

TRAINING AND EMPLOYMENT NOTICE	NO. 04-24
	DATE August 14, 2024

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: JOSÉ JAVIER RODRÍGUEZ /s/
Assistant Secretary

SUBJECT: Workforce Innovation and Opportunity Act (WIOA) Core Program¹ Performance
Accountability Assessment for Program Year (PY) 2023

1. **Purpose.** Consistent with Joint WIOA Final Rule requirements,² the U.S. Departments of Labor and Education (the Departments) have determined it is appropriate and reasonable in PY 2023 for the:

- U.S. Department of Labor (DOL) to assess performance for four performance indicators under the WIOA title I core programs and for 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 (referred to as “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 the Department of Labor (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 2023 for the following performance indicators as applicable:

- Employment Rate 2nd Quarter after Exit;⁴
- Median Earnings 2nd Quarter after Exit;
- Employment Rate 4th Quarter after Exit;⁴ 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;⁵
- The Overall State Indicator Scores for all core programs;⁶ and
- The Overall State Program Scores for the WIOA titles I, II, and IV programs.⁷

This means the Departments will not assess performance for the purpose of imposing sanctions for the above performance indicators and scores for PY 2023 but will continue to use performance data for effective program management, oversight, monitoring, and continuous improvement for these particular performance indicators. In addition to those performance indicators that will be used to assess state performance because sufficient

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 This indicator also includes those who entered into a training or education program for the WIOA Youth program.

⁵ See page 3 for explanation regarding title II data.

⁶ The overall State indicator score for all programs for any given performance indicator cannot be calculated until the Departments have sufficient baseline data to assess for performance for all applicable WIOA core programs with respect to that performance indicator.

⁷ The Departments cannot assess for performance for the overall State program score for the WIOA I, II, or IV core programs until the Departments have sufficient baseline data to yield reliable results for all performance indicators applicable to the core program to be assessed.

baseline data are available to produce reliable estimates using the required statistical adjustment model, the Departments will publish non-binding state performance results for those performance indicators where state assessments cannot reliably be made. These preliminary state performance results will ensure transparency in the performance accountability process and will provide a basis for technical assistance and program oversight.

States are required to submit timely and complete annual performance reports for PY 2023 and will be sanctioned for failure to do so.⁸ If a state is unable to submit complete and timely annual performance reports by October 1, 2024, 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, 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 annually, resulting in four times less data than is generated each year for the titles I, III, and IV core programs 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 measuring program performance; however, with each additional year's worth of data, the Departments have observed 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 continue 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.⁹ 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 PY 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 met its adjusted levels of performance. The Departments developed a model and process for this purpose.¹⁰ To date, the implementation of a model and the performance accountability requirements have informed the Departments' performance negotiations with states, helped to

⁸ See 20 C.F.R. § 677.185(a) and 34 C.F.R. §§ 361.185(a) and 463.185(a).

⁹ 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.

¹⁰ 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>.

prioritize technical assistance efforts, and 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, complete reporting, and using data to improve programs and strengthen outcomes. 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 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, as required by statute, on the statistical adjustment model. Therefore, the Departments determined that it is necessary to continue 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 or historical data are not sufficient. For more information on the Departments' determination, please review Attachment II.

However, the Departments have determined there are 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 continue assessing performance for those performance indicators for PY 2023 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 and described above, will continue to 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.

Question 1: For which primary indicators of performance and for which core programs will the Departments assess state performance for PY 2023?

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;⁴
- Median Earnings 2nd Quarter after Exit;
- Employment Rate 4th Quarter after Exit;⁴ 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.¹¹

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.

For the WIOA title II core program, ED will not assess performance for the purpose of imposing sanctions for the performance indicators for PY 2023 but will continue to use performance data for effective program management, oversight, monitoring, and continuous improvement.

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 PY 2023?

Response 2: If a WIOA title I, III, or IV core program, for the first time, 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 2023, as applicable, the state must receive technical assistance and develop a performance improvement plan in accordance with section 116(f)(1)(A) of WIOA.¹² If the state fails the same Individual Indicator Score for the same program, for the second consecutive time in PY

¹¹ 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).

¹² These four performance indicators are those for which the Departments will assess for performance, as applicable, for the title I, III, and IV WIOA core programs for PY 2023. As noted previously, the credential attainment rate indicator is not applicable to the WIOA title III core program.

2023 or PY 2024, the Departments must impose a financial sanction in accordance with section 116(f)(1)(B) of WIOA.

Similarly, if a WIOA title III core program, for the first time, fails to achieve an Overall State Program Score of at least 90 percent in PY 2023, as described on page 13-14 of TEGL 11-19, Change 1, the Departments must provide technical assistance to the state 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, for the second consecutive time in PY 2023 or PY 2024, the Departments must impose a financial sanction in accordance with section 116(f)(1)(B) of WIOA.

Question 3: Will the Departments suspend or delay WIOA performance reporting requirements for PY 2023?

Response 3: No, states must submit complete and timely required performance information as they have done since PY 2016 in accordance with section 116 of WIOA.

Question 4: Will states be subject to sanctions for failure to submit complete and timely reports for PY 2023?

Response 4: Yes, states are subject to sanctions for failure to submit complete and timely performance reports for all six core programs for PY 2023, as has been true since PY 2017. Failing to submit, as applicable for the WIOA core program, complete PY 2023 annual performance reports by October 1, 2024, could lead to a financial sanction through a reduction of a state's PY 2024 Governor's Reserve funds.¹³ For 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 2023?

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 2023 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 over time.

¹³ 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)).

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

Response 6: No, 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 2023 only. The Departments' decision for PY 2023 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 for that PY only. 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 2024, rather than making a determination to delay assessments for both program years (i.e., PYs 2023 and 2024) at this time. The Departments are therefore advancing performance assessment consistent with the reliability of the data yielded by the statistical adjustment model. For those indicators for which assessment is delayed in PY 2023, the Departments will make a new determination for PY 2024 with the benefit of another year's worth of data input for the model.

Question 7: Will the Departments assess state Effectiveness in Serving Employers (ESE) performance for PY 2023?

Response 7: No. On February 23, 2024, the Departments published the *Workforce Innovation and Opportunity Act Effectiveness in Serving Employers Performance Indicator* final rule at 89 Fed. Reg. 13814. Therefore, because the indicator was just finalized, there are not yet available at least 2 years of complete data for it. In accordance with 20 CFR 677.190(c)(2) and 34 C.F.R. §§ 361.190(c)(2) and 463.190(c)(2), the Departments will collect and monitor state ESE performance results through at least PY 2025 to establish a credible baseline and provide technical assistance. After PY 2025 data are collected, the Departments will develop a statistical adjustment model for ESE in accordance with section 116(b)(3)(A)(v)(II) of WIOA. The Departments will then notify the states of the model estimates' reliability and the Departments' ability to use the model for the purposes of accurate and objective state performance assessments.

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 2023
- Attachment II: Use of Transition Authority