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| EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210 | CLASSIFICATION WIOA |
| | CORRESPONDENCE SYMBOL ETA-OWI |
| | DATE December 7, 2020 |

ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 8-20 OPERATING GUIDANCE for the WORKFORCE INNOVATION AND OPPORTUNITY ACT (referred to as WIOA)

TO: STATE WORKFORCE AGENCIES
STATE AND LOCAL STAKEHOLDERS IN THE WORKFORCE
INNOVATION AND OPPORTUNITY ACT
STATE WORKFORCE ADMINISTRATORS
STATE WORKFORCE LIAISONS
STATE AND LOCAL WORKFORCE BOARD CHAIRS AND DIRECTORS
AMERICAN JOB CENTER DIRECTORS

FROM: JOHN PALLASCH 
Assistant Secretary

SUBJECT: Pay for Performance (PFP) Guidance for WIOA title I, subtitle B

1. **Purpose.** To provide guidance on PFP for state and local WIOA title I, subtitle B programs that implement PFP contract strategies.
2. **Action Requested.** State agencies, state workforce development boards (WDBs), local WDBs, and American Job Center (AJC, also called one-stop) partner programs must follow the requirements in this guidance as they develop policies and procedures related to PFP.
3. **Summary and Background.**
 - a) **Summary.** This U.S. Department of Labor’s (DOL’s) Employment and Training Administration (ETA) PFP guidance adheres closely to the applicable statutory and regulatory provisions. PFP is a type of performance contract in which WIOA funds are paid only after performance occurs and outcomes are validated.
 - b) **Background.** PFP contracting strategies seek to maximize the likelihood that the federal government pays only for demonstrably effective services, and also seeks to secure performance outcomes at a lower cost than might otherwise occur. WIOA introduced PFP contract strategies as an optional activity for certain services allowable under WIOA title I, subtitle B Adult, Dislocated Worker, and Youth programs.

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| RESCISSIONS None | EXPIRATION DATE Continuing |
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PFP evolved from Pay for Success (PFS) projects, which began in the U.S. in 2012. ETA issued two of the first federal competitive grants to pilot test PFS in 2013. The U.S. Government Accountability Office (GAO) conducted a major study of PFS including an examination of several employment projects, which is helpful in understanding some of the complexities involved in various types of performance based-contracting. PFP presents an opportunity to only pay for outcomes achieved rather than for services that may or may not result in positive outcomes. Such an approach can remove unintended incentives for “creaming,” and explicitly direct payments towards employment success for disadvantaged populations.

4. **PFP Guidance.** See Attachments I and III for all PFP guidance.

5. **Inquiries.** Please direct questions to the appropriate ETA regional office.

6. **References.**

- WIOA, Public Law No. 113-128, enacted July 22, 2015, available at <https://www.gpo.gov/fdsys/pkg/PLAW-113publ128/pdf/PLAW-113publ128.pdf>, Sections 3(47), which references 116(b)(2)(A); 116(d)(2)(K); 116(d)(6)(D); 116(h); 129(c)(2), which references 128(b); 134(a)(3)(A)(xiv) and 134(c)(3)(G)(ii)(VI); 134(d)(1)(A)(iii), which references 133(b); and 189(g)(2)(D)
- 20 CFR 677.215(b)
- 20 CFR 683.500 through 683.540; 680.140(b)(4); 680.320(a)(5); 681.420(i); 682.210(l)
- 2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- U.S. Government Accountability Office, *Pay for Success: Collaboration among Federal Agencies Would Be Helpful as Governments Explore New Financing Mechanisms*, September 2015, GAO-15-646 (www.gao.gov/products/GAO-15-646)
- ETA Performance TEGs and TENs (Training and Employment Notice)
 1. TEG 14-18, Aligning Performance Accountability Reporting, Definitions, and Policies Across Workforce Employment and Training Programs Administered by the U.S. Department of Labor (DOL), March 25, 2019 (https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=7611)
 2. TEG 05-18, Workforce Innovation and Opportunity Act (WIOA) Annual Statewide Performance Report Narrative, November 7, 2018 (https://wdr.doleta.gov/directives/corr_doc.cfm?docn=3118)
 3. TEG 03-18, Eligible Training Provider (ETP) Reporting Guidance under the Workforce Innovation and Opportunity Act (WIOA), August 31, 2018 (https://wdr.doleta.gov/directives/corr_doc.cfm?docn=3527)
 4. TEG 10-16, Change 1, Performance Accountability Guidance for Workforce Innovation and Opportunity Act (WIOA) Title I, Title II, Title III and Title IV Core Programs, August 23, 2017 (https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3255)
 5. TEN 8-16, Implementation of an Integrated Performance Reporting System for Multiple Employment and Training Administration (ETA) and Veterans' Employment and Training Service (VETS) Administered Programs, August 24, 2016 (https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=5317)

7. Attachments.

- Attachment I. Pay for Performance Guidance
- Attachment II. Summary of Selected Major Federal, State, and Local WIOA PFP Roles
- Attachment III. Extended Disbursement Account

Attachment I. Pay for Performance Guidance

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1. **PFP Overview.** WIOA assigned various roles and responsibilities to the federal, state, and local levels regarding PFP. Attachment II provides a high-level summary of some of these roles, which are described in more detail in the main body of this guidance.

