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| TRAINING AND EMPLOYMENT NOTICE | NO. 04-23 |
| | DATE August 11, 2023 |

TO: STATE WORKFORCE AGENCIES
STATE WORKFORCE LIAISONS
STATE WORKFORCE ADMINISTRATORS
STATE AND LOCAL WORKFORCE BOARD CHAIRS AND DIRECTORS
STATE LABOR COMMISSIONERS
STATE LMI DIRECTORS

FROM: BRENT PARTON 
Principal Deputy Assistant Secretary

SUBJECT: Workforce Innovation and Opportunity Act (WIOA) Core Program¹ Performance
Accountability Assessment for Program Year (PY) 2022

1. **Purpose.** Consistent with Joint WIOA Final Rule requirements², the U.S. Departments of Labor and Education (the Departments) have determined it is appropriate and reasonable for PY 2022 for the:

- U.S. Department of Labor (DOL) to assess performance for four performance indicators under WIOA title I core programs and three performance indicators under the Employment Service (referred to as “WIOA title III”) core program;
- U.S. Department of Education (ED) to assess performance for four performance indicators under the Vocational Rehabilitation (“WIOA title IV”) core program; and
- Departments to delay assessing performance for the purpose of imposing sanctions for the WIOA title II core program and for the remaining performance indicators in the WIOA titles I, III, and IV core programs to provide for the orderly transition from the requirements of the Workforce Investment Act of 1998 (WIA) to those of WIOA, as permitted under section 503(a) of WIOA.

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.

² See 20 C.F.R. § 677.190(c) and 34 C.F.R. §§ 361.190(c) and 463.190(c).

The Departments' determinations, as will be described more fully herein, are consistent with the phased-in approach to performance assessments described in [Training and Employment Guidance Letter No. 11-19, Change 1](#) issued on May 10, 2023.³

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 – The Departments have determined it is appropriate and reasonable to assess performance for the WIOA title I, III, and IV core programs for PY 2022 for the following performance indicators as applicable:

- Employment Rate 2nd Quarter after Exit;
- Median Earnings 2nd Quarter after Exit;
- Employment Rate 4th Quarter after Exit; and
- Credential Attainment Rate.

The Departments have determined that the available baseline data are not sufficient to produce reliable estimates using the required statistical adjustment model for the remaining performance indicators. Therefore, the Departments have determined it is necessary to use their transition authority, pursuant to section 503(a) of WIOA, to delay assessment of:

- Measurable Skill Gains Rate for the WIOA titles I and IV core programs;
- All performance indicators for the WIOA title II core program;
- The Overall State Indicator Scores; and
- The Overall State Program Scores for the WIOA titles I, II, and IV programs.

This means the Departments will not assess performance for the purpose of imposing sanctions for the above performance indicators for PY 2022 but will continue to use performance data for effective program management, oversight, monitoring, and continuous improvement.

States still must submit timely and complete performance reports for PY 2022 and will be sanctioned for failure to do so.⁴ If a state is unable to submit complete and timely performance reports by October 2, 2023, 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 TEG 11-19, Change 1. The practical implications of the Departments' decision on sanctions implementation are explained in a series of questions and answers below.

With respect to the title II core program, states report aggregate data once annually, resulting in fewer available variables and four times less data than is generated for the

³ This guidance is a statement of the Departments' policy regarding WIOA. Other than statutory and regulatory requirements included in this document, the contents of this guidance do not have the force and effect of law. This document is intended only to provide clarity regarding existing requirements under the applicable law or agency policies.

⁴ See 20 C.F.R. § 677.185(a) and 34 C.F.R. §§ 361.185(a) and 463.185(a).

titles I, III, and IV core programs, each year for use in the statistical adjustment model. As a result, it is taking more time for the title II model to yield reliable estimates for purposes of that program; however, with each additional year's worth of data, the Departments have noticed improvement in the model's ability to produce reliable estimates. This continued and steady improvement constitutes progress toward the Departments' ability to assess all performance indicators for all core programs. In the meantime, the Departments have determined it is necessary to use the transition authority in section 503(a) of WIOA to provide for the orderly transition to the WIOA performance accountability requirements for all core programs.

