

<b>EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210</b>	<b>CLASSIFICATION</b> INA Program – WIOA Waivers
	<b>CORRESPONDENCE SYMBOL</b> OWI/DINAP
	<b>DATE</b> August 29, 2019

**ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 4-19**

**TO:** INDIAN AND NATIVE AMERICAN (INA), Workforce Innovation and Opportunity Act (WIOA) SECTION 166 GRANTEES

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

**SUBJECT:** Waiver Authority for the INA Program and Implementation of Additional Indicators of Performance

1. **Purpose.** This guidance describes additional indicators of performance for the INA program, and provides guidance on submitting waivers to statutory and regulatory requirements, including to the primary indicators of performance at Section 116(b)(2)(A) of the Workforce Innovation and Opportunity Act (WIOA).
2. **Action Requested.** INA grantees should review the additional indicators and waiver options in this guidance and determine whether a waiver request is appropriate for their organization.
3. **Summary and Background.** Section 166(h) of WIOA requires that the Secretary of Labor (Secretary) develop a set of performance indicators in consultation with the Native American Employment and Training Council (hereinafter referred to as the Council), that are in addition to the primary indicators of performance described in section 116(b)(2)(A) of WIOA. In addition, WIOA Section 166(i)(3) allows the Secretary to approve waivers for the INA program. ETA will consider requests submitted by grantees for waiver of performance indicators so that grantees can structure their performance indicators to best fit the economic circumstances of the communities served and improve positive outcomes.
4. **Additional Performance Indicators.** The additional indicators fulfill the Secretary’s requirement at Section 166(h)(1)(A) of WIOA to develop a set of performance indicators that is in addition to the primary indicators of performance described in section 116(b)(2)(A). In developing these performance indicators, the Secretary took into account the special considerations in Section 166(h)(1)(B) of WIOA. The two additional indicators for the INA Comprehensive Services Program (CSP) are:

*Percent in Training:* The percentage of active participants in a report period placed in training.

*Employability Enhancement / Training Completion rate:* The percentage of exiters receiving at least one of the following five enhancements: (1) completed training; (2)

<b>RESCISSIONS</b> None	<b>EXPIRATION DATE</b> Continuing
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returned to school full-time; (3) completed major level of education; (4) completed worksite training objective; and (5) attained basic/occupational skills proficiency.

The six additional indicators for the INA Supplemental Youth Services Program (SYSP) are:

*Entered Unsubsidized Employment (Including Military):* The percentage of exiters in the report period that entered non-WIOA funded employment, including entry into the armed forces, self-employment or employed on the staff of the WIOA Program.

*Completed Internship or Work Experience:* The percentage of active participants in the report period that, during the course of participation, completed a work internship or successfully completed work experience (i.e., short-term subsidized employment).

*Completed Career Assessment or Work Readiness Training:* The percentage of active participants in the report period that, during the course of participation, completed a formal career assessment of occupational interests, values, skills, or aptitudes, leading to an identification of careers for which the participant may be suited or had a measurable increase in work readiness skills including the world of work awareness, labor market knowledge, occupational information, career planning and job search techniques such as: resume writing, interview preparation, completing job applications and writing follow-up letters.

*Attained High School Diploma or High School Equivalency:* The percentage of participants who, at any point while participating in the program or upon exit from the program, attained a state-recognized high school diploma or High School Equivalency.

*Completed Occupational Skills Training:* The percentage of active participants in the report period that, during the course of participation, completed occupational skills training include vocational education and on-the-job training.

*Completed Summer Employment:* The percentage of active participants in the report period that, during the course of participation, successfully completed summer employment with an employer.

5. **Submitting a Waiver Request.** ETA encourages grantees to seek waivers using the process described below, including waivers of performance indicators if appropriate and justified.

a. **General Waiver of Statutory or Regulatory Requirements.** To request a general waiver of a statutory or regulatory requirement, including the performance indicators at Section 116 of WIOA, an INA grantee must submit a waiver request indicating how the waiver will improve the grantee's outcomes for WIOA participants. The request must generally be consistent with the waiver requirements in Section 189(i)(3)(B). This requirement is satisfied if the grantee's waiver request does the following:

- **Identifies the statutory or regulatory requirements in the waiver request and the goals and enhanced participant outcomes that the grantee intends to achieve because of the waiver.**

The grantee should clearly cite the statute and/or regulation(s) in its request, and ensure that the citations refer to the specific elements that it wishes to waive.

