

41217

Submission of Federal Rules Under the Congressional Review Act

☐ President of the Senate ☐ Speaker of the House of Representatives ☒ GAO

Please fill the circles electronically or with black pen or #2 pencil.

1. Name of Department or Agency

2. Subdivision or Office

US Department of Labor

Employment and Training Administration

3. Rule Title

Workforce Innovation and Opportunity Act Title I Non-Core Program Effectiveness in Serving Employers
Performance Indicator Final Rule

4. Rule Identification Number (RIN) or Other Unique Identifier (if applicable) RIN 1205-AC08

5. Major Rule ☐ Non-major Rule ☒

6. Final Rule ☒ Other ☐

7. With respect to this rule, did your agency solicit public comments? Yes ☒ No ☐ N/A ☐

8. Priority of Regulation (fill in one)

☒ Economically Significant; or
Significant; or
Substantive, Nonsignificant

☐ Routine and Frequent or
Informational/Administrative/Other
(Do not complete the other side
of this form if filled in above.)

9. Effective Date (if applicable) March 25, 2024

10. Is a concise Summary of the Rule provided? Yes ☒ No ☐

Submitted by: Sherril Hurd (signature)

Name: Sherril Hurd

Title: Supervisory Workforce Analyst

For Congressional Use Only:

Date Received: _____

Committee of Jurisdiction: _____



41217



	Yes	No	N/A
A. With respect to this rule, did your agency prepare an analysis of costs and benefits?	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
B. With respect to this rule, at the final rulemaking stage, did your agency			
1. certify that the rule would not have a significant economic impact on a substantial number of small entities under 5 U.S.C. § 605(b)?	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
2. prepare a final Regulatory Flexibility Analysis under 5 U.S.C. § 604(a)?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
C. With respect to this rule, did your agency prepare a written statement under § 202 of the Unfunded Mandates Reform Act of 1995?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
D. With respect to this rule, did your agency prepare an Environmental Assessment or an Environmental Impact Statement under the National Environmental Policy Act (NEPA)?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
E. Does this rule contain a collection of information requiring OMB approval under the Paperwork Reduction Act of 1995?	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
F. With respect to this rule, did your agency prepare a statement regarding compliance with the requirements of the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
G. Did you discuss any of the following in the preamble to the rule			
• E.O. 13132, Federalism	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
• E.O. 12630, Government Actions and Interference with Constitutionally Protected Property Rights	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
• E.O. 12866, Regulatory Planning and Review	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
• E.O. 12988, Civil Justice Reform	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
• E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other statutes or executive orders discussed in the preamble concerning the rulemaking process (please specify)			
<div>E.O. 13563 (Improving Regulation and Regulatory Review) E.O. 14094 (Modernizing Regulatory Review) E.O. 13272 (Proper Consideration of Small Entities in Agency Rulemaking) E.O. 13175 (Indian Tribal Governments)</div>			

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Title: Supervisory Workforce Analyst

For Congressional Use Only:

Date Received: 3/4/24

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E.O. 14094 (Modernizing Regulatory Review)
E.O. 13272 (Proper Consideration of Small Entities in Agency Rulemaking)
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E.O. 13175 (Indian Tribal Governments)

Technical Note: The term *Gy* (silicon) refers to the energy in Joules per kilogram absorbed by an unshielded silicon sample when exposed to ionizing radiation.*

* * * * *

6A293 Cameras not classified ECCNs 6A003 or 6A203 with all the following characteristics: (see List of Items Controlled).

License Requirements

Reason for Control: NP, AT

Control(s)	Country chart (see Supp. No. 1 to part 738)
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NP applies to entire entry.	NP Column 1
AT applies to entire entry.	AT Column 1

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: N/A

GBS: N/A

Special Conditions for STA

STA: License Exception STA (§ 740.20 of the EAR) may not be used for ECCN 6A293.

List of Items Controlled

Related Controls: See ECCNs 6A003 and 6A203.

Related Definitions: N/A

Items:

- a. Minimum exposure time of 1 microsecond or faster, and
- b. a throughput of 13.43 Giga Pixels/s or greater when taken at 205,000 frames/s.

