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**ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER WIOA NO. 26-15 OPERATING GUIDANCE for the WORKFORCE INNOVATION AND OPPORTUNITY ACT (referred to as WIOA or the Opportunity Act)**

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

**FROM:** PORTIA WU /s/  
Assistant Secretary

**SUBJECT:** Negotiating Performance Goals for the Workforce Innovation and Opportunity Act (WIOA) Title I Programs and the Wagner-Peyser Employment Service as amended by Title III, for Program Year (PY) 2016 and PY 2017

- Purpose.** To inform States of the guidelines for the negotiation process for the first two years of implementation of the WIOA title I programs (Adult, Dislocated Worker, and Youth) and the Wagner-Peyser Employment Service program, as amended by title III of WIOA, for PY 2016 and PY 2017. Once negotiated levels are agreed upon by each State and the Employment and Training Administration (ETA), they will be incorporated into the State Unified or Combined Plan. This guidance also provides information on the negotiations process for the Adult Education and Family Literacy Act programs under title II of WIOA and the Vocational Rehabilitation program as amended by title IV of WIOA for PY 2016 and 2017.
- References.** See Attachment IV.
- Background.** On July 22, 2014, President Obama signed the Workforce Innovation and Opportunity Act (WIOA) into law. WIOA significantly advances the strategic alignment of workforce development programs, with particular emphasis on aligning the “core programs” administered by the Departments of Labor and Education. The core programs are the Adult, Dislocated Worker, and Youth programs; the Wagner-Peyser Employment Service; the Adult Education and Family Literacy program; and Vocational Rehabilitation. Such alignment is advanced through mechanisms such as Unified State Plans which require the States to develop one strategic plan for the core programs; Combined State Plans which may include

<b>RESCISSIONS</b> None	<b>EXPIRATION DATE</b> Continuing
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certain additional partner programs; and the alignment of performance accountability provisions for WIOA core programs.

While much of WIOA became operational on July 1, 2015, several major provisions have later implementation dates, including the state planning (WIOA sections 102 and 103) and performance accountability provisions (sec. 116). The Unified and Combined State Plans and the performance accountability provisions are effective on July 1, 2016.

As required by WIOA, the Departments of Labor and Education (the Departments) jointly developed aligned definitions of the primary indicators of performance and created an initial statistical adjustment model. These performance accountability provisions initially were proposed through the Notice of Proposed Rulemaking for the Workforce Innovation and Opportunity Act Joint Rule for Unified and Combined State Plans, Performance Accountability, and the One-Stop System Joint Provisions published April 16, 2015, published at 80 Fed. Reg. 20573 (April 16, 2015). They also were further interpreted in the Workforce Innovation and Opportunity Act Common Performance Reporting Information Collection Request (“Joint WIOA Performance ICR”) 30-day notice for comment published at 80 Fed. Reg. 24654 (April 26, 2016).

Under WIOA, there are six primary indicators of performance:

- The percentage of program participants who are in unsubsidized employment during the second quarter after exit from the program (for title I Youth, the indicator is participants in education, or training activities or employment in the 2nd quarter after exit);
- The percentage of program participants who are in unsubsidized employment during the fourth quarter after exit from the program (for title I Youth, the indicator is participants in education, or training activities or employment in the 4th quarter after exit);
- The median earnings of program participants who are in unsubsidized employment during the second quarter after exit from the program;
- 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 1 year after exit from the program;
- 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; and
- Effectiveness of the core programs in serving employers.

The Departments recognize that the States will need time to make modifications to their data systems to fully implement the data elements and definitions to comply with the new WIOA

performance requirements. While the States are required to collect the data beginning July 1, 2016, the Departments also acknowledge that States may not be able to report data in the early quarters of PY 2016 because of system readiness and capability to submit data.

Additional information regarding the negotiation process and the use of the statistical adjustment model is provided in sections 5 through 7 of this guidance below.

