



# Technical Assistance Guide (T.A.G.) Workforce Innovation and Opportunity Act

**Number:** 20-4

**Date:** December 23, 2020

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**Subject:** Negotiations and Sanctions Guidance for Workforce Innovation and Opportunity Act (WIOA) Title I

**Purpose:** This guidance delineates the process for negotiating local levels of performance, as required by section 116(b)(3)(A)(iv) of the WIOA, and outlines sanctions for nonconformance.

**Scope:** Local Workforce Development Board Performance Negotiations for Workforce Innovation and Opportunity Act (WIOA) Title I – Adult, Dislocated Worker and Youth Programs

**Effective Date:** December 23, 2020

### **References/Authorities:**

- The Workforce Innovation and Opportunity Act (WIOA) of 2014 (Pub. L. 113-128) Title I; WIOA sec. 116(b)(3)(A)(iv)
- Federal Register/Vol. 81, No. 161, Parts 677,679 and 683
- [20 CFR §677.210; §677.170\(c\)](#);
- [TEGL 11-19](#)
- [State Compliance Policy 1.1](#)

WIOA requires states to strategically align workforce development programs to ensure that employment and training services provided by the core programs are coordinated and complementary so that job seekers acquire skills and credentials that meet employers' needs.

WIOA further promotes alignment of workforce development programs with regional economic development strategies to meet the needs of local and regional employers, which includes the alignment of performance accountability for WIOA core programs. This is accomplished in the state through the development of one strategic plan developed through the coordination and alignment of state and designated local areas that results in effective service delivery strategies that align with state- and local- identified economic and workforce goals.

In consultation with the core partners, Nevada will use an objective statistical adjustment model as prescribed in WIOA sec. 116(b)(3)(viii), and the state will work in tandem with its Federal and local partners to arrive at agreed upon negotiated levels of performance at the state and local echelons.

## **Policy and Procedures:**

### Performance Indicators

Per WIOA sec. 116(b)(2)(A), there are six primary indicators of performance that each state's core programs must negotiate targets for with its respective Federal agency. For WIOA Title I, that is the U.S. Department of Labor's (USDOL) Employment and Training Administration (ETA).

1. The *percentage of program participants* who are in unsubsidized employment during the *second quarter after exit* from the program.
  - For Title I Youth program, the indicator is the percentage of program participants in *education or training activities*, or unsubsidized employment during the second quarter after exit.
2. The *percentage of program participants* who are in unsubsidized employment during the *fourth quarter after exit* from the program.
  - For Title I Youth program, the indicator is the percentage of program participants in *education or training activities*, or unsubsidized employment during the fourth quarter after exit.
3. The *median earnings of program participants* who are in unsubsidized employment during the *second quarter after exit* from the program.
4. The *percentage of program participants* who attain a *recognized postsecondary credential*, or a *secondary school diploma* or its recognized equivalent, during participation in or within one year after exit from the program, provided that a program participant who obtains a secondary school diploma or its recognized equivalent is included in the percentage of program participants who have attained a secondary school diploma or its recognized equivalent **only if** the participant also is employed or is enrolled in an education or training program leading to a recognized postsecondary credential within one year after exit from the program.
  - This performance indicator **does not** apply to the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA Title III.
5. The *percentage of program participants* who, during a program year, are in an *education or training program* that leads to a recognized postsecondary credential or employment and who are achieving measurable skill gains toward such a credential or employment.
  - This performance indicator **does not** apply to the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA Title III.
6. The *effectiveness in serving employers*. This performance indicator will be measured as a *shared outcome* across all six core programs within each state to ensure a holistic approach to serving employers.
  - This performance indicator will continue to be *piloted* for the first two years of Nevada's PY 2020-2023 Unified State Plan.
  - For PY 2020 and PY 2021, states are not required to submit an expected level of performance for effectiveness in serving employers.

- Core programs are expected to collect data and select one agency to report joint results for this performance indicator for PY 2020 and PY 2021. The agency in Nevada that was selected for this is the Department of Employment, Training and Rehabilitation (DETR) Employment Security Division.

Negotiation Factors

Per WIOA sec. 116(b)(3)(viii), an objective statistical adjustment model distributed by the USDOL will be used to reach an agreement on the *state* negotiated levels of performance. In addition to the factors required by WIOA, this model takes into consideration additional factors including actual economic conditions and characteristics of participants.