Technical Note: Throughput = Width (pixels) x Height (pixels) x Frames per Second. The width and Height in pixels are those that are achieved at 205,000 frames per second.

Note: This entry includes cameras which may be referred to as high-speed digital imaging cameras, high-speed video cameras or slow-motion cameras or any other camera that meets these parameters.

* * * * *

Thea R. Kendler,

Assistant Secretary for Export Administration.

[FR Doc. 2024-03661 Filed 2-22-24; 8:45 am]

BILLING CODE 3510-33-P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 684, 686, and 688

[Docket No. ETA-2022-0005]

RIN 1205-AC08

Workforce Innovation and Opportunity Act Title I Non-Core Programs Effectiveness in Serving Employers Performance Indicator

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Final rule.

SUMMARY: The Workforce Innovation and Opportunity Act (WIOA) establishes six primary indicators of performance for certain WIOA-authorized programs and defines five of the six performance indicators. The U.S. Departments of Labor and Education (the Departments) published a final rule under RIN 1205-AC01 to define the sixth performance indicator—effectiveness in serving employers—as Retention with Same Employer into the implementing regulations for the six WIOA core programs. In this related final rule, the Department of Labor (DOL or the Department) is incorporating the same definition of the ESE performance indicator into regulations for the following WIOA title I non-core programs: the Indian and Native American (INA), the Job Corps, and the YouthBuild program. This final rule makes two changes from the notice of proposed rulemaking (NPRM) for the WIOA title I non-core programs: the final rule permits the use of supplemental wage information in the definition of the effectiveness in serving employers performance indicator, and it specifies that the definition is measuring retention in unsubsidized employment.

DATES: This final rule is effective March 25, 2024.

FOR FURTHER INFORMATION CONTACT:

Michelle Paczynski, Administrator, Office of Policy Development and Research, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW, Room N-5641, Washington, DC 20210, Telephone: 202-693-3700 (voice) (this is not a toll-free number), 1-877-872-5627, or 1-800-326-2577 (telecommunications device for the deaf).

SUPPLEMENTARY INFORMATION:

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 - C. Paperwork Reduction Act
 - D. Executive Order 13132 (Federalism)
 - E. Unfunded Mandates Reform Act
 - F. Executive Order 13175 (Indian Tribal Governments)

Acronyms and Abbreviations

AEFLA Adult Education and Family Literacy Act
 AJC American Job Center
 CFR Code of Federal Regulations
 Departments U.S. Departments of Labor and Education
 DOL or Department U.S. Department of Labor
 E.O. Executive Order
 ES Employment Service
 ETA Employment and Training Administration
 FR Federal Register
 GPMS Grantee Performance Management System
 ICR Information Collection Request
 INA Indian and Native American
 MSFW migrant and seasonal farmworker
 NAETC Native American Employment and Training Council
 NFJP National Farmworker Jobs Program
 NPRM or proposed rule notice of proposed rulemaking
 OIRA Office of Information and Regulatory Affairs
 OMB Office of Management and Budget
 PIRL Participant Individual Record Layout
 PRA Paperwork Reduction Act of 1995
 Pub. L. Public Law

PY Program Year
 REO Reentry Employment Opportunities
 RFA Regulatory Flexibility Act
 RIA Regulatory impact analysis
 RIN Regulation Identifier Number
 Stat. United States Statutes at Large
 UI unemployment insurance
 UMRA Unfunded Mandates Reform Act
 U.S.C. United States Code
 TEGL Training and Employment Guidance Letter
 VR Vocational Rehabilitation
 WIOA Workforce Innovation and Opportunity Act
 WIPS Workforce Integrated Performance System

I. Background and Rulemaking Authority

A. WIOA Background

President Barack Obama signed WIOA into law on July 22, 2014. WIOA superseded the Workforce Investment Act of 1998 and amended the Wagner-Peyser Act and the Rehabilitation Act of 1973. In WIOA sec. 503(f), Congress directed the Department to issue regulations implementing statutory requirements to ensure that the public workforce system operates as a comprehensive, integrated, and streamlined system to provide pathways to prosperity and continuously improve the quality and performance of its services to job seekers and employers. Additionally, WIOA sec. 189(a) permits the Secretary of Labor to prescribe rules and regulations to carry out title I of WIOA.

