIOA).

The Departments consider continuous improvement to be a critical factor in the negotiations process. The Departments will consider continuous improvement factors that ensure optimal return on investment of Federal funds.

The Departments acknowledge that there are many ways to define continuous improvement as related to state or national program circumstances. For example, continuous improvement may reflect:

- an increase from the levels of performance previously attained;
- increases in percentile rankings of levels of performance either nationally or among similar states;
- a change in service strategy and delivery, including more progressive or innovative approaches;
- a change in the intensity or comprehensiveness with which customers are served;  
or
- a maintenance of previous performance for the top performing states.

The Departments acknowledge that changes to service strategy or customers served do not always lead to increases in performance levels.

States and local areas must adhere to the priority of service requirements of WIOA title I programs as established in WIOA<sup>5</sup>. Additionally, the Departments encourage all other WIOA programs to serve more individuals with barriers to employment who may need more intensive services to achieve a positive outcome. The effect of serving more of these customers will be accounted for in the *adjusted levels of performance* calculated after the program year.

4. Take into account the extent to which the 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 of 1993 (GPRA) (section 116(b)(3)(A)(v)(IV) of WIOA).

Section 116(b)(3)(A)(vi) of WIOA requires the Departments to establish long term goals for the *adjusted levels of performance* for each of their core programs through GPRA expectations. GPRA is a mechanism through which Congress and the Office of Management and Budget evaluate the success of Federal programs, including those operated by states and local areas. During negotiations, the Departments will take into consideration levels of performance that will assist the Federal agencies in meeting the established GPRA goals.

### **Determination of Sanctions**

There are two types of failure that can lead to sanctions: failure to report and failure to meet *adjusted levels of performance* (section 116(f) of WIOA). A discussion of both circumstances is below.

#### **a. Sanctions for Failure to Report**

Sanctions will be applied when a state fails to submit the performance reports to the appropriate Federal agency, as required under WIOA section 116(d) (section 116(f)(1)(B) of WIOA). Consistent with 20 CFR § 677.185(a) and 34 CFR §§ 361.185(a) and 463.185(a), the Departments consider a state as failing to submit the performance reports if the state either: (1) does not submit performance reports by 11:59 p.m. local time<sup>6</sup> on October 1 or (2) submits performance reports by the date for timely submission, but the report is incomplete. Annual performance report requirements are complete when the state:

- attests all reports are complete and accurate to the best of their knowledge;
- submits a WIOA Statewide Performance Report (ETA-9169) for each of the six WIOA core programs;

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<sup>5</sup> WIOA section 134(c)(3)(E) and TEGL 19-16 provide additional information regarding priority of service populations and service requirements.

<sup>6</sup> Local time references the state capital's time zone.

- reports all elements of the WIOA Statewide Performance Reports as data are available according to the reporting periods of each indicator;
- makes available a mechanism of electronic access to local area performance reports for WIOA title I programs;
- makes available a mechanism of electronic access to Eligible Training Provider (ETP) performance reports for WIOA title I programs; and
- submits at least one WIOA Statewide Performance Report that includes Effectiveness in Serving Employers performance results reflecting all six core programs.

If the performance report submitted by the state does not meet all of the above requirements by the reporting deadline, it is incomplete.

The Departments implemented sanctions provisions for failure to report beginning with the PY 2017 WIOA Statewide Performance Reports submission, which was due on October 1, 2018.<sup>7</sup>

Consistent with section 116(f)(1)(B) of WIOA, sanctions will not be applied in cases where failure to report is due to exceptional circumstances outside the state's control as determined by the Departments. The Departments defined exceptional circumstances in 20 CFR § 677.185(b) and 34 CFR §§ 361.185(b) and 463.185(b). Exceptional circumstances may include, but are not limited to:

- natural disasters;
- unexpected personnel transitions; and
- unexpected technology related issues.