The initial statistical adjustment model was developed based on historical data reported by States against the Workforce Investment Act (WIA) performance measures, which is used as a proxy for WIOA performance measures. The Department of Labor plans to use the initial statistical model (which is based on data reported under WIA) in negotiations with the States on their PY 2016 expected levels of performance for the following four indicators for title I and title III programs, as applicable: 1) employment in the second quarter after exit; 2) employment in the fourth quarter after exit; 3) median earnings in the second quarter; and 4) credential attainment rate. See Attachment VI for additional clarification.

**4. Definitions of Terms Related to Performance Negotiations.** This guidance uses the following terms:

- **Expected levels of performance** are the levels of performance on each primary indicator of performance on each core program submitted by the State in the initial submission of the State Plan prior to negotiations.
- **Negotiated levels of performance** are the levels of performance for each primary indicator for each core program, agreed to by the State and the Secretaries, prior to the start of the program year. The deadline for establishing negotiated levels in 2016 has been extended for the title I and Wagner-Peyser Service program as discussed below. These negotiated levels of performance must be incorporated into the Unified or Combined State Plan.
- **Actual results** are the results reported by a State for each primary indicator for each core program. Actual results will be compared to the adjusted levels of performance (see below) at the close of the program year to determine if the State failed to meet the adjusted levels of performance.
- **Adjusted levels of performance** are the negotiated levels of performance, after being revised at the end of the program year using the statistical adjustment model (see below). The statistical adjustment model is run to account for actual economic conditions and characteristics of participants served.
- **Baseline indicators** are indicators for which States will not propose an expected level of performance in the State Plan submission for PY 2016 or PY 2017 and will not need to come to agreement with the Departments on negotiated levels of performance. The selection of primary indicators for the designation as a baseline indicator is made based on the likelihood of a State having adequate data on which to make a reasonable

determination of an expected level of performance and such a designation will vary across core programs. It is unlikely that a State would have data on the baseline indicators because there was no reason to have collected such data under WIA. Additionally, certain indicators were designated as baseline indicators for PY 2016 and PY 2017 because there were insufficient observations to construct a statistical model for those indicators at this time. As a result, it is nearly impossible to objectively estimate an expected level of performance for these indicators.

“Baseline” indicators will not be used in the end of the year performance calculations and will not be used to determine failure to achieve adjusted levels of performance for purposes of sanctions. States are expected to collect data and report on these indicators of performance. Baseline indicators, by core program title, include:

- Title I: Measurable Skill Gains, Effectiveness in Serving Employers, Median Earnings (Youth program only)
  - Title II: All primary indicators EXCEPT Measurable Skill Gains
  - Title III: Effectiveness in Serving Employers (Credential Attainment Rate and Measurable Skill Gains are not required indicators)
  - Title IV: All primary indicators
- **Statistical Adjustment Model** (WIOA sec. 116(b)(3)(viii)), established by the Departments, is an objective statistical model to be used to make adjustments in the State negotiated levels of performance for actual economic conditions and the characteristics of participants served at the end of the program year. It also is a key factor to be used in arriving at mutual agreement on State negotiated core program performance levels. See below for greater detail on its development and use.
5. **The Negotiation Process for PY 2016 and PY 2017.** WIOA sec. 116(b)(3)(A)(iv) mandates that States will negotiate two years of performance outcomes for the first two program years. States and federal partners will negotiate goals for all non-baseline indicators for both PY 2016 and PY 2017. States will be able to renegotiate PY 2017 performance levels during the fourth quarter of PY 2016. Please refer to *Orderly Transition Provisions for Baseline and Negotiated Indicators of Performance* contained within this section for details on renegotiation.

As described more fully in Attachment VI, indicators to be negotiated for PY 2016 and PY 2017 are:

- Title I Adult, Dislocated Worker, and Youth programs: indicators for employment in the second quarter after exit, employment in the fourth quarter after exit, median earnings in the second quarter after exit (for Title I Adult and Dislocated Worker programs only), and credential attainment rate;
- Title II Adult Education and Family Literacy program: indicator for measurable skill gains; and

- Title III Wagner-Peyser Employment Service: indicators for employment in the second quarter after exit, employment in the fourth quarter after exit, median earnings in the second quarter after exit.

