TRAINING AND EMPLOYMENT NOTICE	NO. 14-21
	DATE October 27, 2021

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: ANGELA HANKS /s/
Acting Assistant Secretary

SUBJECT: Workforce Innovation and Opportunity Act (WIOA) Core Program Performance Accountability Assessment for Program Years (PY) 2020 and 2021[1]

1. **Purpose.** The U.S. Departments of Labor and Education (the Departments) have determined it is appropriate and reasonable for the Department of Labor (DOL) to begin assessing performance for two performance indicators under WIOA title I and III core programs for PYs 2020 and 2021 in accordance with the phased-in approach to performance assessments described in Training and Employment Guidance Letter (TEGL) 11-19, *Negotiations and Sanctions Guidance for the Workforce Innovation and Opportunity Act (WIOA) Core Programs*. The Departments, as permitted under section 503(a) of WIOA, have determined it reasonable to delay assessing performance for the purpose of imposing sanctions for the remaining performance indicators to ensure an orderly transition from the requirements of the Workforce Investment Act of 1998 (WIA) to those of WIOA.

2. **Action Requested.** Please distribute this information to the appropriate state and local staff, including program, reporting, performance accountability, and technical staff.

3. **Summary and Background.**

   a. Summary – For the Employment Rate 2nd Quarter after Exit and Median Earnings 2nd Quarter after Exit performance indicators, the Departments have determined it is appropriate and reasonable to assess performance for the WIOA title I and III core programs. The Departments have determined it is appropriate to use their transition authority to delay assessment of (1) performance for WIOA title II and IV core programs, (2) the remaining primary performance indicators for WIOA title I and III core programs, and (3) the overall state program and indicator scores for all core

[1] These 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 the US Department of Education (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.

programs. The Departments will not impose associated sanctions on a state for PYs 2020 and 2021 when the available baseline data are not sufficient to produce reliable estimates using the statistical adjustment model. However, states still must submit timely and complete performance reports and will be sanctioned for failure to do so. If a state is unable to submit complete and timely performance reports by the deadlines due to exceptional circumstances outside of the state's control, it must notify the Departments pursuant to 20 C.F.R. § 677.185(c) and 34 C.F.R. §§ 361.185(c) and 463.185(c) and consistent with guidance set forth in TEGL 11-19. The practical implications of the Departments' decision on sanctions implementation are explained in a series of questions and answers under section 4.

b. Background – Section 116 of WIOA establishes primary performance indicators that apply to the six core programs and reporting requirements that assess states' effectiveness in achieving positive outcomes for individuals and employers served by WIOA's six core programs.[2] WIOA also requires that the Departments use a statistical adjustment model to assess state performance by adjusting negotiated performance levels for the characteristics of participants actually served throughout the program year and for the actual economic conditions within the state. WIOA requires the Departments to use the model to assess state performance and determine whether a state has failed to meet its adjusted levels of performance. The Departments developed a model and process[3] for this purpose. To date, the implementation of a model and the performance accountability provisions have informed the Departments' performance negotiations with states and technical assistance efforts, and have advanced the workforce system toward a more objective and data-driven accountability structure.

   WIOA instituted a new approach to performance accountability in the workforce system, and the Departments find it is taking longer to collect sufficient baseline data to produce reliable estimates for certain performance indicators and for certain core programs than had been anticipated. The Departments are doing everything they can to collect performance data and promote robust practices related to data collection, data integrity, and complete reporting. As additional data are collected, the Departments will continue to review and refine the statistical adjustment model. Section 503(a) of WIOA authorizes the Secretaries of Education and Labor to take such action as appropriate to provide for the orderly transition from any requirement under WIA to those under WIOA, including those related to the performance accountability system established in section 116 of WIOA. The Departments have determined that it would be inappropriate to assess for performance pursuant to section 116(b)(3)(A) of WIOA and 20 C.F.R. § 677.190, and 34 C.F.R. §§ 361.190 and 463.190, and to impose sanctions pursuant to section 116(f) of WIOA, on a state

[2] 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.