WIOA authorizes, and ETA encourages, local WDBs to reserve not more than 10 percent of the local allocation for WIOA title I Adult, Dislocated Worker, and Youth formula funds for PFP contract strategies. Under WIOA, funds reserved from the Adult and Dislocated Worker allocations can only be used for training services under WIOA Section 134(c)(3). Funds reserved from the Youth allocation can be used for the Youth program activities in WIOA Section 129(c)(2). While WIOA limits PFP contracts to the provision of training services defined under Section 134(c)(3) for Adult and Dislocated Worker programs, PFP contract recipients may provide additional services to help PFP participants succeed in their training or employment or education programs through other sources of funding including their own funds, WIOA formula funds, or other American Job Center partner programs, as long as these services are supported by a non-PFP fund source. In keeping with the Department's One Workforce approach, states and local areas can collaborate with other public or private partners to get PFP participants and all customers the services they need for employment. WIOA Section 3(47) defines PFP contract strategies as procurement strategies that include: 1) contracts where a fixed amount is paid to an eligible provider based on the achievement of specified levels of performance on WIOA's primary indicators of performance for target populations within a defined timetable; 2) an independent validation of the performance achieved; and 3) a description of how state or local areas will reallocate funds to other PFP contract strategies if the funds were not used because the performance outcomes were not

met. This guidance specifically addresses PFP contract strategies as defined in WIOA Section 3(47) and 20 CFR part 683, subpart E. This guidance does not apply to types of performance-based contracting other than PFP, and does not prohibit grantees from engaging in other types of performance-based contracting.

WIOA supports both PFP contract strategies and PFP-related activities. For purposes of PFP contract strategies, local areas may reserve not more than 10 percent of their formula allocations which when used to carry out pay-for-performance contract strategies shall remain available until expended. Pay-for-performance contract strategies include only the activities listed in the definition of PFP contracting strategies at WIOA Section 3(47), such as payments for performance outcomes and independent validation of results. PFP-related activities include additional state and local activities related to pay-for-performance contracting strategies, such as feasibility studies, technical assistance, and PFP evaluations, and funds used for PFP-related activities do not count toward the 10 percent limitation. ETA delineates two types of PFP activities, each of which can be funded by different sources.

The first – called **PFP contract strategies** – includes activities for which local areas may reserve not more than 10 percent of a local area’s formula funds. ETA has interpreted this requirement to apply only to activities that the WIOA statute and regulations specify parts of a PFP contract strategy to include payments for performance outcomes including bonuses, and independent validation. The second type of PFP activity – called **PFP-related activities** – is associated with PFP contract strategies but is not part of the strategy (such as the feasibility study, technical assistance, and PFP evaluations).

Local boards may pay for PFP contract strategies with funds that are reserved and set aside, using the process described in Attachment III of this guidance. Funds reserved for PFP contract strategies count toward the 10 percent limitation. PFP-related activities cannot be paid for using these set-aside funds (see below for what funding sources can be used), and WIOA expenditures for PFP-related activities do not count toward the 10 percent limitation. Note that some PFP-related activities occur before a formal PFP contract exists.

In the remainder of this guidance, the term “PFP” is used to describe both PFP contract strategies and PFP-related activities. The PFP contract is the required legal agreement among all parties to a PFP contract strategy. The service provider is the entity that delivers services (e.g., training) directly to participants in a PFP contract strategy.

The following definitions apply to the WIOA performance terms in this guidance.

- “Performance indicators” refer to the primary indicators of performance in WIOA §116(b)(2)(A) (Performance Accountability System).
- “Performance outcomes” refer to the actual performance achieved by the PFP contract strategy.

2. **Local and State Roles.** WIOA Section 129(c)(1)(D) states that implementation of PFP contract strategies using funds allocated to the local area under WIOA Section 128(b)(2)(A) is at the discretion of the local boards. PFP contract strategies are an optional WIOA local activity, and therefore most of the decisions, policies, activities, and oversight of PFP will occur in WIOA local areas. Consequently, most of this guidance concerns PFP implementation at the local level.