The law includes a common performance accountability system, consisting of six statutory primary indicators of performance, applicable to all WIOA core programs: adult, dislocated worker, and youth programs under title I of WIOA; the Adult Education and Family Literacy Act (AEFLA) program under title II; the Employment Service (ES) program authorized under the Wagner-Peyser Act as amended by WIOA title III; and the Vocational Rehabilitation (VR) program authorized under title I of the Rehabilitation Act as amended by WIOA title IV. WIOA also requires that the six statutory primary indicators of

performance apply to four WIOA title I, DOL-administered non-core programs: INA programs (WIOA sec. 166(e)(5)), the NFJP (WIOA sec. 167(c)(2)(C)), Job Corps (WIOA sec. 159(c)(1)), and YouthBuild (WIOA sec. 171(f)(1)) (hereinafter “title I non-core programs”).

Although not mandated by WIOA, the Department requires several other DOL-administered WIOA title I non-core programs and projects also to report on the WIOA sec. 116 primary indicators of performance. For example, the Department requires Reentry

Employment Opportunities (REO) grants (authorized under WIOA sec. 169 and annual appropriation acts) to report on the sec. 116 primary indicators of performance. The Department anticipates applying the definition of the effectiveness in serving employers performance indicator adopted in this final rule to those programs.

In WIOA, Congress directed the Department to issue regulations implementing statutory requirements to ensure that the public workforce system operates as a comprehensive, integrated, and streamlined system in order to provide pathways to prosperity and continuously improve the quality and performance of its services to job seekers and employers. On August 19, 2016, the Department issued the *Workforce Innovation and Opportunity Act; Final Rule* (DOL WIOA Final Rule) to implement WIOA for the title I non-core programs (81 FR 56071). That same day the Departments jointly issued the *Workforce Innovation and Opportunity Act; Joint Rule for Unified and Combined State Plans, Performance Accountability, and the One-Stop System Joint Provisions; Final Rule* (Joint WIOA Final Rule) to implement WIOA for the six core programs (81 FR 55791).

The WIOA statute defines five of the six performance indicators. However, the statute did not specify how the sixth performance indicator, effectiveness in serving employers, should be measured. Instead, WIOA directed the Departments to develop a definition for the effectiveness in serving employers performance indicator (WIOA sec. 116(b)(2)(A)(iv)).¹ At that time, the Departments concluded that there was not enough evidence of what should be measured to assess the effectiveness in serving employers to adopt a standard definition. Therefore, in the Joint WIOA Final Rule, the Departments determined that it was prudent to pilot three definitions for the sixth performance indicator to test the feasibility and rigor of three approaches to measure a State's effectiveness in serving employers

¹ Section 116(b)(2)(A)(i) of WIOA states the primary indicators of performance: (1) the percentage of participants who are employed during the second and (2) fourth quarters after exit from the program, (3) the median earnings of participants who are employed during the second quarter after exit, (4) the percentage of participants who obtain a recognized postsecondary credential during the program or within 1 year of exit, (5) the percentage of participants who achieve measurable skill gains during a program year, and (6) “indicators of effectiveness in serving employers.” This last indicator is the subject of this final rule. Definitions of the others were included in the WIOA regulations promulgated in August 2016 (81 FR 55791; see 20 CFR 677.155, 34 CFR 361.155, 34 CFR 463.155).

through its WIOA-authorized core programs. As discussed more fully below, during the pilot period, the Department, through guidance² and the “DOL-Only Performance Accountability, Information, and Reporting System” Information Collection Request (ICR), approved under Office of Management and Budget (OMB) Control Number 1205-0521, required the WIOA title I non-core programs to report on Retention with the Same Employer, one of the three definitions being piloted by the six WIOA core programs.