- **Describes how the requirements that the grantee proposes to waive are hindering and negatively impacting positive outcomes for participants.**
- **Describes the goals of the waiver and the expected and improved programmatic outcomes of the grant request.** The grantee should articulate the goals it seeks to achieve by requesting a waiver. Understanding the challenge from the grantee's perspective can also help the Department identify other flexibilities if a request is beyond the Secretary's waiver authority.
- **Describes the individuals impacted by the waiver.** Grantees must describe the potential impact of a waiver on various grantee stakeholders, including how the waiver will affect services for American Indians, Alaska Natives, and Native Hawaiians in the INA grantee's service area.

**b. Waivers to Implement Council Recommended Performance Indicators.** The Council recommended that ETA consider a specific set of performance indicators for INA grantees. ETA plans to deploy the Grant Performance Management System (GPMS) case management system in November, 2019 for INA grantees and will be able to calculate all the WIOA performance measures, without additional burden on INA grantees. However, ETA will review any waiver request, including waiver requests for performance indicators for the INA youth and INA CSP programs, and the specific performance indicator recommendations from the Council.

For the CSP performance indicators, the Council recommended a waiver of the following three performance indicators established in WIOA Section 116: Employed in the 4<sup>th</sup> Quarter after Exit; Measurable Skill Gains; and Effectiveness in Serving Employers. Grantees that request this waiver for their CSP program would have the following five performance indicators: 1) Employed in the 2nd quarter after exit, 2) Median earnings in the 2nd quarter after exit, 3) Credential attainment, 4) Percent in Training, and 5) Employability Enhancement. Grantees may ask for waivers recommended by the Council, a different waiver, or report on all measures. ETA will continue to gather data through the forthcoming GPMS for the waived WIOA performance indicators to inform assessments of program performance, but will not include these measures in the grantee's grant agreement.

For the SYSP performance indicators, the Council recommended a waiver limiting reporting on the youth performance indicators; ETA will only consider waivers where grantees select a minimum of two of the six additional performance indicators described in Section 4. Grantees may ask for waivers recommended by the Council, a different waiver, or report on all measures. ETA will continue to gather data through the forthcoming GPMS for the waived WIOA performance indicators to inform assessments of program performance, but will not include these measures in the grantee's grant agreement.

6. **Limitations to Waiver Authority.** 20 CFR 684.920 lists the provisions of law or regulation that cannot be waived. These provisions are:

- Wage and labor standards;
- Worker rights;
- Participation and protection of workers and participants;
- Grievance procedures;
- Judicial review; and
- Nondiscrimination.

7. **Submission and Decision Process.** INA grantees may submit waiver requests as a part of their four-year strategic plan or anytime during the four-year grant award cycle. Waivers constitute a modification to the four-year strategic plan and remain in effect until the end of the four-year award cycle, and all waivers expire at the end of the four-year award cycle. Please email a scanned (electronic) copy of the waiver request to your designated Federal Project Officer. You may also submit a hard copy of the waiver request to the following address:

U.S. Department of Labor / ETA  
Division of Indian and Native  
American Programs  
200 Constitution Ave. NW, Room S-4206  
Washington, DC 20001  
ATTN: DINAP Waiver Desk

The review includes a legal assessment to determine whether the request is within the Secretary's waiver authority, addresses the requirements outlined in section 5.a of this guidance, and aligns with Department's policy considerations.

8. **Inquiries.** Please direct inquiries to your Federal Project Officer.

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9. **References.**

- WIOA (Pub. L. 113-128) Title I Sections 116, 166(h), 166(i)(3) and 189(i)(3);
- WIOA Final Rule at 20 CFR 684.900,684.910 and 684.920

10. **Attachment.** Not Applicable.