[3] TEGL 11-19: *Negotiations and Sanctions Guidance for the Workforce Innovation and Opportunity Act (WIOA) Core Programs*, available at https://wdr.doleta.gov/directives/corr_doc.cfm?docn=3430

on the basis of a statistical adjustment model for which the available baseline data are not sufficient to produce reliable estimates.

Use of WIOA's transition authority to delay assessing performance and imposing sanctions is an appropriate action for an orderly transition to the WIOA performance accountability system, because of the performance accountability system's reliance on the statistical adjustment model. Therefore, the Departments determined that it is reasonable to use the WIOA transition authority of section 503(a) of WIOA to delay assessing performance and imposing sanctions against states that fail to meet adjusted levels of performance for those individual indicator scores, as well as for the overall state program score and the overall state indicator score, for which the baseline data are not sufficient. For more information on the Departments' determination, please review Attachment II.

4. **Questions and Answers.** The Departments have determined it is appropriate for DOL to begin assessing performance for two performance indicators under WIOA title I and III core programs for PYs 2020 and 2021 in accordance with the phased-in approach to performance assessments as described in TEGL 11-19. The Departments, as permitted under section 503(a) of WIOA, will delay assessing performance for the purpose of imposing sanctions for the remaining performance indicators. The following questions and answers explain what this means in practical terms.

Question 1: For which primary indicators of performance and for which core programs will the Departments assess performance for PY 2020 and PY 2021?

Answer 1: The Departments will assess performance only for the Individual Indicator Scores for two indicators – Employment Rate 2nd Quarter after Exit and Median Earnings 2nd Quarter after Exit – for the WIOA title I and III core programs. See Attachments I & II for additional information.

Question 2: Can states be sanctioned for a performance failure of WIOA title I and III core program Individual Indicator Scores for PY 2020 and PY 2021?

Answer 2: Yes. If a WIOA title I or III core program fails to achieve an Individual Indicator Score of at least 50%, as described on page 12 of TEGL 11-19, for either the Employment Rate 2nd Quarter after Exit or Median Earnings 2nd Quarter after Exit indicators in PY 2020 or PY 2021, the state must receive technical assistance and develop a program improvement plan in accordance with section 116(f)(1)(A) of WIOA. If the state fails the same indicator for a second consecutive program year (for example, in PY 2021), the Departments must impose a financial sanction in accordance with section 116(f)(1)(B) of WIOA.

Question 3: Will the Departments suspend WIOA performance reporting for PY 2020 and PY 2021?

Answer 3: No, states are still required to submit complete and timely performance information as they have been since PY 2016.

Question 4: Will states be subject to sanctions for failure to submit complete and timely reports for PY 2020 or PY 2021?

Answer 4: Yes, states are subject to sanctions for failure to submit complete and timely performance reports for all six core programs. Failing to certify complete annual performance reports by October 1 could lead to a financial sanction of the following program year's funds. For details regarding complete and timely reporting and requesting an annual reporting extension, refer to pages 9-11 of TEGL 11-19.

Question 5: If not using it to assess performance, how will the Departments use performance data from PYs 2020 and 2021?

Answer 5: The Departments will continue to use the data for the purposes of effective program management, system oversight, monitoring and internal controls, and the provision of technical assistance, including implementing methods for ensuring data reliability, as appropriate. The Departments will share performance results with states as appropriate. States should expect to review performance data for these program years and prepare to engage with federal staff to discuss topics including but not limited to, data quality, continuous improvement, and performance results.

5. **Inquiries.** Please direct inquiries to the appropriate Regional Office.

6. **References.**

- TEGL 11-19: *Negotiations and Sanctions Guidance for the Workforce Innovation and Opportunity Act (WIOA) Core Programs*, available at: https://wdr.doleta.gov/directives/corr_doc.cfm?docn=3430