If there is a PFP contract strategy in a state, the state must do the following.¹

- Collect and report to ETA:
 - Participant-level data used to determine the performance outcomes of PFP service providers, and the information and data to demonstrate that the service providers meet all other performance requirements (see section 8 of this TEGl for more information); and
 - State and/or local evaluations of the PFP contract strategies (see section 9 of this TEGl for more information).
 - Where possible, collect and report to ETA the employers' and participants' level of satisfaction with the PFP contract strategy, per WIOA Section 116(d)(2)(K) and 20 CFR 677.160.
 - Monitor local PFP contract strategies to ensure:
 - Compliance with 20 CFR 683.500, the contract specifications in 20 CFR 683.510, and applicable procurement policies;
 - No more than 10 percent of a local area's WIOA title I Adult and Dislocated Worker allocation, and no more than 10 percent of a local area's WIOA title I Youth allocation, are reserved for PFP contract strategies; and
 - No conflicts of interest occur in the required validation of PFP contract strategy outcomes.
3. **Feasibility Study Pre-Implementation Requirements.** Per 20 CFR 683.500(b), local areas are required to study the feasibility of whether an intervention is suitable for a PFP contract strategy. If a local area determines that a PFP contracting strategy will meet the requirements of WIOA Section 3(47) and 20 CFR 683.500(a), it has fulfilled its obligation under 20 CFR 683.500(b). Prior to establishing a PFP contract strategy, a WIOA local area must complete a feasibility determination which addresses the following required elements of a PFP contract strategy.
- a. Identify the workforce development problem that the project will address, per 20 CFR 683.500(a)(2);
 - b. Identify the target population, per 20 CFR 683.500(a)(2), and the projected number of participants;
 - c. Specify the projected performance outcomes for the WIOA-required performance indicators, per 20 CFR 683.500(a)(2);
 - d. Estimate the acceptable cost to the government associated with achieving the projected performance outcomes, per 20 CFR 683.500(a)(2);
 - e. Describe the prospective services for participants, per 20 CFR 683.510(d).

¹ 20 CFR 683.540(c)

- f. Describe how the local area will reallocate funds to other PFP contract strategies, if the project does not achieve the projected performance outcomes, per 20 CFR 683.500(a)(4).

The feasibility determination or study assists state and local WIOA programs to ascertain the suitability of a prospective contract strategy. There is no requirement that such a determination or study be developed by a third party. As part of developing a PFP contract strategy, state and local WIOA programs are required to identify baseline performance per 20 CFR 683.500(a)(2). However, state and local WIOA programs have broad flexibility in determining the performance baseline to be used in a PFP contract provided they include WIOA-required performance indicators. PFP contract strategies are required to include services described in WIOA Section 134(c)(3) or 129(c)(2) but may include additional activities or services. In completing its feasibility determination or study, the ETA research publications database (<https://wdr.doleta.gov/research>), the U.S. Department of Labor’s Clearinghouse for Labor Evaluation and Research (CLEAR) at <https://clear.dol.gov>, and ETA’s Workforce System Strategies (<https://strategies.workforcegps.org/>) repository may be useful.

While such a determination does not have to incur a new cost, WIOA formula funds may be used for the feasibility study. Because ETA considers that the feasibility study is a PFP-related activity, its costs may *not* be paid for with the PFP funds set-aside as described in Attachment III. Additionally, feasibility study costs do not count toward the 10 percent cap on local WIOA funds used for PFP contract strategies.

4. **Funding and Contracting.** Under a PFP contract strategy, payment with WIOA funds can only occur after the contractually-specified performance outcomes have been met and validated. Another source may supply the initial funds while services are being provided (sometimes called capital or upfront funding). Local areas may use their WIOA allotments for capital or upfront funding related to the provision of activities allowed under WIOA Section 134(c) or 129(c)(2). Upfront funding for activities not allowable under WIOA Section 134(c) or WIOA Section 129(c)(2) may include non-WIOA federal funds (if authorized pursuant to the governing statute); state or local government funds; private sector financing in which reimbursement and potentially a profit is returned to the investor; private sector funds for which no reimbursement occurs, such as typical foundation financing; or alternative sources of capital not identified in this guidance. The financing may consist of a monetary and/or in-kind contribution.

A. Funding Sources

The table below summarizes the principal types of spending, and the allowable WIOA Title I funding sources for each spending type, which are explained in more detail in the subsections that follow.

| Type of Spending | Allowable WIOA Title I Funding Sources |
|---|---|
| Feasibility study | WIOA title I, subtitle B: Local or Governor’s Reserve |
| Technical assistance | WIOA title I, subtitle B: Local or Governor’s Reserve |
| Gubernatorial incentives to encourage PFP | Non-Federal funds only |
| PFP contract | WIOA title I, subtitle B: Local or Governor’s Reserve for activities consistent with WIOA §134(a) |

| Type of Spending | Allowable WIOA Title I Funding Sources |
|---|--|
| WIOA performance payments (including any bonuses) | WIOA title I, subtitle B: Local, or Governor's Reserve for activities consistent with WIOA §134(a) |
| PFP performance validation | WIOA title I, subtitle B: Local, or Governor's Reserve for activities consistent with WIOA §134(a) |
| PFP evaluation (including employer/participant satisfaction survey) | WIOA title I, subtitle B: Local or Governor's Reserve |
| Reporting: performance | WIOA title I, subtitle B: Local or Governor's Reserve |
| Reporting: financial | WIOA title I, subtitle B: Local or Governor's Reserve |
| PFP cost-plus-a-percentage-of-costs contracts | Not allowed with any WIOA funds |

Local adult and dislocated worker programs. For these programs,

- Funds allocated under WIOA Section 133(b)(2)–(3) may be reserved and used for a PFP contract strategy, and used for PFP-related activities;
- No more than 10 percent of the combined total of the local WIOA title I Adult and Dislocated Worker allocation for each local area for a single year may be reserved and used for PFP contract strategies for the adult and dislocated worker training services described in WIOA §134(c)(3); and
- PFP contract strategy funds reserved from Adult/Dislocated Worker funds must be spent on Adult and/or Dislocated Worker-eligible participants.