Please note that no levels of performance will be negotiated for the Vocational Rehabilitation State grant programs for PY 2016 and PY 2017.

As mentioned above, the Departments realize that performance outcome data will not be available for any core indicator except for Measurable Skill Gains in PY 2016. However, DOL grantees will negotiate goals for PY 2016 in conjunction with negotiating goals for PY 2017 as well.

The overall State negotiation process will proceed as outlined below:

- Each State submits expected levels of performance in its Unified or Combined State Plan based on the State's analysis of factors that may affect performance. Expected levels of performance must be stated to the nearest tenth of a percent (XX.X%) or to the nearest whole dollar for median earnings. When the State submits the expected levels of performance to ETA, the State must confirm that it has made the expected levels of performance available to the public for review and comment. For instructions on plan submission, see TEGL 14-15, *Workforce Innovation and Opportunity Act (WIOA) Requirements for Unified and Combined State Plans*.
- After Plan submission, the State is required to reach agreement with the Secretary of Labor, in conjunction with the Secretary of Education, on State negotiated levels of performance for the indicators for each of the first two years of the Plan, for each of the core programs under WIOA sec. 116(b)(3)(A)(iv)(I). The factors that will be taken into account during the negotiation process are described in detail in section 6 of this guidance. In addition to these factors, the Departments will use the statistical adjustment model as a tool in the negotiation process to adjust the State's expected levels of performance to help reach agreement on the negotiated levels of performance. For the WIOA title I programs (Adult, Dislocated Worker, and Youth) and the Wagner-Peyser Employment Service program, as amended by title III of WIOA, the State will negotiate its performance with the ETA regional office. As part of the negotiation process, the State will be asked to provide the rationale for the methodology behind its expected levels of performance, considering the factors identified in WIOA sec. 116(b)(3)(A)(v) and further described in section 6 of this guidance. The regional office will review the analyses used by the State to develop the expected levels of performance and work with the State to set mutually agreed-upon levels of performance. These are the negotiated levels of performance. Regional offices will take into account the factors outlined in WIOA sec. 116(b)(3)(A)(v) and those addressed by the State. Once negotiated levels of performance are agreed upon, the State must incorporate these modifications into the Unified or Combined State Plan.

- While the Departments will not use baseline indicators in the end of PY 2016 performance calculations, and these baseline indicators will not be used to determine if a State failed to meet its adjusted levels of performance for purposes of sanctions, **States still must collect and report on all primary indicators of performance, including those that have been designated as “baseline.”** The actual performance data reported by States for indicators designated as “baseline” in the first two program years of implementation will serve to support negotiations and to continue to build and refine the statistical adjustment model in future years. It should also be noted that OCTAE will negotiate with States for the title II AEFLA programs, and RSA will negotiate with States for the title IV VR programs.

Determinations of financial sanctions, on account of any overall State program score or indicator score, will not occur until at least 2 full years of outcome data has been reported; the Departments will not consider data reported prior to July 1, 2016 as a component of 2 full years of outcome data under WIOA. The Departments will issue additional guidance on the sanctions process.

- It should be noted that the Departments will not engage in mid-year renegotiations. For example, after PY 2016 negotiated levels of performance are agreed upon, States will not be able to be renegotiate these levels during or after the program year. However, States will have an opportunity to renegotiate PY 2017 levels during the fourth quarter of PY 2016. These renegotiations would be based upon three quarters of data and information on the other three factors presented by the State.

**Orderly Transition Provisions for Baseline and Negotiated Indicators of Performance –**

The data and information that currently are available for each primary performance indicator vary across indicators and also across the core programs. To ensure an orderly transition to the performance accountability system in sec. 116 of WIOA, for PY 2016 and PY 2017, the Departments will use the transition authority under sec. 503(a) of WIOA to designate certain primary performance indicators of performance as “baseline” indicators in the first State plan submission.