In instances of exceptional circumstances causing a state's failure to report that occur more than 30 calendar days before the established deadline, the state must notify the Secretary of Labor or Education, as appropriate, by requesting a reporting extension no later than 30 calendar days prior to the established deadline for submission (20 CFR § 677.185(c)(1) and 34 CFR §§ 361.185(c)(1) and 463.185(c)(1)).

### **Extension Requests**

In the event of exceptional circumstances as just described, the state must notify the Secretary of Labor or Education, as appropriate, in writing of a potential impact on the State's ability to submit its State annual performance report in order not to be considered failing to report (20 CFR § 677.185(c) and 34 CFR §§ 361.185(c) and 463.185(c)). In so doing, the State's request for an extension should include a detailed account identifying the unexpected events precluding timely reporting sufficient for the Departments to make

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<sup>7</sup> ETP performance reports are required to be submitted beginning with the PY 2018 Annual Report due on October 1, 2019.

a determination. Information that should be included in an extension request is as follows:

- Sufficient detail of the unexpected circumstances that will lead to untimely or incomplete reporting to warrant an extension;
- A proposed extension, fitting of the circumstances causing the delay, which should not exceed 30 calendar days after the established annual reporting deadline; and
- Any other information that the state deems relevant to help explain the need for an extension.

The state must submit the extension request as soon as possible, but not later than 30 calendar days prior to the established annual reporting deadline (20 CFR § 677.185(c)(1) and 34 CFR §§ 361.185(c)(1) and 463.185(c)(1)). The annual reporting deadline is October 1 each year; therefore, states must submit reporting extension requests not later than September 1 (or the next business day if September 1 falls on a holiday or weekend).

In cases where exceptional circumstances occur within 30 calendar days of the established annual reporting deadline, the state must submit an extension request to the Secretary of Labor or Education, as applicable, as soon as possible but not later than the established annual reporting deadline (20 CFR § 677.185(c)(2) and 34 CFR §§ 361.185(c)(2) and 463.185(c)(2)). Under these circumstances in addition to the above, the request also should include sufficient explanation as to why notification of the delay could not be provided 30 calendar days prior to the established annual reporting deadline.

All extension requests will be reviewed by the Departments for completeness and a thorough explanation of exceptional circumstances. The Departments may grant extension requests as submitted, grant extension requests with revisions, or reject the extension requests. Proposed reporting extensions should not exceed 30 calendar days after the established annual reporting deadline and should be appropriate to and commensurate with the cause of the requested extension.

Additionally, all extension requests should include the names and contact information of each responsible state designee or designated point of contact who will ensure that the extension deadline will be met.

In the event of failure to report timely or completely, pursuant to section 116(f)(1)(B) of WIOA, the Governor's discretionary funds provided under section 128(a) of WIOA will be reduced by five percent of the maximum available allotment in the immediately succeeding program year. The WIOA Joint Final Rule at 20 CFR § 677.195 and 34 CFR §§ 361.195 and 463.195 clarified that the sanction is equal to five percent of the maximum allotment percentage that could be reserved by the Governor in the succeeding program year rather than a five percentage point reduction from the percentage that a

Governor elected to reserve. This sanction will be enforced for each year in which a state fails to report timely or completely.

**b. Sanctions for Failure to Meet Adjusted Levels of Performance**

In accordance with 20 CFR § 677.190(d) and 34 CFR §§ 361.190(d) and 463.190(d), a performance failure occurs if:

- any single *Individual Indicator Score* for any single core program falls below 50 percent of the adjusted level of performance;
- the *Overall State Program Score* falls below 90 percent for that single core program; or
- the *Overall State Indicator Score* falls below 90 percent for that single measure.

Any State that fails to meet adjusted levels of performance for the primary indicators of performance for any year will receive technical assistance, including assistance in the development of a performance improvement plan provided by the Secretary of Labor or Secretary of Education (20 CFR § 677.190(b) and 34 CFR §§ 361.190(b) and 463.190(b)). However, if the state has the same performance failure occur in two consecutive program years, the Departments will apply sanctions. Further explanation of how technical assistance and sanctions will be applied is provided later in this section.

