

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION WIA Performance
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TRAINING AND EMPLOYMENT GUIDANCE LETTER No. 9-07

TO: ALL STATE WORKFORCE AGENCIES
 ALL STATE WORKFORCE LIAISONS

FROM: EMILY STOVER DeROCCO /s/
 Assistant Secretary

SUBJECT: Revised Incentive and Sanction Policy for Workforce Investment Act Title IB Programs

1. **Purpose.** To provide states guidance on the Employment and Training Administration's (ETA) revised policy related to incentives and sanctions under title IB of the Workforce Investment Act (WIA) for performance accountability purposes.
2. **References.** Workforce Investment Act of 1998 (Public Law 105-220), Section 136, 20 CFR part 666; Training and Employment Guidance Letter (TEGL) No. 8-99, *Negotiating Performance Goals; and Incentives and Sanctions Process under Title I of the Workforce Investment Act (WIA)*; TEGL 19-02, *Sanctions Policy for Failure to Meet State Negotiated Performance Levels Under Title I of the Workforce Investment Act*; TEGL 3-03, *Change 3, Data Validation for Employment and Training Programs*; TEGL 14-03, *Change 1, Performance Reporting Submission Procedures for the Workforce Investment Act Standardized Record Data (WIASRD) and the Annual Report under Title IB of the Workforce Investment Act for Program Year (PY) 2003 and 2004*; TEGL 17-05, *Common Measures Policy for the Employment and Training Administration's (ETA) Performance Accountability System and Related Performance Issues*; and Training and Employment Notice (TEN) 9-06, *Timeline for Program Year (PY) 2005 Workforce Investment Act Performance Reporting and PY 2005 Data Validation (all programs)*.
3. **Background.** A stated goal of WIA is to increase the employment, retention, and earnings of participants. Section 136 of the WIA specifies core indicators of performance as the basis of a comprehensive performance accountability system that includes measures of employment, retention, and earnings, as well as attainment of credentials or diplomas (in the case of young people age 14-18), attainment of skills, and customer satisfaction for a total of 17 WIA performance measures. States negotiate levels of performance for each of these measures. Based on results

RESCISSIONS TEGL 8-99; TEGL 19-02	EXPIRATION DATE Continuing
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reported in their annual reports that are submitted each October, states may qualify for an incentive for performance that exceeds the negotiated performance levels, or be subject to sanctions for performance that does not meet the negotiated performance levels.

In 2002, using the WIA performance accountability system as a model, a number of federal agencies developed a set of common performance measures to be used for Federally-funded job training and employment programs with a similar purpose. Beginning in PY 2005, ETA incorporated the definitions of these common performance measures into the WIA title IB performance reporting requirements, including the performance reporting for several of ETA's other workforce investment programs.

The value of implementing the common performance measures is the ability to describe, in a similar manner, the core purposes of the workforce system: how many people obtain jobs (entered employment); how many stay employed (retention); and how much do people finding employment earn (average earnings). Multiple sets of performance measures have burdened states and grantees, as they have been required to report performance outcomes based on varying definitions and methodologies. By minimizing the different reporting and performance requirements, common performance measures contribute to facilitating the integration of service delivery, reducing barriers to cooperation among programs, and enhancing the ability to assess the effectiveness and impact of the workforce investment system.

4. Revised WIA Incentive and Sanction Policy. ETA incorporated the definitions for the common performance measures into the WIA performance accountability system beginning in PY 2005. For the WIA Adult and Dislocated Worker programs, the existing retention and earnings measure definitions were changed to reflect the common performance measure definitions (no change was required for the entered employment measure). The youth common performance measures are substantially different than the statutory measures for youth, and it was not possible to incorporate the common performance measures for youth into the WIA older and younger youth measure definitions. As a result, states generally report against the three youth common measures in addition to the 17 statutory performance measures and are evaluated, for performance purposes, against the 17 statutory measures.

At the same time, states have begun to further integrate and streamline program services, and have requested waivers to streamline performance reporting by reporting against the common performance measures *only* instead of the current WIA statutory performance measures. States with an approved reporting waiver are accountable for results against 9 performance measures (which includes the three substantially different youth measures), rather than the 17 measures for which the other states are accountable. Because of this, states that were granted waivers to

report common performance measure outcomes *only* for the PY 2005 performance year were exempt from consideration for an incentive grant, since they were reporting and being assessed against a different set of measures than the majority of states, still being assessed against the WIA statutory measures.