Local youth programs. For these programs,

- Funds allocated under WIOA Section 128(b) may be reserved and used for a PFP contract strategy, and may be used for PFP-related activities;
- No more than 10 percent of the local WIOA title I Youth allocation for each local area for a single year may be reserved and used for PFP contract strategies for youth training services and other activities described in WIOA §129(c)(2); and
- The PFP contract strategy funds reserved from Youth funds must be spent on Youth-eligible participants.

Governor's Reserve Fund for statewide activities. States may, with the WIOA Governor's Reserve funds for statewide activities, expend money on the following PFP-related activities:²

- Providing technical assistance to local areas considering PFP contract strategies, including general assistance regarding a PFP contracting strategy, performance data collection, meeting performance data entry requirements, and identifying performance levels;
- Evaluating local PFP contract strategies; and
- Other activities that comply with limitations on the use of the Governor's Reserve funds for statewide activities.

States may use Governor's Reserve funds for any activities that are a part of a PFP contract strategy to the extent that such activities are consistent with the requirements of WIOA §134(a). The Governor's Reserve funds used for PFP activities retain the same period of availability as all Governor's Reserve funds (governed by WIOA Section 189(g)(2)(A)); they may not be reserved under the procedure explained in Attachment III of this TEGL.

² 20 CFR 683.540(a)

Non-federal funds. Per WIOA §116(h), governors may use *non*-federal funds to establish incentives for local WDBs to implement PFP contract strategies.

B. Duration of PFP Funding

Because of the length of time necessary to complete PFP contracting strategies, including the validation of performance outcomes and the reallocation of PFP funds for other PFP activities if performance outcomes are not met, WIOA allows funds reserved for a PFP contract strategy to remain available to local areas until expended. In contrast, under normal WIOA funding, local areas have only two years to spend their allocations. Any statewide funds that are used for PFP do not remain available until expended; they have the same durational limit as all WIOA state funds.

Funding before and after PY 2019. In the Federal Award Terms for PY 2017 and PY 2018 for the WIOA Adult, Dislocated Worker, and Youth programs, ETA stated the following.

A forthcoming Training and Employment Guidance Letter (TEGL) will provide information and procedural requirements on the implementation of PFP Contract Strategies using the WIOA formula funding streams. After the PFP TEGL is published, this grant will be modified to incorporate the PFP Federal Award Terms, which would become effective when a state has received approval of a grant modification request to implement PFP.

As no state has received prior approval for implementation of a PFP contract strategy, no funds from the program years prior to PY 2019 are available for PFP contract strategies or for the accompanying extended disbursement. However, as noted above, these funds could still be used for other types of performance-based contracting, but the life of those funds remains the normal two-year limit for local WIOA grant funds.

WIOA funding from PY 2019 forward may be made available for extended disbursement by notifying ETA (see Attachment III). Because a single year's WIOA allocation might be insufficient to fund a PFP contract strategy – given the 10 percent cap for each year – the set-aside funds may accumulate over multiple years provided that the process for reserving funds in Attachment III is followed, including the timeline. Funds reserved for PFP contract strategies only count against the 10 percent limitation for the appropriation from which they are reserved.

Local funds reserved for PFP contract strategies remain available until expended.³ If funds reserved for PFP contract strategies under Attachment III are not spent because the performance outcomes were not met, they may be reallocated *only* to other PFP contract strategies (see Attachment III for additional requirements regarding reallocations).⁴

WIOA formula funds used for PFP-related activities are subject to the usual time limitations, and do not remain available until expended.

³ However, a PFP account may be closed and any remaining balance cancelled pursuant to 31 USC 1555, if applicable.

⁴ 20 CFR 683.530

C. General PFP Contracting Policies and Restrictions

- Only local Adult, Dislocated Worker, and Youth WIOA title I, subtitle B allocations may be reserved for PFP contract strategies. Statewide activities funds may be used for PFP, but they cannot be reserved.
- PFP contract strategies are optional, but if used must provide the adult and dislocated worker program training services in WIOA §134(c)(3), and/or the youth program activities in WIOA §129(c)(2).
- Payment for achievement of the performance outcomes (including bonus payments, explained in the next subsection), and for independent validation of the performance outcomes, are subject to the annual 10 percent limitation on the reservation of the WIOA local allocations. Grantees must use funds reserved and set aside for PFP contract strategies (see Attachment III) to make such payments.

D. Contract-Specific Requirements

Funds used as part of a PFP contract strategy must be obligated in legally binding contracts that specify a fixed amount to be paid to an eligible service provider, per WIOA §3(47)(A). In addition, the following are applicable to PFP contracts.