**Determining Performance Success or Failure**

The Departments will determine state performance success or failure at the end of each program year. In order to make a determination of success or failure, the *negotiated levels of performance* for that year will be adjusted using the *statistical adjustment model*, which will factor in data on the actual economic conditions of the state and the actual characteristics of the populations served by the program during that year. This adjustment will be calculated as described above in the definitions of *adjustment factor* and *adjusted levels of performance*. A detailed explanation of this calculation is found in Attachment 2 “Calculation—Adjusted Level of Performance.” This will determine the *adjusted levels of performance* for the program year against which the state’s *actual levels of performance* will be evaluated through the calculation of the performance score. Attachment 4, “Determining Performance Success or Failure,” provides an overview of the entire process.

The *individual indicator score* is calculated by dividing the *actual level of performance* achieved by the *adjusted level of performance*. The *adjusted level of performance* is calculated by adding the *adjustment factor* to the *negotiated level of performance*. The *individual indicator score* will not be rounded; it will be truncated to the first decimal place. A detailed example can be found in Attachment 1.

Table 1, below, illustrates the determination of performance success or failure across all indicators of performance for a single core program. The performance scores are

calculated for each primary indicator of performance and the average is computed. In this example, the *Individual Indicator Score* for Employment Rate—4<sup>th</sup> Quarter after Exit of 46.8 percent is a performance failure because it is below the 50.0 percent threshold. The *Overall State Program Score* of 81.5 percent is obtained by averaging the scores for each indicator in the program. In Table 1 below, this is a performance failure because the core program did not achieve 90 percent. Percentages will not be rounded in this calculation; they will be truncated to the tenth of a percent. Note that the Effectiveness in Serving Employers indicator is not included in this calculation because this indicator is not yet defined by the Departments.

Table 1: Calculation of Overall State Program Score

Primary Indicator of Performance	Actual Level of Performance (Numerator/Denominator)	Adjusted Level of Performance	Individual Indicator Score Calculation
Employment Rate—2 <sup>nd</sup> Quarter after Exit	$\frac{14,720}{20,000}$	75.1%	$\left(\frac{14,720}{20,000}\right) \div 75.1\% = 98.0\%$
Employment Rate—4 <sup>th</sup> Quarter after Exit	$\frac{8,200}{25,000}$	70.0%	$\left(\frac{8,200}{25,000}\right) \div 70.0\% = 46.8\%$
Median Earnings—2 <sup>nd</sup> Quarter after Exit	\$3,434	\$3,890	$\$3,434 \div \$3,890 = 88.2\%$
Credential Attainment	$\frac{12,500}{25,000}$	55.2%	$\left(\frac{12,500}{25,000}\right) \div 55.2\% = 90.5\%$
Measurable Skill Gains	$\frac{21,600}{30,000}$	85.6%	$\left(\frac{21,600}{30,000}\right) \div 85.6\% = 84.1\%$
Effectiveness in Serving Employers	N/A	N/A	N/A
Overall State Program Score* (Average of Individual Indicator Scores for this Core Program)	-	-	81.5%

\*For a detailed explanation of the calculation behind the Overall State Program Score, please refer to Attachment 1.

Table 2 illustrates the calculation for a single primary indicator of performance across all core programs. The performance scores are calculated for the Employment—2<sup>nd</sup> Quarter after Exit indicator for each core program, and the average is computed. In this case, the *Overall State Indicator Score*, which is the average of all *Individual Indicator Scores*, is 92.6 percent, so the core program achieved performance success. Again, percentages will not be rounded in this calculation; they will be truncated to the tenth of a percent.