- 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.⁵ 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 for this purpose.⁶ 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 from the statistical adjustment model for certain performance indicators and for certain core programs than had been anticipated. The Departments remain focused and committed to collecting performance data and promoting 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 on the basis of a

⁵ As stated in 20 C.F.R. § 677.150(d) and 34 C.F.R. § 361.150(d) and § 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 WIOA sec. 3(45)—American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, and the Republic of Palau.

⁶ TEGL 11-19, Change 1 *Negotiations and Sanctions Guidance for the WIOA Core Programs*, available at <https://www.dol.gov/agencies/eta/advisories/tegl-11-19-change-1>.

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 necessary to use the transition authority in 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 Scores and the Overall State Indicator Scores, for which the baseline data are not sufficient. For more information on the Departments' determination, please review Attachment II.

However, the Departments have determined there are now sufficient baseline data for the statistical adjustment model to yield consistently reliable results for most of the performance indicators for the WIOA titles I, III, and IV core programs. Therefore, the Departments have determined it is appropriate for DOL and ED to begin assessing performance for those performance indicators for PY 2022 in accordance with joint WIOA regulations and the phased-in approach to performance assessments described in TEGL 11-19, Change 1. 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.

4. **Questions and Answers.** The Departments have determined it is appropriate for DOL to begin assessing performance for four performance indicators under WIOA title I and III core programs for PY 2022 in accordance with the phased-in approach to performance assessments as described in TEGL 11-19, Change 1. 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 state performance for PY 2022?

Response 1: DOL and ED will assess state performance for the following Individual Indicator Scores for the WIOA titles I and IV core programs:

- Employment Rate 2nd Quarter after Exit;
- Median Earnings 2nd Quarter after Exit;
- Employment Rate 4th Quarter after Exit; and
- Credential Attainment Rate.

DOL will assess state performance for the following Individual Indicator Scores for the WIOA title III core program:

- Employment Rate 2nd Quarter after Exit;
- Median Earnings 2nd Quarter after Exit; and
- Employment Rate 4th Quarter after Exit.⁷

DOL will also assess state performance for the Overall State Program Score for the WIOA title III core program since DOL will be assessing all of the Individual Indicator Scores applicable to that program. See Attachments I and II for additional information.

Question 2: What happens if a state has a performance failure with respect to WIOA titles I, III, and IV core program Individual Indicator Scores and the WIOA title III core program Overall State Program Score for PYs 2022?

Response 2: If a WIOA title I, III, or IV core program fails to achieve an Individual Indicator Score of at least 50%, as described on page 13-14 of TEGL 11-19, Change 1, for the Employment Rate 2nd Quarter after Exit, Median Earnings 2nd Quarter after Exit, Employment Rate 4th Quarter after Exit, or Credential Attainment Rate indicators in PY 2022, the state must receive technical assistance and develop a performance improvement plan in accordance with section 116(f)(1)(A) of WIOA. If the state fails the same Individual Indicator Score for the same program in PY 2023, the Departments must impose a financial sanction in accordance with section 116(f)(1)(B) of WIOA.

If a WIOA title III core program fails to achieve an Overall State Program Score of at least 90 percent in PY 2022, as described on page 13-14 of TEGL 11-19, Change 1, the state must receive technical assistance and develop a performance improvement plan in accordance with section 116(f)(1)(A) of WIOA. If a state WIOA title III core program fails to achieve an Overall State Program Score of 90 percent again in PY 2023, 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 2022?

Response 3: No, states must submit complete and timely performance information as they have done since PY 2016.

Question 4: Will states be subject to sanctions for failure to submit complete and timely reports for PY 2022?