The Median Earnings for the Youth primary indicator will not be negotiated for PY 2016 and PY 2017, as previously indicated in Appendix I of the Information Collection Request for Unified and Combined State Plans. There are insufficient observations from the WIA Workforce Investment Act Standardized Record Data (WIASRD) to accurately build a statistical adjustment model for this indicator. The statistical adjustment model will be developed and used for this indicator after States have submitted two full program years of youth earnings data.

**Use of the Statistical Adjustment Model in the Negotiation Process:** Under WIOA, the statistical adjustment model, established by the Secretaries of Labor and Education, will be used to ensure that the negotiated performance levels are based on the actual economic conditions and characteristics of participants. Actual economic conditions include differences in unemployment rates and job losses or gains in particular industries. Characteristics of

participants include indicators of poor work history, lack of work experience, lack of educational or occupational skills attainment, dislocation from high-wage and high-benefit employment, low levels of literacy or English proficiency, disability status, homelessness, ex-offender status, and welfare dependency. The Departments emphasize the critical importance of the statistical adjustment model in the performance negotiation process under WIOA in addition to acknowledging that the model will be refined with ongoing use and application using pertinent data.

The statistical adjustment model will provide two major functions in performance negotiations and assessment. First, it is one of the factors used when coming to mutual agreement on the negotiated levels of performance. It is used to account for the expected economic conditions and the expected characteristics of participants to be served in the State and/or local areas. Second, it will be applied at the close of a program year to the negotiated level, to adjust for actual economic conditions experienced and actual characteristics of participants. States are encouraged to reference Attachment II for an executive summary of the statistical adjustment model. Additional guidance will be issued on the statistical adjustment model.

The Departments recognize that the use of the statistical adjustment model is a new requirement for the core programs and its initial application will provide baselines for future applications. The methodology for the statistical adjustment model, including the factors in the model, will be available for periodic public comment and review. The Departments also recognize that the initial statistical adjustment model will be updated and refined after the Departments receive actual WIOA performance data. The Departments will issue more specific guidance to the workforce system.

The Department of Labor will utilize the targets generated from the statistical adjustment model in its negotiation process with the States for the non-baseline indicators. However, due to the lack of complete availability of data that will be reported at the end of PY 2016, the model will not be applied to determine adjusted levels of performance for PY 2016.

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

The Department has developed an Excel spreadsheet (Attachment IIIB) to accompany the statistical adjustment model to facilitate the negotiations process between the States and local

areas. The tool displays each variable used within the model, the coefficient associated with each variable, as well as the statewide population proportion for each variable; a summary of targets by state is also available. Detailed instructions on its use are in the first tab labeled Attachment IIIA.

6. **Reaching Agreement on State Performance Levels.** State Unified or Combined State Plans submitted on or before April 1, 2016 should have contained expected levels of performance for the non-baseline primary performance indicators; this information is the first step in the negotiation process. Negotiated levels of performance must be agreed upon by no later than **August 15, 2016. In order to facilitate an orderly transition, the Departments are exercising their transition authority to extend the deadline to reach agreement on PY 2016 and PY 2017 expected levels of performance.** However, in future years, the deadline will be June 30.

Additionally 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 no later than September 30, 2016.

### **Negotiation Factors**

In reaching agreement on the negotiated levels of performance States and the Secretary shall take into account the following factors:

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

States may use historical, annual WIA performance information (PY 2007-2014) to inform the expected levels of performance for PY 2016 and PY 2017. States also may use recent quarterly performance results to support projected performance and service populations.