That pilot, as well as a study of the results from the pilot, are now complete. The definition in this final rule applies to both WIOA core programs—which are addressed in the concurrently published *Workforce Innovation and Opportunity Act Effectiveness in Serving Employers Performance Indicator; Joint Final Rule* (RIN 1205-AC01) (hereinafter referred to as Joint WIOA Effectiveness in Serving Employers Final Rule)—as well as the four title I non-core programs, which are addressed in this final rule.

WIOA secs. 159(c)(1) (Job Corps), 166(e)(5) (INA), 167(c)(2)(C) (NFJP), and 171(f)(1) (YouthBuild) specify that performance for these title I non-core programs must be assessed using the primary indicators of performance in sec. 116 of WIOA. On September 14, 2022, the Departments published a joint NPRM in which the Departments proposed to codify the approach for evaluating a WIOA core program's effectiveness in serving employers (87 FR 56318) (Joint WIOA Effectiveness in Serving Employers NPRM). On the same day, DOL published an NPRM in which the Department proposed to codify the approach for evaluating a WIOA title I non-core program's effectiveness in serving employers (87 FR 56340) (hereinafter referred to as the NPRM).

B. Summary of Changes From NPRM to Final Rule of the Effectiveness in Serving Employers Performance Indicator for WIOA Non-Core Programs

This final rule implements Retention with the Same Employer as the definition for effectiveness in serving employers for WIOA title I non-core programs, as proposed in the NPRM, with two changes from the NPRM made in response to comments received on the Joint WIOA Effectiveness in Serving

² ETA, TEGL No. 14-18, “Aligning Performance Accountability Reporting, Definitions, and Policies Across Workforce Employment and Training Programs Administered by the U.S. Department of Labor (DOL),” Mar. 25, 2019, https://wdr.doleta.gov/directives/corr_doc.cfm?docn=7611.

Employers NPRM, which were also relevant to the NPRM.

Specifically, in the Joint WIOA Effectiveness in Serving Employers Final Rule the Departments determined that supplemental wage information plays a vital role when wage records are either unavailable for a participant or difficult to obtain. For this reason, the Departments revised § 677.155(a)(1)(vi) and (c)(6) in the Joint WIOA Effectiveness in Serving Employers Final Rule to remove the requirement that wage records be used to document a participant's employment status for purposes of the effectiveness in serving employers performance indicator, thereby allowing for the use of supplemental wage data. Second, the Joint WIOA Effectiveness in Serving Employers Final Rule definition for effectiveness in serving employers adds the requirement that the participant must have been in "unsubsidized employment" in the second and fourth quarters after exit. The reasons for changing the Joint WIOA Effectiveness in Serving Employers Final Rule text also apply to the WIOA title I non-core programs. Therefore, the changes to the § 677.155 regulatory text have been carried over to this final rule at revised § 684.460(a)(6) for INA Youth, revised § 684.620(a)(6) for INA, revised § 686.1010(f) for Job Corps, and revised § 688.400(f) for YouthBuild.

C. Effectiveness in Serving Employers Performance Indicator Approaches for WIOA Core Programs, as Relevant to WIOA Title I Non-Core Programs

Section 677.155 sets forth the primary indicators by which the performance of core programs is evaluated, as required by WIOA sec. 116(b)(2)(A)(i). These primary indicators of performance apply to the core programs described in WIOA sec. 116(b)(3)(A)(ii), as well as to the title I non-core programs. These primary indicators of performance create a common language shared across the programs' performance metrics, support system alignment, enhance programmatic decision making, and help participants make informed decisions related to training. Sections 116(b)(2)(A)(i)(VI) and (b)(2)(A)(iv) of WIOA require the Secretaries of Labor and Education to jointly develop and establish the sixth performance indicator—effectiveness in serving employers—after consultation with representatives of State and local governments, business and industry, and other interested parties.

In the Joint WIOA Effectiveness in Serving Employers NPRM, the Departments proposed to define the effectiveness in serving employers

performance indicator in § 677.155(a)(1)(vi) as the percentage of participants with wage records who exited a program and were employed by the same employer in the second and fourth quarters after exit and specified that this is a statewide indicator reported by one core program on behalf of all six core programs in the State. In the NPRM, the Department proposed this same language for the WIOA title I non-core programs; however, as proposed in the NPRM, the statewide aspect of the proposed definition in the Joint WIOA Effectiveness in Serving Employers NPRM would not apply to WIOA title I non-core programs. The Department sought comment on how the proposed definition of effectiveness in serving employers performance indicator would impact the WIOA title I non-core programs.