- The contract must include the required elements of the PFP contract strategy addressed in the feasibility determination or study described in section 3 of this guidance. For the purpose of making the content of these elements more current and accurate, the elements' content can be revised from the version submitted in the feasibility study. The nature of the work under PFP contracts must be sufficiently precise to permit clear delivery specifications and a reasonable price valuation.
- Payments cannot be made for reasons other than meeting or exceeding the contractually-specified performance outcomes. Unless the contract strategy meets or exceeds these outcome levels, WIOA programs do not owe PFP payment to the contractor or any other entity, regardless of the costs incurred.
- Contracts *may* include bonus payments to contractors (see section 8.C of this guidance). The performance outcomes necessary for payments and bonuses must be separately identified.
- Parties are encouraged to negotiate circumstances that would necessitate outcomes being adjusted and include them in the contract before it is finalized.
- Cost-plus-a-percentage-of-cost contracts are prohibited for PFP contract strategies.⁵ PFP contracts that are consistent with this guidance, however, do not constitute a cost-plus-a-percentage-of-costs contract, as stated in 2 CFR 200.323.
- Contracts must identify the timetable within which it will achieve the performance outcomes, per WIOA §3(47)(A).
- PFP contract strategies should be written precisely enough so that it is clear to the local board, the contractor, the validator, and any oversight bodies what specific outcomes should be used to determine a PFP payment, differentiated from any other tasks or budgets or payment schedules. The PFP portion of the contract must only be paid out using performance based payments and not cost reimbursement. This will

⁵ 2 CFR 200.323

usually require a separate contract from other WIOA services, but a very clearly delineated contract provision may suffice.

- PFP contract strategies must maintain documentation related to all PFP contracts, including records pertaining to the contracts that precede and follow the primary contract, and must make such documentation available to local, state and federal authorities upon request.
- The statement of work (SOW) must specify the period of performance, or the start and end date of the contract and the levels of performance described in WIOA §116(b)(2)(A) for the identified target population, plus any additional performance outcomes.
- Contracts, agreements, and memoranda of understanding (MOUs) must include standard terms and conditions that are required by the state, local area, and the federal government.
- The signatures and dates of persons authorized to enter into such agreements must be included. Authorized officials are persons authorized to enter into and sign legally binding agreements, and must be on record as the signatory officials. Signatures of the offeror/bidder and offeree local WDB must be in the written contract.

5. **Target Population.** A PFP contract strategy must define the target population for its services. The contract strategy may serve only WIOA participants determined eligible for training services under WIOA title I Adult and Dislocated Worker programs, and the allowable services under Youth grant programs, or any subset of these participants that the state or local areas chooses to target. ETA encourages PFP contract strategies to serve individuals with barriers to employment. Eligible veterans and eligible spouses are entitled to receive priority of service for PFP contract strategies, per 38 USC 4215.
6. **Eligible Service Providers.** PFP service providers must be eligible providers pursuant to WIOA §122 or 123, as applicable. Providers may include local or national community-based organizations or intermediaries, community colleges, or other providers eligible under WIOA §122 or 123, as appropriate.⁶
7. **Services Provided.** PFP contract strategies must be used to provide Adult and Dislocated Worker training services in WIOA §134(c)(3) and/or Youth activities in §129(c)(2), as applicable.⁷ For the Adult and Dislocated Worker contract strategies, such services are the “allowable training” listed in WIOA §134(c)(3), which includes occupational skills training, on-the-job training, incumbent worker training, cooperative education, private sector training, skill upgrading and retraining, entrepreneurial training, transitional jobs, job readiness training, adult education and literacy activities, and customized training. The permitted Youth services are much broader, including not only training but tutoring, work experience, supportive services, counseling, entrepreneurship, labor market information, financial literacy, and other services listed in WIOA §129(c)(2).
8. **Performance and Performance Reporting.** PFP contractually-specified performance outcomes must be based on the primary performance indicators in WIOA §116(b)(2)(A) as defined in OMB control number 1205-0526 and described in Training and Employment

⁶ 20 CFR 683.510(f)

⁷ 20 CFR 683.510(d)

Guidance Letter (TEGL) 10-16, Change 1 and TEGL 14-18. The indicators must be applied to the relevant target population, within the same WIOA timeframes identified in §116(b)(2)(A) for these indicators. PFP contract strategies are subject to the same performance statutory and regulatory provisions and guidance applicable to other WIOA title I, subtitle B activities. PFP contract strategies also have additional statutory performance requirements, described below.

A. Reporting Requirements

States that include PFP contract strategies must annually submit a separate PFP Report form ETA-9174

(https://www.doleta.gov/performance/pfdocs/ETA_9174_Pay_for_Performance_acc.pdf) for each PFP contract strategy.⁸ This is a narrative report that requests information on the PFP target population and the populations or baselines used for comparison purposes to determine performance standards; the performance indicators used; and the actual performance outcomes. The narrative report also includes the research questions addressed in the evaluation, and the evaluation challenges encountered; the design of PFP contracts and contract strategies; the methodology used to measure outcomes of the intervention; the methodology used to determine the success of the PFP contract; and the technical assistance provided by the state.