Response 4: Yes, states are subject to sanctions for failure to submit complete and timely performance reports for all six core programs, as has been true since PY 2017. Failing to certify complete PY 2022 annual performance reports by October 2, 2023, could lead to a financial sanction through a reduction of a state's PY 2023 Governor's Reserve funds.⁸ For

⁷ The Credential Attainment Rate and Measurable Skill Gains performance indicators are not applicable to the WIOA Title III core program, pursuant to section 116(b)(2)(A)(i).

⁸ This refers to the percentage of a state's WIOA title I allotment that the state's Governor is allowed to reserve for statewide activities under sec. 128(a) of WIOA (29 U.S.C. § 3163(a)).

details regarding complete and timely reporting and requesting an annual reporting extension, refer to pages 11-13 of TEGl 11-19, Change 1.

Question 5: If the Departments are not using the data to assess performance for sanctions purposes, how will the Departments use performance data from PY 2022?

Response 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 PY 2022 and prepare to engage with Federal staff to discuss, among other topics, data quality, continuous improvement, and performance results. All data reported by states, even those not used for performance assessment in a particular PY, benefit the statistical adjustment model used by the Departments by increasing the amount of data input, thereby enabling the model to produce more reliable results in the future.

Question 6: Does the Departments' decision regarding assessing for performance for PY 2022 apply to PY 2023 too?

Response 6: The Departments' decision to assess state performance for certain performance indicators and overall scores based on the reliability of the statistical adjustment model applies to PY 2022 only. The Departments' decision for PY 2022 is based on a determination that sufficient baseline data are available to produce reliable estimates using the statistical adjustment model for the indicators that will be assessed for performance. In an effort to accelerate the full implementation of WIOA performance accountability requirements, the Departments will make a separate assessment of the model's reliability for PY 2023, rather than making a determination to delay assessments for both program years at this time. The Departments are therefore advancing performance assessment consistent with the reliability, and therefore readiness, of the data yielded by the statistical adjustment model, and, for those indicators for which assessment is delayed in PY 2022, will make a determination anew for PY 2023 with the benefit of another year's worth of data input for the model.

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

6. **References.**

- TEGl 11-19, Change 1: *Negotiations and Sanctions Guidance for the Workforce Innovation and Opportunity Act (WIOA) Core Programs*, issued May 10, 2023, <https://www.dol.gov/agencies/eta/advisories/tegl-11-19-change-1>

7. **Attachment(s).**

- Attachment I: Individual Indicator Scores and Overall State Program Score Subject to Performance Assessment in PY 2022
- Attachment II: Use of Transition Authority

Attachment I: Individual Indicator Scores and Overall State Program Score Subject to
Performance Assessment in PY 2022

| Primary Indicator/ Core Program | Title I Adult | Title I Dislocated Worker | Title I Youth | Title II AEFLA | Title III Wagner-Peyser | Title IV Vocational Rehabilitation | Overall State Indicator Score |
|--|---------------|---------------------------|---------------|----------------|-------------------------|------------------------------------|--------------------------------------|
| Employment Rate 2 nd Qtr after Exit | Yes | Yes | Yes | No | Yes | Yes | No |
| Employment Rate 4 th Qtr after Exit | Yes | Yes | Yes | No | Yes | Yes | No |
| Median Earnings 2 nd Qtr after Exit | Yes | Yes | Yes | No | Yes | Yes | No |
| Credential Attainment Rate | Yes | Yes | Yes | No | | Yes | No |
| Measurable Skill Gains Rate | No | No | No | No | | No | No |
| Effectiveness in Serving Employers | N/A | N/A | N/A | N/A | N/A | N/A | N/A |
| Overall State Program Score | No | No | No | No | Yes | No | - |

Attachment II: Use of Transition Authority

Use of WIOA Transition Authority for Individual Indicator Scores

For purposes of the WIOA titles I and IV core programs (the Adult, Dislocated Worker, Youth, and Vocational Rehabilitation programs), the Departments have determined that the statistical adjustment model is yielding reliable results for the following performance indicators for purposes of assessing the Individual Indicator Score, pursuant to 20 C.F.R. § 677.190(c)(5) and 34 C.F.R. §§ 361.190(c)(5):

- Employment Rate 2nd Quarter after Exit;
- Median Earnings 2nd Quarter after Exit;
- Employment Rate 4th Quarter after Exit; and
- Credential Attainment Rate.

