

TRAINING AND EMPLOYMENT NOTICE	NO. 11-21
	DATE October 14, 2021

TO: STATE WORKFORCE AGENCIES
STATE WORKFORCE LIAISONS
INDIAN AND NATIVE AMERICAN PROGRAM SECTION 166 GRANTEEES

FROM: ANGELA HANKS *AH*
Acting Assistant Secretary

SUBJECT: Announcing Tribal Consultation for Notice of Proposed Rulemaking on the Effectiveness in Serving Employers Primary Indicator of Performance

1. **Purpose.** To announce a virtual Tribal Consultation the Department plans to conduct regarding the *effectiveness in serving employers* (ESE) performance indicator in the regulations for the Indian and Native American (INA) program authorized under section 166 of the Workforce Innovation and Opportunity Act (WIOA), scheduled for October 19, 2021, 2 p.m. ET on <http://www.workforcegps.org>.
2. **Action Requested.** Tribal officials and WIOA section 166 grantees and stakeholders, especially those responsible for performance accountability and federal performance reporting, are invited to join.
3. **Summary and Background.**
 - a. Summary – The Employment and Training Administration (ETA) is developing a standard definition for the ESE performance indicator in WIOA’s implementing regulations. This Tribal Consultation fulfills requirements outlined below, and provides a dedicated opportunity for ETA to engage with tribal officials and WIOA section 166 grantees and INA program stakeholders on this proposed rulemaking activity.
 - b. Background – Section 116 of WIOA establishes performance accountability indicators and performance reporting requirements to assess the effectiveness of grantees in achieving positive outcomes for individuals served by the workforce development system. Under WIOA, there are six primary indicators of performance. Five of the six indicators are currently defined in regulations implementing WIOA. In the joint final rule implementing WIOA (81 FR 55791) the Departments of Labor and Education (the Departments) determined that testing various alternatives for the sixth indicator of performance, which measures the workforce system’s ESE, was advisable.

- i. **Effectiveness in Serving Employers Performance Indicator Pilot for WIOA Core Programs:** The Departments issued joint guidance, “Performance Accountability Guidance for Workforce Innovation and Opportunity Act (WIOA) Title I, Title II, Title III, and Title IV Core Programs” (Training Employment Guidance Letter (TEGL) 10-16, Change 1), which described the three alternatives for a definition of the ESE performance indicator for WIOA core programs. Additionally, the Departments assessed the ESE pilot indicators via a Department of Labor (DOL) contract that resulted in a final research report titled, “*Measuring the Effectiveness of Services to Employers: Options for Performance Measures under the Workforce Innovation and Opportunity Act.*”¹ The pilot process is now complete, and the Departments are preparing to amend the WIOA regulations to add the definition for this sixth indicator. If finalized, the proposed rulemaking’s definition for the ESE indicator will establish how this indicator will be calculated for all programs using the WIOA statutorily-required performance indicators, including the INA program.
- ii. **WIOA Section 166 Indian and Native American Programs:** DOL’s final rule implementing WIOA (82 FR 56071) also did not define in regulation the sixth primary performance indicator, effectiveness in serving employers, for the non-core WIOA programs administered by DOL. These DOL programs, including the Section 166 INA program, currently follow DOL’s guidance issued in March 2019, “Aligning Performance Accountability Reporting, Definitions, and Policies Across Workforce Employment and Training Programs Administered by the U.S. Department of Labor (DOL)” (TEGL 14-18), which aligns and streamlines performance indicators and requirements across 15 ETA programs to the WIOA performance indicators. Attachment 2 of TEGL 14-18 describes the program-specific details of the performance accountability guidance for the Section 166 INA program. Under this guidance, INA program grantees report the “Retention with the Same Employer” for determining effectiveness in serving employers performance indicator, which measures the percentage of program participants who exit and are employed with the same employer in the second and fourth quarters after exit. The INA program did not participate in the core program pilot of the other two indicators of effectiveness in serving employers.
- iii. **Tribal Consultation:** Executive Order 13175, Consultation and Coordination with Indian Tribal Governments (65 FR 67249), and the Department of Labor’s Tribal Consultation Policy (77 FR 71833), require the Department of Labor to solicit input by tribal officials in the development of Federal policies that have tribal implications. Accordingly, DOL is engaging in a tribal consultation to provide tribes an opportunity to offer input as DOL develops

¹ Urban Institute Research Report, “Measuring the Effectiveness of Services to Employers: Options for Performance Measures under the Workforce Innovation and Opportunity Act”, January 2021, available at https://wdr.doleta.gov/research/FullText_Documents/ETAOP2021-17%20Measures%20of%20Effectiveness%20in%20Serving%20Employers_Final%20Report.pdf

the proposed definition of the performance indicator for ESE in 20 CFR part 684, the regulations governing the INA authorized under sec. 166 of WIOA.

4. **Logistics for the Tribal Consultation.** This Tribal Consultation will take place on Tuesday, October 19, 2021, at 2 p.m. ET, in a virtual meeting that will be publicly-accessible on the WorkforceGPS, an online technical assistance platform sponsored by ETA. Registration information for this tribal consultation can be found on <https://www.workforcegps.org/events>.
5. **Inquiries.** For further information, please contact Sherril Hurd, Office of Policy Development and Research, at Hurd.Sherril@dol.gov.
6. **References.**
 - Section 166 of WIOA (Pub. L. 113-128) and its implementing regulations at 20 CFR part 684;
 - Section 116 of WIOA and its implementing regulations at 20 CFR part 677;
 - Executive Order 13175, Consultation and Coordination with Indian Tribal Governments (65 FR 67249);
 - Department of Labor’s Tribal Consultation Policy (77 FR 71833);
 - Department of Education and Department of Labor Joint Final Rule implementing WIOA (81 FR 55791);
 - DOL-only WIOA Final Rule (81 FR 56071);
 - TEGL 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*;
 - TEGL 14-18, *Aligning Performance Accountability Reporting, Definitions, and Policies Across Workforce Employment and Training Programs Administered by the U.S. Department of Labor (DOL)*; and
 - TEGL 14-18, Attachment 2: *Indian and Native American Programs*.
7. **Attachment(s).** N/A