An electronic copy of ETA-9174 must be e-mailed to WIOA.AR@dol.gov by December 1 (or the following business day, if December 1 falls on a weekend) of each year. The report must be submitted as a single document, and must include the completed ETA-9174 for each PFP contract strategy in the state plus the state-completed ETA-9174 describing the state's PFP strategies. States must also submit an electronic copy to their respective ETA Regional Administrator, and a copy to their Federal Project Officer (FPO). Hard copies of the report may also be submitted, but are not required. ETA will publish each state's report at www.doleta.gov/performance. Because each state's report will be posted on ETA's performance website, all WIOA PFP reports must be submitted electronically in a machine-readable format that complies with the Rehabilitation Act, Section 508.

In addition to the required report ETA-9174, TEGL 14-18 requires that "state and local staff must ensure that participants receiving services funded by a pay-for-performance strategy are coded as a "1" in the data element PIRL #930 "Pay-for-Performance" and that the Pay-for-Performance provider identification (ID) number is reported in the data element PIRL #107 "Special Project ID – 3."

General performance policy and reporting requirements, which also apply to participants served by PFP contract strategies, are in TEGL 14-18 and TEGL 10-16, Change 1.

TEGL 05-18 (Annual Statewide Performance Report) states (on p. 5) that in the annual statewide performance report, states should consider providing information on "Any strategies/policies relating to Pay-for-Performance contracting, which may include examples from local areas."

⁸ OMB Control Number 1205-0521 (DOL-Only Performance Accountability, Information, and Reporting System), available at https://doleta.gov/performance/reporting/eta_default.cfm.

TEGL 03-18 (Eligible Training Provider (ETP) Reporting Guidance) requires states to report on the performance of ETPs for the WIOA Adult, WIOA Dislocated Worker, and WIOA Youth (Out-of-School Youth only) programs. If an ETP conducts a PFP contract strategy, the ETP must include that performance information in the report.

B. Avoiding Adverse Incentives

Making payment contingent upon performance can encourage manipulated performance outcomes. ETA encourages state and local boards to implement measures to preclude this. Such pre-emptive measures should include enrollment thresholds for the number and/or percentage of enrollees who must be served and considered exiters in PFP contracts, and other measures necessary to prevent manipulation of enrollment and performance or performance-related data. The required validation (see below) is another measure to minimize potential adverse incentives.

C. Payment for Meeting or Exceeding Performance Outcomes

PFP contract strategies must meet or exceed all contractually-specified performance outcomes for the WIOA §116(b)(2)(A) indicators for the population served, in order to receive any performance payments, including bonus payments. Bonuses may be considered for a reasonable level of performance that exceeds the negotiated performance outcomes contained in the agreement. PFP contract strategies have the flexibility to design bonus payments for some or all of the performance indicators. Additionally, bonus payments can be provided if a service provider achieves the necessary outcomes for a bonus payment for one indicator but fails to achieve the necessary outcome for a bonus payment on other indicators. If included, bonus payments *must* be used by the service provider to expand their capacity to provide effective training.⁹

Contract strategies have the flexibility to design payment amounts for each performance outcome across all the applicable WIOA performance indicators, but ETA encourages the use of higher payments for those performance indicators that the local WIOA area believes are more difficult to meet. Contract strategies can also include a scale of payments, e.g. a certain payout amount for one level of performance and a higher payout amount for higher levels of performance. Such “scaling” is not considered a bonus payment, and not subject to the restrictions above on the use of bonus payments.

D. Use of Performance Indicators in Addition to the WIOA Indicators

PFP contract strategies may utilize performance indicators in addition to the WIOA primary indicators of performance. No payments can be made to the PFP contractor until performance meets or exceeds the performance outcomes specified in the PFP contract on the primary indicators of performance. However, PFP contract strategies can require that performance also meet additional indicators prior to payment. Such additional performance indicators must be clearly specified; capable of independent, objective measurement; and must be set at performance levels that likely would not be attainable without the services

⁹ 20 CFR 683.510(h)

provided in the PFP contract strategy. These additional performance indicators must be related to the WIOA title I, subtitle B allowable PFP activities. If such additional performance indicators are used, information about them must be included in the ETA-9174 report described above.

E. Validation of Performance Outcomes

Validation of performance outcomes by an entity independent of the contract strategy is required prior to payment to PFP contract strategies. The validation must be based on high-quality, reliable, and verified data.¹⁰ The independent validation must include a determination that a PFP contract strategy is in compliance with the DOL performance accountability provisions in TEGL 14-18, TEGL 03-18, and TEGL 10-16, Change 1. If the contract strategy includes performance indicators in addition to the WIOA primary indicators of performance, independent validation of these additional indicators must occur prior to payment. Independent validations must be conducted in accordance with the usual professional standards applicable to validations and audits. Individuals and organizations that have conflicts of interest with the PFP contract strategy (all parties to the PFP contract and subcontracts) cannot conduct the validation. Therefore the validation must involve a separate contract.