Table 2: Calculation of Overall State Indicator Score

Program	Title I-Adult	Title I-Youth	Title I-DW	Title II	Title III	Title IV	Overall State Indicator Score* (Average of Individual Indicator Scores Across Core Programs)
Actual Level of Performance (Numerator/Denominator)	$\frac{14,720}{20,000}$	$\frac{8,820}{15,000}$	$\frac{12,648}{17,000}$	$\frac{9,300}{15,000}$	$\frac{21,330}{30,000}$	$\frac{6,792}{12,000}$	-
Adjusted Level of Performance	75.1%	70.2%	75.5%	67.5%	70.0%	69.0%	-
Individual Indicator Score Calculation	$\left(\frac{14,720}{20,000}\right) \div 75.1\% = 98.0\%$	$\left(\frac{8,820}{15,000}\right) \div 70.2\% = 83.7\%$	$\left(\frac{12,648}{17,000}\right) \div 75.5\% = 98.5\%$	$\left(\frac{9,300}{15,000}\right) \div 67.5\% = 91.8\%$	$\left(\frac{21,330}{30,000}\right) \div 70.0\% = 101.5\%$	$\left(\frac{6,792}{12,000}\right) \div 69.0\% = 82.0\%$	92.6%

\*For a detailed explanation of the calculation behind the Overall State Indicator Score, please refer to Attachment 1.

### Phasing in Sanctions for Performance Failure

The Departments used their transition authority under section 503(a) of WIOA to implement a phased-in approach to determine performance success or failure for each indicator or program, due to data availability, as described in 20 CFR § 677.190(c) and 34 CFR §§ 361.190(c) and 463.190(c).

If a performance failure occurs at the end of the program year, the respective Federal agency and the state agency will work to develop a performance improvement plan, and the Federal agency will provide technical assistance in accordance with section 116(f)(1)(A) of WIOA.

Table 3 below summarizes the first years in which each performance indicator will be evaluated for performance success or failure (with the exception of the Effectiveness in Serving Employers performance indicator, which is currently being piloted and will be established in subsequent guidance).

Table 3: Implementation of Performance Determination by Title and Indicator

<b>Title</b>	<b>Indicators of Performance</b>	<b>First Program Year for which Performance Success or Failure Can Be Determined</b>
Title I	<ul style="list-style-type: none"> <li>▪ Employment 2<sup>nd</sup> Quarter after Exit*</li> <li>▪ Median Earnings 2<sup>nd</sup> Quarter after Exit</li> <li>▪ Measurable Skill Gains</li> </ul>	PY 2020
Title I	<ul style="list-style-type: none"> <li>▪ Employment 4<sup>th</sup> Quarter after Exit*</li> <li>▪ Credential Attainment</li> </ul>	PY 2022
Title II	<ul style="list-style-type: none"> <li>▪ Employment 2<sup>nd</sup> Quarter after Exit</li> <li>▪ Median Earnings 2<sup>nd</sup> Quarter after Exit</li> <li>▪ Measurable Skill Gains</li> </ul>	PY 2020
Title II	<ul style="list-style-type: none"> <li>▪ Employment 4<sup>th</sup> Quarter after Exit</li> <li>▪ Credential Attainment</li> </ul>	PY 2022
Title III	<ul style="list-style-type: none"> <li>▪ Employment 2<sup>nd</sup> Quarter after Exit</li> <li>▪ Median Earnings 2<sup>nd</sup> Quarter after Exit</li> </ul>	PY 2020
Title III	<ul style="list-style-type: none"> <li>▪ Employment 4<sup>th</sup> Quarter after Exit</li> </ul>	PY 2022
Title IV	<ul style="list-style-type: none"> <li>▪ Measurable Skill Gains</li> </ul>	PY 2020
Title IV	<ul style="list-style-type: none"> <li>▪ Employment 2<sup>nd</sup> Quarter after Exit</li> <li>▪ Median Earnings 2<sup>nd</sup> Quarter after Exit</li> <li>▪ Employment 4<sup>th</sup> Quarter after Exit</li> <li>▪ Credential Attainment</li> </ul>	PY 2022

*\*Note that for WIOA title I Youth, these indicators include placement in education or training.*