Local areas are also required to use a statistical adjustment model to reach an agreement on the *local* negotiated levels of performance, which is also provided by USDOL.

PY 2020 and PY 2021

Nevada’s *state* negotiated levels for performance for the PY 2020 and PY 2021 under WIOA for **Title I** and as published in Nevada’s Unified State Plan are:

Indicator	Adults		Dislocated Workers		Youth	
	PY 2020	PY 2021	PY 2020	PY 2021	PY 2020	PY 2021
Employment 2 <sup>nd</sup> Quarter After Exit	76.0%	76.0%	83.0%	83.0%	65.0%	65.0%
Employment 4 <sup>th</sup> Quarter After Exit	70.0%	70.0%	83.5%	83.5%	68.0%	68.0%
Median Earnings 2 <sup>nd</sup> Quarter After Exit	\$5,700	\$5,700	\$7,400	\$7,400	\$3,829	\$3,829
Measurable Skill Gains	77.0%	77.0%	82.5%	82.5%	56.0%	56.0%
Effectiveness in Serving Employers	62.5%	62.5%	64.0%	64.0%	50.0%	50.0%

*Local* Levels of Performance - Negotiation Methods

**Requirements and Tools**

The Governor, through the designated state agency the Nevada Department of Employment, Training and Rehabilitation (DETR), must negotiate and reach an agreement with the chief elected official, through the designated local workforce development board (LWDB), on the *local* levels of performance based on the state negotiated levels of performance by using the objective statistical adjustment model provided by USDOL no later than September 30<sup>th</sup>.

The objective statistical adjustment model will be applied at the end of the program year to adjust negotiated *local* levels of performance in order to reflect the actual economic conditions experienced in the local area and the characteristics of participants consistent with WIOA sec. 116.

In negotiating the *local* levels of performance, the following four factors of negotiation must be used at the state level:

1. **Comparison to other states:** Take into account how the levels involved compare with the negotiated levels of performance established for other states. [WIOA sec. 116(b)(3)(A)(v)(I)]
2. **Statistical adjustment model:** This statistical adjustment model includes levels of performance, as estimated by USDOL, to be used to inform the negotiations process.
3. **Continuous improvement:** The negotiation process should take into account the extent proposed levels promote continuous improvement in performance accountability measures and ensure optimal return on the investment of Federal funds. [WIOA sec. 116(b)(3)(A)(v)(III)]
  - a. State and local areas must adhere to the priority of service requirements of WIOA Title I programs.
4. **Government Performance and Results Act (GPRA):** The negotiation process should take into account the extent to which the levels involved will assist the state in meeting the performance goals established by the Secretaries of Education and Labor in accordance with the Government Performance and Results Act of 1993 (GPRA). [WIOA sec. 116(b)(3)(A)(v)(IV)]

#### Negotiation Sequence

1. DETR's Workforce Investment Support Services (WISS) will schedule a formal meeting wherein local performance levels will be discussed and negotiated.
2. Not less than 30-days prior to the scheduled negotiation, each LWDB will submit to DETR-WISS a written **proposed local performance levels and justification**. Said justification must incorporate the above-referenced four factors and any additional factors not accounted for in the statistical adjustment model.
3. DETR-WISS will review the proposed *local* levels of performance and justification submitted by each of Nevada's LWDBs. DETR-WISS will take into consideration:
  - a. Past performance levels;
  - b. DETR-WISS' own review of the economic and demographic profile in the local area;
  - c. Circumstances not accounted for in the statistical adjustment model;
  - d. How the levels compare with other local areas;
  - e. Information and analysis submitted by the local area; and
  - f. The extent to which the levels will assist the state in meeting the *state's* negotiated levels of performance.
4. Negotiations will occur throughout the month of September of the negotiation year; once *local* levels are agreed upon, DETR-WISS will report these *local* levels to USDOL no later than September 30<sup>th</sup> of said negotiation year.

**NOTE:** *For the renegotiation process of PY 2021 local levels of performance, negotiations will occur throughout the month of March 2021; once local levels are agreed upon, DETR-WISS will report these local levels to USDOL no later than March 31, 2021.*

## Evaluation/Adjustment/Sanctions

At the end of the program year, DETR-WISS will apply the statistical adjustment model to each of the local areas to assess *local* levels of performance and establish *adjusted* levels of performance, if necessary.