- 9. Evaluation.** If a PFP contract strategy exists in a state, WIOA requires that states report to ETA an evaluation of the design of the programs and performance of the strategies of such PFP contract strategies. PFP contract strategy evaluations must comply with the WIOA evaluations provisions in the WIOA Section 116(e) and 20 CFR 682.220. States may conduct their own evaluations of the WIOA PFP contract strategies, or procure an evaluator. For an objective and independent evaluation, ETA recommends that the state ascertain actual and potential conflicts of interests, and preclude entities and individuals with a conflict of interest (all signatories to the PFP contract) from conducting the evaluation, whether the evaluation is conducted by the state or an external party. In the required performance report (form ETA-9174), there are two required evaluation topics that must be described: 1) the research questions addressed by the evaluation(s); and 2) the challenges to evaluating PFP contract strategies, either at the project level or across projects.

WIOA's PFP evaluation requirements are flexible, but ETA emphasizes the importance of quality research and evaluations, and thus encourages evaluations that are rigorous, independent, objective, and conducted according to professional standards. The evaluation regulations in 20 CFR 682.220 require that state evaluations must be developed in collaboration with state and local boards and other state agencies, should be as rigorous as possible, and result in reports made electronically available to the state board and the public during the program year that the reports are completed. The regulations clarify that states have tremendous flexibility in conducting evaluations, and may use a wide range of types and methods.

Payments for an evaluation are not subject to the 10 percent limitation. Consequently, funds reserved for PFP contract strategies (which are subject to the cap) cannot pay for evaluation costs. WIOA title I, subtitle B formula funds, Governor's Reserve funds, and other funding

¹⁰ 20 CFR 683.510(e) and (j)

sources per 20 CFR 682.220(f) may be used to pay for PFP contract strategy evaluations (including technical assistance to support the evaluation). If the same entity conducts both the evaluation and the performance validation (the latter is part of the contract strategy), then the contracts for these two functions must be separate.

10. Financial Reporting. For the funds reserved and set aside for PFP contract strategies (see Attachment III), states must submit quarterly ETA 9130 basic reports on behalf of the local areas (<https://www.doleta.gov/grants/pdf/ETA-9130-Basic.pdf>). States must submit an ETA 9130 basic report for each WIOA funding source utilized, which could include funding from local Youth, local Adult (July and October funding), and local Dislocated Worker (July and October funding).

Because funds reserved and set aside for PFP contract strategies will be moved to a separate PFP grant document (but not a separate grant), grantees should not list any PFP contract strategies expenditures on the designated PFP lines in section 11 of the applicable WIOA 9130 financial reports listed immediately below. Grantees also should not report PFP-related activities costs on line 11 of the WIOA 9130 financial reports, and must instead include costs for PFP-related activities (as opposed to be PFP contract strategy costs) with other WIOA costs, in the reports listed below.

- Adult (<https://doleta.gov/grants/pdf/ETA-9130-D.pdf>)
- Statewide Adult (<https://www.doleta.gov/grants/pdf/ETA-9130-C.pdf>)
- Dislocated Worker (<https://doleta.gov/grants/pdf/ETA-9130-F.pdf>)
- Statewide Dislocated Worker (<https://www.doleta.gov/grants/pdf/ETA-9130-E.pdf>)
- Youth (<https://doleta.gov/grants/pdf/ETA-9130-B.pdf>)
- Statewide Youth (<https://www.doleta.gov/grants/pdf/ETA-9130-A.pdf>)

11. Administrative Costs. ETA considers all costs for PFP contract strategies to be program costs, because such costs are not included in the 20 CFR 683.215 definition of administrative costs. Therefore, ETA is not requesting that states report administrative costs for activities that are part of a PFP contract strategy. However, PFP related-activities should be classified as program costs or administrative costs based on 20 CFR 683.215.

Attachment II. Summary of Selected Major Federal, State, and Local PFP Roles Under WIOA

This table serves as a simplified explanation of selected federal, state, and local PFP roles under WIOA, for the convenience of readers. It is not a substitute for the TEGL and Attachments I and III, whose guidance is the definitive interpretation of ETA’s policy on PFP.