The number of approved waiver requests continues to increase, and ETA has re-examined its incentive and sanction policy so these states would not be automatically exempted from incentive eligibility, thereby avoiding a possible disincentive to further program integration. In developing a revised incentive and sanction policy, ETA officials have sought to balance the competing interests of fairness and flexibility provided for in the WIA waiver authority. We also want to ensure that all states are afforded the opportunity to be considered for an incentive grant, if the state exceeds its negotiated levels of performance. Additionally, it is important to further establish the important correlation between timely and accurate data to quality performance information.

To accomplish these goals, ETA has reconsidered its interpretation of what it means to "exceed" WIA performance measures, as well as what combination of measures will be considered under the revised incentive and sanction policy to allow both waiver and non-waiver states to be eligible for incentive grants. ETA continues to encourage high performance and continuous improvement, while not providing waiver states with an unfair advantage over other states. Therefore, for purposes of determining eligibility for incentive grants under 20 CFR 666.200(a), ETA will consider a state to have exceeded the negotiated levels of performance for the WIA required core indicators of performance when the state exceeds the levels for the common performance measures if it is a waiver state, or when it exceeds the measures for a substantially comparable set of measures if it is a non-waiver state. In effect, in order to hold all states to a comparable standard of performance for incentive purposes, we are treating all states as if they had requested the common measures performance waiver, without imposing the burden of applying for the waiver on states that would otherwise not request such a waiver.

Therefore, beginning with the PY 2006 performance measures outcomes, only those states that exceed their negotiated performance levels for the following applicable measures for the WIA Adult, Dislocated Worker, and Youth programs will be considered in the incentive and sanction determinations. These applicable measures are (also see the Attachment):

WIA Adult and Dislocated Worker Measures

The WIA measures for non-waiver states and the common measures waiver states are the same for the Adult and Dislocated Worker programs.

These measures are:

- 1) Entered Employment Rate;
- 2) Employment Retention Rate; and
- 3) Average Six Months Earnings.

WIA Youth Measures

The WIA Youth measures for non-waiver states and the common measures waiver states are not the same. There are four WIA measures for non-waiver states and three measures for the common measures waiver states.

The four WIA measures for non-waiver states are:

- 1) Older Youth Entered Employment Rate;
- 2) Older Youth Employment Retention Rate;
- 3) Younger Youth Diploma or Equivalent Rate; and
- 4) Younger Youth Retention Rate.

The three youth measures for the common measures waiver states are:

- 1) Placement in Employment or Education;
- 2) Attainment of a Degree or Certificate; and
- 3) Literacy and Numeracy Gains (with potentially one exception: the outcomes against the literacy/numeracy measure will only be considered in the determination of incentives or sanctions if the state has implemented the measure for two or more years as a minimum of two years is needed to get valid data for this measure. If the measure has not been implemented for the necessary period of time, these outcomes will not be considered in determining a state's incentive eligibility or in the application of sanctions.)

Although outcomes against the adult, dislocated worker, and older youth credential measures; the older youth earnings change measure; the younger youth skill attainment measure; and the participant and employer customer satisfaction measures, will no longer be considered in incentive or sanction determinations, states without a waiver to report on common performance measures *only* will still be required to collect and report on these remaining WIA performance measures. Failure to report against these other measures will result in immediate disqualification for incentive eligibility or the potential for a larger sanction. States will continue to be able to request technical assistance if they have failed to meet

their negotiated levels for any of these other measures. The revised incentive policy is described further in Section 5 of this TEGL.

Similarly, ETA is revising its sanction policy (set forth in TEGL 19-02, *Sanctions Policy for Failure to Meet State Negotiated Performance Levels under Title I of the Workforce Investment Act (WIA)*). Only the outcomes reported against the applicable performance measures above (which are also contained in the Attachment), will be analyzed when considering the application of sanctions (with the potential exception of the literacy/numeracy measure, if it has not been implemented for two or more years). The revised sanction policy is described further in Section 7 of this TEGL.

5. Revised Policy for WIA Incentive Grants. Section 503(a) of the WIA requires the Secretary to award incentive grants to states that exceed the negotiated levels of performance for WIA title IB programs, the expected levels of performance for WIA title II Adult Education and Family Literacy Act programs, and the levels of performance for the Carl D. Perkins Vocational and Technical Education Act programs.