If the state has the same performance failure occur in two consecutive program years, the Departments will apply sanctions, pursuant to section 116(f)(1)(B) of WIOA. Specifically, the Departments will reduce the Governor’s discretionary funds provided under section 128(a) of WIOA by five percent of the maximum available amount in the program year immediately succeeding the second consecutive performance failure. The WIOA Joint Final Rule at 20 CFR § 677.195 and 34 CFR §§ 361.195 and 463.195 clarified that the sanction is equal to five percent of the maximum allotment percentage that could be reserved by the Governor in the succeeding program year rather than a five percentage point reduction from the percentage that a Governor elected to reserve. This sanction will be enforced each successive year in which the state continues to have the same performance failure.

## **Local Performance and Negotiations under WIOA Title I**

### **a. Negotiations with Local Areas**

In addition to the state *negotiated levels of performance*, states must work with local workforce development areas to establish local performance goals for WIOA title I programs (section 116(c) of WIOA).

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 also must use the above-listed four factors of negotiation used at the state level. In addition, a statistical adjustment model that aligns with the framework of the state-level 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 the actual individuals served according to the state's established policies. States should make these negotiated and adjusted levels as well as the established policies for local performance assessment available to the local boards and the state's DOL-ETA Regional Office prior to the start of the program year in which the policies will be applied.

The Departments have developed the framework for an objective *statistical adjustment model* that satisfies the WIOA requirements at the state level. States must use this framework and develop a model that satisfies their needs at the local level, both in the performance negotiations and year-end adjustment of local levels of performance.

The local board, the Chief Elected Official, and the Governor must negotiate and reach agreement on local levels of performance for two program years at a time, based on the state's *negotiated levels of performance*, no later than September 30 in each year in which state negotiations occur. The state must notify its DOL-ETA Regional Office that negotiations are complete.

### **b. Local Performance Success and Failure**

States must use local performance goals for WIOA title I programs for two required purposes: (1) to determine if a local area “performed successfully” for subsequent local area designation, and (2) to determine when a state must take corrective action when a local area fails to meet the adjusted levels of performance.

For the purpose of determining subsequent local area designation, the term “performed successfully” means that the local area met or exceeded the levels of performance the Governor negotiated with the local board and chief elected official for WIOA primary indicators of performance and that the local area has not failed any individual measure for the

last two consecutive program years in accordance with a state-established definition, provided in the state plan, of met or exceeded performance. For subsequent designation determinations made at the conclusion of PY 2018, or at any point thereafter, states must base their findings of whether a local area performed successfully for the two most recently completed program years on all six of the WIOA primary indicators of performance where at least two years of data are available.

A state must establish the threshold for failure to meet adjusted levels of performance for a local area before coming to agreement on the negotiated levels of performance for the local area. Following the conclusion of the program year, a state must establish the adjusted level of performance for a local area, using the statistical adjustment model described. At least two years of complete data on any indicator for any local core program are required in order to establish adjusted levels of performance for a local area. States must provide technical assistance if a local area fails to meet the adjusted levels of performance agreed to for the primary indicators of performance in WIOA title I programs in any program year. Upon the state's request to the Secretary of Labor, DOL may provide this technical assistance.

The technical assistance may include:

- assistance in the development of a 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 Governor must take corrective actions. If the governor takes corrective action against a local area for failing to meet the negotiated goals, the state workforce agency should advise its Federal Project Officer of this action. The corrective actions must include the development of a reorganization plan under which the Governor:

- requires the appointment and certification of a new local board, consistent with the criteria 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.

5. **Inquiries.** Questions regarding this guidance should be directed to the appropriate ETA, OCTAE, or RSA office.
6. **References.** Refer to Attachment 5 of this guidance.

**7. Attachments.**

Attachment I: Calculation—Overall State Indicator and Program Scores

Attachment II: Calculation—Adjusted Level of Performance

Attachment III: WIOA Negotiations / Performance Process Flow Chart

Attachment IV: Determining Performance Success or Failure

Attachment V: References—Joint Negotiations and Sanctions Guidance