For purposes of the Wagner-Peyser Act Employment Service program (referred to as “WIOA title III”), the Departments have determined that the statistical adjustment model is yielding reliable results for the following performance indicators for purposes of assessing the Individual Indicator Score, pursuant to 20 C.F.R. § 677.190(c)(5):

- Employment Rate 2nd Quarter after Exit;
- Median Earnings 2nd Quarter after Exit; and
- Employment Rate 4th Quarter after Exit.⁹

Therefore, the Departments have determined there is no need to use the transition authority of section 503(a) of WIOA for purposes of delaying assessing the Individual Indicator Score for these four indicators for the WIOA titles I and IV core programs and these three indicators for the WIOA title III core program.

However, the Departments have determined that the baseline data, which includes economic variables required by the statute, for the other indicators and core programs are not sufficient for the statistical adjustment model to yield consistently reliable results. For these performance indicators and programs, more baseline data are necessary for the model to yield reliable results. Therefore, the Departments have determined it necessary to continue to use the transition authority in section 503(a) of WIOA in PY 2022 to delay assessing performance and imposing sanctions for:

⁹ Pursuant to section 116(b)(2)(A)(i) of WIOA, the Credential Attainment Rate and Measurable Skill Gains Rate indicators are not applicable to the Wagner-Peyser program.

- Measurable Skill Gains Rate for the WIOA titles I and IV core programs, pursuant to 20 C.F.R. § 677.190(c)(5) and 34 C.F.R. §§ 361.190(c)(5); and
- All performance indicators for the WIOA title II AEFLA core program, pursuant to 34 C.F.R. § 463.190(c)(5).

Section 116 of WIOA requires that the Departments use the same participant characteristics and economic conditions in the statistical adjustment model for all primary indicators of performance. This requirement has proved challenging, especially in the case of the Measurable Skill Gains Rate, where there is little empirical evidence the economic conditions within the state have a meaningful effect on state performance. Nevertheless, with each PY's worth of data added to the statistical adjustment model, its ability to produce reliable estimates improves considerably. Despite the challenges faced by the Departments with respect to the Measurable Skill Gains Rate indicator for the titles I, II, and IV core programs to date, the Departments are increasingly confident the model will produce reliable estimates for this indicator for most applicable programs in PY 2023.

Use of WIOA Transition Authority for Overall State Indicator Score and Overall Program Score

While the model is yielding reliable results for certain performance indicators for the WIOA titles I, III, and IV core programs, the Departments have concluded it would not be reasonable to assess an Overall State Indicator Score, as required by 20 C.F.R. § 677.190(c)(3) and 34 C.F.R. § 361.190(c)(3), because such a score would not be an accurate representation of the state's overall performance across all core programs on any of the indicators.

Similarly, the Departments have determined it would not be reasonable to assess an Overall State Program Score by considering only four performance indicators for which there are reliable data for the WIOA titles I and IV core programs (20 C.F.R. § 677.190(c)(1) and 34 C.F.R. § 361.190(c)(1)). The Departments have determined that it would be reasonable to assess an Overall State Program Score for the WIOA title III core programs because such a score takes into account all of the Individual Indicator Scores applicable to this program, as required by 20 C.F.R. § 677.190(c)(2).

Therefore, the Departments have determined it necessary to use the transition authority in section 503(a) of WIOA to delay assessing performance for Overall State Indicator Scores and Overall State Program Scores, with the exception of the WIOA title III core program's Overall State Program score, and for imposing sanctions for any state that fails in accordance with 20 C.F.R. § 677.190(d)(1) and 34 C.F.R. §§ 361.190(d)(1) and 463.190(d)(1), for PY 2022.