There are three measurable performance success thresholds for performance established for Nevada, which are to be used at the local level:

- A threshold for performance failure is **90 percent** of the adjusted level of performance for the overall **state program score**. *Determined by an average of each indicator for each program.*
- A threshold for performance failure is **90 percent** of the adjusted level of performance for the overall **state indicator score**. *Determined by an average across the core programs for each indicator.*
- A threshold for performance failure is **50 percent** of the adjusted level of performance on any individual indicator of any individual program. *Determined by each individual measure.*

Each score will be determined based on the actual results achieved relative to the *adjusted* levels of performance. Following the end of the program year, the state will determine if corrective action is necessary and apply.

If a local area fails to meet the negotiated levels of performance for the core measures of performance for a program in any program year, technical assistance must be provided with funds reserved for the statewide workforce development activities pursuant to State Compliance Policy 1.16. Said technical assistance may include:

- Development of a performance improvement plan;
- A modified local plan; or
- Other actions designed to assist the local area in improving performance.

If a local area fails to meet the negotiated levels of performance for the core measures for a program for two consecutive years, corrective action must be taken which may include:

- Development of a reorganization and/or corrective action plan;
- De-designation sanctions;
- Prohibiting the use of particular service provider(s) or One Stop partners that have been identified as achieving poor levels of performance; or
- Other appropriate measures designed to improve the performance of the local area.

The LWDBs may appeal to the Governor to rescind or revise a reorganization plan and/or appeal any of the above-referenced sanctions not later than 30 days after receiving notice of the plan. The Governor has 30 days after receipt of the appeal to reach a final decision. In turn, LWDBs may appeal the Governor's decision to the Secretary of Labor. The reorganization plan becomes effective on the date it is issued

and remains in effect from that date unless the Secretary rescinds or revises the plan.  
[20 CFR §666.420(c); SCP 1.16]

### **Definitions:**

Expected levels of performance: The levels of performance on each primary indicator of performance on each core program submitted.

Negotiated levels of performance: The levels of performance for each primary indicator of each core program agreed to by the LWDBs and the state.

Actual results: The results reported for each primary indicator for each core program. Actual results will be compared to the adjusted levels of performance at the close of the program year to determine if an area failed to meet the adjusted levels of performance.

Adjusted levels of performance: The negotiated levels of performance, after being revised at the end of the program year using the statistical adjustment model. The statistical adjustment model is run to account for actual economic conditions and characteristics of participants serve.

Performed successfully: The local area met or exceeded the levels of performance that the state negotiated with the LWDBs for WIOA primary indicators of performance and that the respective local area has not failed any individual measure for the last two consecutive program years in accordance with a state-established definition, provided in the state plan, or met or exceeded performance.

### **Timeline for Negotiation Program Year:**

- July:** DETR-WISS provides notification to LWDBs of the negotiation process and schedules .
- August 15:** LWDBs submit their **proposed local performance levels and justification** to DETR-WISS.
- September 1:** DETR-WISS notifies LWDBs of acceptance or rejection of individual indicator goals.
- September 10-21:** Negotiation process with LWDBs, as needed.
- September 30:** DETR-WISS submits local performance negotiated levels due to USDOL.

**NOTE:** *For the renegotiation process of PY 2021 local levels of performance, negotiations will occur throughout the month of March 2021; once local levels are agreed upon, DETR-WISS will report these local levels to USDOL no later than March 31, 2021.*

### **Equal Opportunity and Nondiscrimination Statement:**

All recipients, and subrecipients/subgrantees must comply with WIOA's Equal Opportunity and Nondiscrimination provisions which prohibit discrimination on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, political

affiliation or belief, or, for beneficiaries, applicants, and participants only, on the basis of citizenship status or participation in a WIOA Title-I financially assisted program or activity.

**Action Required:**

This TAG is to become a part of your permanent records and made available to appropriate staff and subrecipients.

**Inquiries:**

If you have any questions about this TAG and/or this local level negotiation process, please contact staff at DETR-WISS, (775)684-0301 and request WIOA program lead.