For the WIA title IB programs, beginning with annual outcomes reported for PY 2006, the following criteria will be applied to determine incentive eligibility based on performance outcomes:

- Performance is at, or above, 90 percent of the negotiated level for each applicable WIA performance measure (see Attachment); except for the Literacy and Numeracy Gains measure, which will only be considered in incentive or sanction determinations if the state has implemented the measure for two or more years (and hence has valid data for the measure);
- The score for the average attainment rates for each of the WIA performance groups (adults, dislocated workers, and youth) is above 100 percent;
- The performance outcomes are reported on time and are accurate, as further defined in Section 6 of this TEGL;
- The state has reported on the remaining WIA performance measures, including customer satisfaction, that are not part of the determination of incentive eligibility. Failure to do so will result in immediate disqualification for incentive eligibility, unless the state has an approved waiver to report on the common performance measures only; and
- The state has not requested a revision to lower its negotiated performance levels for any measure after the end of the third quarter of the program/performance year (March 31). Note that this requirement is not retroactive; it will be first

applied during incentive eligibility determinations made based on PY 2007 outcomes (spring 2009). This requirement only applies to lowering negotiated levels of performance; states may request a higher negotiated level of performance for a measure at any time.

As noted above, a state must now meet 90 percent of the negotiated level for each applicable WIA performance measure to be eligible for an incentive, rather than 80 percent of the negotiated level that applied under the previous incentive policy. This level was raised in the interest of continuous improvement; 90 percent of the negotiated level of performance more accurately reflects a successful outcome, based on analysis of past national performance results. States now have a history of negotiating performance levels, as well as good baseline data from previous program years to base their negotiations upon, and this level is a reasonable expectation that states should be able to meet.

Incentive grant awards will range from \$750,000 to \$3,000,000, with a proportionate reduction in the minimum and maximum, when total available funds are insufficient.

6. **Failure to Report and Data Accuracy.** As noted in Section 5 of this TEGL, one of the criteria for incentive eligibility is that the data used to compute the performance outcomes must be submitted on time and be accurate. This is consistent with the WIA program reporting requirements that directs grantees to submit timely and accurate participation and outcome reports.

Guidance found in TEGL 14-03, Change 1, emphasizes the importance of a timely report as part of the criteria used by ETA when determining eligibility for WIA incentive grants. Along with other subsequent guidance, it also established the deadline for the annual report, which is the official submission that contains the data upon which incentive and sanction determinations are based.

To address the accuracy of the data submitted, ETA implemented its data validation initiative to identify and address discrepancies in state grantees' reporting (See TEGL 13-03 and subsequent guidance for further information). Data validation consists of report validation and data element validation. Report validation compares the performance results reported by a state to those calculated by ETA's validation software to verify the accuracy of the state's report calculations. Data element validation compares data contained in a sample of participant records from the state's validation extract file to approved source documentation in order to verify the accuracy of the data elements used in calculating the reports.

For annual outcomes reported for PY 2006 and subsequent years, ETA will consider a WIA state grantee as having failed to report year-end results when one or more of the following conditions exist:

- The grantee fails to submit a complete WIA annual report as defined in TEGL 14-03 and subsequent Training and Employment Notices that provide timelines for annual performance reporting and data validation submissions;
- The grantee fails to conduct the report validation outlined in TEGL 3-03 and subsequent guidance;
- The grantee fails to submit the required Report Validation Summary by the required due date outlined in TEGL 3-03 and subsequent reporting guidance;
- The grantee fails to submit an accurate WIA annual report as determined by applying a two percent error threshold to program outcomes, including numerators and denominators, summarized in the Report Validation Summary¹; or
- The grantee fails to submit a required WIA annual program information report, ETA 9091, within 45 days of the established due date.

Submitting data element validation results will not be a factor in determining failure to report year-end results.

7. WIA Sanction Policy. If a state fails to meet its negotiated levels of performance for any of the applicable measures (see Attachment) for one year, the state may request technical assistance from ETA. If the state fails to achieve 80 percent of the negotiated level of performance for the same measure for two consecutive years, the state may be subject to financial sanctions in the form of a reduction in the annual allotment for the program area, up to a maximum of five percent.

The application of a financial sanction must be made to the allotment for the program year following the year of poor performance. Any funds recovered from the application of financial sanctions will be made available for performance incentive grants.

¹ One or more reported items included in the results of the calculation of performance outcomes on the program's performance measures as reported in the program's annual submission that exceed the two percent tolerance level will result in a failed to report finding. Discrepancy rates are determined by comparing the state's figures on the Report Validation Summary to the reported counts on the program year summary (i.e., ETA 9091 for WIA programs).

In addition to the statutory provisions in WIA section 136, guidance to the workforce system on the subject of sanctions has been provided previously in the regulations at 20 CFR 666.240 and in TEG's 8-99 and 19-02.

The effective use of sanction authority related to performance will include a range of actions, with the ultimate goal of improving services to customers. Further, the use of sanctions will reinforce the management philosophy underlying WIA and the Administration--the importance of performance outcomes and results. Financial sanctions will be considered when it is clear that a state has not taken reasonable steps to address its poor performance, but levying a financial penalty will not be the sole purpose or result of a sanction.