| Function | Federal Role | State Role | Local Role |
|---|---|---|--|
| Reservation and expenditure of WIOA funds for PFP | ETA moves PFP funds from the original WIOA grant document to a PFP-specific grant document with a specific subaccount and Payment Management System account | States may use Governor’s Reserve fund for statewide activities for allowable PFP related activities (which do not remain available until expended). Some states are single area states, and in these cases the state board acts as a local board for the purpose of administering a PFP contract strategy. | Local boards may reserve a maximum of 10 percent of their combined local Adult and Dislocated Worker allocations, and 10 per of their local Youth allocation. Such PFP contract strategy funds remain available until expended. |
| General authority | ETA issues regulations and guidance to establish general PFP policy. | States must monitor and oversee WIOA activities in the state, including PFP contract strategies | Local areas set PFP policy within the local area, and oversee individual PFP contract strategies. |
| Incentives and bonuses | N/A | Governors (using non-federal money) may establish incentives for local boards to implement PFP for allowable adult training and youth activities. | Local boards may receive the Governor’s incentive payments. Local programs may also provide bonus payments to contractors who exceed the contractually-specified performance outcomes (bonus payments are separate from incentives). |
| Technical assistance | ETA will provide technical assistance on PFP to states and localities. | States may utilize Governor’s Reserve funds for statewide activities to provide technical assistance to PFP contract strategies. | Local boards may receive state technical assistance funds, or use their own WIOA formula funds to provide technical assistance to PFP contract strategies. |
| Performance outcome reports | ETA may publish information on PFP performance. | States must submit performance outcome reports (form 9174) to ETA. | Local boards must provide PFP performance data to the state, for the state report. |

| Function | Federal Role | State Role | Local Role |
|---|---|---|--|
| Evaluation | DOL possesses general authority to evaluate programs. | States must include an evaluation of the design of PFP contract strategies and success of PFP contract strategies in the state performance reports. | Local boards must provide information and any assistance necessary for a state to include an evaluation of the design of the PFP contract strategies and performance of PFP contract strategies in the state performance report. |
| Customer satisfaction | N/A | States must ascertain, where possible, the level of satisfaction of PFP among employers and participants. | N/A |
| Reallocation of PFP funds which are not expended for the original PFP contract strategy | N/A | State monitors that the locals adhere to the reallocation requirement | PFP funds not distributed because performance outcomes were not met remain available until expended, but if reallocated can only be spent on PFP contract strategies. |
| Recommendations to Congress | Both DOL and U.S. Department of Education may make recommendations for improvements and adjustments to PFP. | N/A | N/A |

Attachment III. Extended Disbursement Account

To keep PY 2019 and future program year funds for PFP contract strategies available past the normal period of performance (POP) for WIOA grants, states must complete the following actions.

If local areas within a state seek to use funding for PFP contract strategies, the state must notify ETA prior to December 31 of the expiration of the two-year POP availability, so that ETA can move PFP funds to a separate grant document to permit their availability until expended. Prior to December 31 of the expiration of the two-year POP, the state's authorizing official must submit a letter to its regional FPO notifying ETA of the amount that local areas intend to reserve for PFP contract strategies. The letter must identify the specific formula grant source of the PFP funding stream (WIOA title I Adult, Dislocated Worker, and/or Youth); the applicable program or fiscal year designation and the associated document number; and include the following information for *each* local area that seeks to reserve PFP funding:

- a) the name of the local area;
- b) the state's assurance that it has analyzed the proposed contract strategy and confirms that it is consistent with WIOA PFP provisions and state procurement policies or can be adjusted to do so before finalizing the contract;
- c) a WIOA title I Adult, Dislocated Worker, and/or Youth SF-424 Application for Federal Assistance for the total amount to be transferred for the PFP contract strategy or strategies; and
- d) state assurance that the amount the area intends to use for WIOA PFP contract strategies does not exceed 10 percent of its combined local allocations for the Adult and Dislocated Worker program, and its local allocation for the Youth program.

Bullets a and b above must be provided again whenever there is a need to reallocate PFP contract strategy funding that was previously reserved but not utilized for a payout.

ETA looks forward to reviewing requests for reserving WIOA funds for PFP contract strategies, and plans to review such requests promptly. For applicants that meet the above requirements, ETA will administratively move PFP funds from the original WIOA grant document to a PFP-specific grant document with the same Treasury account (but a different subaccount) and a separate Payment Management System account. The PFP grant document and PMS account effectively do not expire. These accounts have the following characteristics and conditions.

- The state will have only one PFP grant document with no POP end date: *not* a separate PFP grant document for each program year.
- ETA's transfer of funds from the original WIOA grant document to the PFP grant document will take approximately two months (during January and February of each year), during which time these funds cannot be drawn down. During the interval between the submission and the transfer, the state should coordinate with the formula-grant FPO to ensure that all required information is available to ETA to execute the action. ETA expects to complete the transfers by the end of February of each year.
- Following ETA's approval of a state's PFP account, ETA will issue the following two Notices of Award (NOAs).
 - NOA #1 will confirm ETA's approval of the removal of PFP funds from the applicable WIOA formula grant and specified program.

- NOA #2 will create and/or add new monies to the PFP grant document.
- Once a state receives NOA #2, the state cannot move PFP funds back to a WIOA grant document, but can only expend them on a PFP contract strategy or strategies.
- States must submit quarterly ETA 9130 financial reports for the PFP grant document funds, including separate tracking by – as relevant – local Adult, local Dislocated Worker, and local Youth funding streams. However, states will use the ETA 9130 basic financial reports instead of the applicable WIOA 9130 financial report.
- Once there is no unexpended balance remaining on a specific funding stream, the report for that stream can be marked as final. When a state wishes to close part or all of a PFP grant document, the state authorizing official must notify the FPO via a letter requesting this action, including the end date.