Although States should have access to their own historical performance information, various tools and resources are available to examine all states' performance data, including State by State files ([www.doleta.gov/Performance/results/wia\\_national\\_performance.cfm](http://www.doleta.gov/Performance/results/wia_national_performance.cfm)); DOL's Clearinghouse for Labor Evaluation and Research (CLEAR) (<http://clear.dol.gov/>); VETS' performance data (<http://www.dol.gov/vets/vetoutcomes/index.htm>). Bureau of Labor Statistics (BLS) data includes employment, industries, counties, and average earnings ([www.bls.gov/cew/home.htm](http://www.bls.gov/cew/home.htm)). When using BLS data as a guide, States should be careful to consider the timeframes covered by BLS employment and wage information, and the relative time periods in which WIA and Wagner-Peyser Act exiters enter employment and obtain post-program earnings. For example, when looking at unemployment rates for a given geographical region, it is important to align the time period to the lagged timing of the indicator target being established.

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

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

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

The Department considers continuous improvement to be a critical factor in the negotiations process. The Department acknowledges that there are many ways to define continuous improvement. Continuous improvement may reflect an increase in the level of performance, a change in service strategy and delivery, or a change in the customers served. The customers served by the local area may have a significant impact on outcomes depending on the type of services provided and other factors unique to the population. WIOA emphasizes serving those individuals with barriers to employment and individuals more at-risk of not connecting to the labor market.

ETA will consider setting performance targets to accommodate States currently serving a significant number of individuals with barriers to employment who need higher levels of service to achieve a positive outcome. In such circumstances, the performance levels would be agreed upon during the negotiation process based on expectations to serve a significant population of individuals with barriers to employment, and subsequently adjusted to account for the actual characteristics of individual served.

When negotiating the Youth goals, States should consider the importance of serving the youth most in need, especially out-of-school youth (including those who are dropouts, in foster care, youth who are homeless or runaways, subject to the juvenile or adult justice system, pregnant or parenting, basic skills deficient or English language learners). States that have ongoing initiatives for serving individuals with barriers to employment or serving the youth most in need may work with their respective Regional Administrator to negotiate appropriate goals for PY 2016 and PY 2017.

When negotiating goals for the Adult program, States proposing new efforts to increase access to services for special populations that may face significant barriers to employment, such as older individuals, individuals with disabilities, eligible migrant or seasonal farm workers, Indians, Alaska Natives, and Native Hawaiians, individuals who are basic skills deficient, public assistance recipients, or other low income individuals should provide data to show how

these new efforts will impact outcomes. ETA supports efforts that will help States reach a wider variety of available workers as they expand their talent pipelines.

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

Throughout the performance negotiations process, States should be aware of GPRA goals the Department established through PY 2017. The Departments will use GPRA goals as one of several benchmarks by which to gauge their States' proposed performance levels in the context of these national system goals. GPRA is an important mechanism by which Congress and OMB evaluate the success of Federal programs, including those operated by States and local areas. GPRA goals for core programs operated by the Department of Labor will be available at <http://www.doleta.gov/Performance/goals/gpra.cfm>.

#### **7. Methodology for Assessing Performance against Adjusted Levels.**

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

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

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

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

Because the Departments recognize that there will be no outcomes available to be reported in PY 2016 for the indicators that are being negotiated for the core programs, the Departments are exercising their transition authority to provide that sanctions will occur only after two years of complete data are available.

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

8. **Action Requested.** States are requested to distribute this information to the appropriate State and local staff.
9. **Inquiries.** Questions concerning this guidance should be directed to the appropriate regional office.
10. **Attachments.**
  - Attachment I: Recommended Timeline for the PY 2016 and PY 2017 Negotiations Process
  - Attachment II: Executive Summary of the Statistical Adjustment Model
  - Attachment IIIA: Note to Reviewer
  - Attachment IIIB: Excel Spreadsheet Tool for the Negotiation Process
  - Attachment IV: WIOA Operating Guidance TEGL References
  - Attachment V: Data Tools for Identifying Characteristics of Participants and Economic Conditions
  - Attachment VI: Negotiated Indicators of Performance for PY 2016 and PY 2017