- a. Any state that has failed to perform at 80 percent of the negotiated level for a specific performance measure for a second consecutive year, or has failed to submit an accurate and complete annual report within 45 days of the due date, will be required to modify its Five-Year Strategic Plan to incorporate an agreed upon performance improvement plan.**

At a minimum, if a state has failed to achieve the negotiated level of performance for two years in a row, the state will work with the appropriate ETA Regional Office to develop a performance improvement plan. Such a plan will include: changes to program goals, as appropriate, as well as design, management or administration remedies that address any deficiencies in program design or service strategy that have inhibited performance, including reporting problems; appropriate technical assistance to improve program services; and continued monitoring by the ETA Regional Office. The plan modification requirement is supported by 20 CFR 661.230(b)(3), which requires plan modifications in such circumstances.

- b. The amount of a financial sanction for poor performance within a program area will be directly related to the number of negotiated performance levels the state failed to meet for measures within that program area for two consecutive years, but will not be more than five percent of the annual allotment for the program area.**

In addition to the required performance improvement plan, financial sanctions will be applied to the program area in which the state failed to achieve the negotiated level of performance, i.e., adults, youth, and/or dislocated workers.

- c. When determining the amount of a financial sanction, failure to submit an accurate and timely annual report will increase the financial sanction by an additional one percent of the annual allotment in the program area that is being sanctioned.**

If a state has failed to submit an accurate and timely annual report, but has met all of its negotiated levels of performance, then a financial sanction will not be imposed.

A financial sanction may be appropriate for any state that failed one or more measures of performance for workforce investment programs. The following describes the maximum amount of a financial sanction, subject to adjustment upon further review. Since there are three measures that will be considered for the WIA Adult and Dislocated Worker programs, the amount of the financial sanction will be based on the number of measures failed in each program area:

<u>Adult/Dislocated Worker No. of Measures Failed</u>	<u>Maximum Amount of Sanction</u>
1	1 percent
2	2 percent
3	3 percent
*	4 percent

* Failure to submit an accurate and timely annual report will increase the level of financial sanction applied to a program by an additional one percent if it is otherwise subject to financial sanction.

For the WIA Youth program, since there are four indicators of performance under consideration (three for common measures waiver states), the amount of the financial sanction would be calculated as follows:

<u>Youth No. of Measures Failed</u>	<u>Maximum Amount of Sanction</u>
1	1 percent
2	2 percent
3-4	3 percent
*	4 percent

* Failure to submit an accurate and timely annual report will increase the level of financial sanction applied to a program by an additional one percent if it is otherwise subject to financial sanction.

There are several general factors to consider in relation to sanctions for performance that will be taken into consideration in determining the actual amount of the sanction (up to the maximum percentages as discussed above), such as performance on other indicators, economic conditions, and the progress of performance on the failed measure between the two program years. The ETA Regional Offices will work with the state(s) to address the seven mitigating factors articulated in the regulations at 20 CFR 666.240(c):

1. The state's performance relative to other states;
2. Improvement efforts underway;
3. Incremental improvement on the performance measures;
4. Technical assistance previously provided;
5. Changes in economic conditions and program design;
6. The characteristics of participants served compared to the participant characteristics described in the State Plan; and
7. Performance on other core indicators of performance and customer satisfaction indicators for that program (WIA section 136(g)), if applicable.

It is important to understand that ETA's primary interest is in ensuring effective and efficient service delivery and successful outcomes for participants served by WIA programs. In addressing the mitigating factors, the state should acknowledge areas where performance is failing and provide documentation that either substantiates actions taken by the state to improve performance throughout the period of performance or that provides sufficient context around the state's actual performance results.

ETA Regional Offices will provide a final recommendation for a financial sanction based on their analysis of the information received from the state(s), including responses on the seven factors discussed above. The amount of the sanction for each performance measure missed could be reduced if the state provides relevant and sufficient information to explain the performance failure.

8. **Appeals.** States may request a review of a decision to impose a sanction. In accordance with 20 CFR 667.800(a), such an appeal must be submitted in writing to the Department of Labor's Office of Administrative Law Judges within 21 days of receipt of the final determination imposing the sanction.
9. **Action Requested.** State Workforce Agency Administrators and State Workforce Liaisons are asked to distribute this guidance to the appropriate officials at the state and local levels.
10. **Inquiries.** Please direct any questions to the appropriate ETA Regional Office.
11. **Attachment.** Applicable Performance Measures for WIA Incentive and Sanction Policy