Prior to selecting this single approach to propose, the Departments selected three approaches for measuring effectiveness in serving employers to be piloted by WIOA core programs. The Departments assessed the use of each of the three approaches with a focus on minimizing employer burden and using information that would provide an accurate picture of how well the public workforce system serves employers.

Under the guidance of the Departments,³ each State piloted its choice of any two of three definitions for the effectiveness in serving employers performance indicator for WIOA core programs: (1) *Retention with the Same Employer: Percentage of participants with wage records who exited from WIOA core programs and were employed by the same employer in the second and fourth quarters after exit*; (2) *Repeat Business Customer: Percentage of employers who have used WIOA core program services more than once during the last three reporting periods*; and (3) *Employer Penetration: Percentage of employers using WIOA core program services out of all employers in the State*.

The Departments assessed the pilot through a DOL contract that resulted in a final report titled *Measuring the Effectiveness of Services to Employers: Options for Performance Measures under the Workforce Innovation and Opportunity Act* (Final Pilot Study

³ This joint guidance, "Performance Accountability Guidance for Workforce Innovation and Opportunity Act (WIOA) Title I, Title II, Title III, and Title IV Core Programs," was concurrently issued on December 19, 2016, as TEGL No. 10–16 by the Department of Labor, and as Office of Career, Technical, and Adult Education Program Memorandum 17–2 and Rehabilitation Services Administration Technical Assistance Circular (TAC) TAC–17–01 by the Department of Education.

Report).⁴ Specifically, the study assessed each approach to defining the effectiveness in serving employers performance indicator for validity, reliability, practicality, and unintended consequences.⁵ Though the study did not definitively recommend one approach, in assessing the study's findings for each of the three approaches of the effectiveness in serving employers performance indicator, the Departments concluded that the Retention with the Same Employer approach provides a valid and reliable approach to measuring the indicator, while also placing the least amount of burden on States to implement.

D. Effectiveness in Serving Employers Performance Indicator for WIOA Title I Non-Core Programs

Although the four WIOA title I non-core programs discussed in this rule—Job Corps, INA, NFJP, and YouthBuild—did not participate in the core program pilot, these title I non-core program fund recipients (*i.e.*, Job Corps contractors and INA, NFJP, and YouthBuild grantees) have been required to report on Retention with the Same Employer since 2019, following the issuance of Training and Employment Guidance Letter (TEGL) No. 14–18 on March 25, 2019.⁶ In TEGL No. 14–18, the Department

⁴ S. Spaulding, et al., "Measuring the Effectiveness of Services to Employers: Options for Performance Measures under the Workforce Innovation and Opportunity Act," Jan. 2021, https://wdr.doleta.gov/research/FullText_Documents/ETAOP2021-17%20Measures%20of%20Effectiveness%20in%20Serving%20Employers_Final%20Report.pdf (hereinafter "Final Pilot Study Report").

⁵ See id. at 3–6 (stating that validity "is used to assess whether you are measuring what you intend to measure"; that reliability "refers to the ability to maintain consistency in data collection over time and across the organizations collecting the data"; that practicality means that the measure "must be relatively uncomplicated and simple to administer to avoid threats to reliability and validity" and "must be practical to use in administering programs"; and that unintended consequences are "negative consequences or behaviors that result . . . such as the displacement of other goals or conflict between goals").

⁶ See Joint WIOA Final Rule, 81 FR 55791, 55845–55846 (discussing the pilot and the three proposed definitions for the effectiveness in serving employers performance indicator); ETA, TEGL No. 10–16, "Performance Accountability Guidance for Workforce Innovation and Opportunity Act (WIOA) Title I, Title II, Title III, and Title IV Core Programs," Dec. 19, 2016, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=8226; ETA, TEGL No. 14–18, "Aligning Performance Accountability Reporting, Definitions, and Policies Across Workforce Employment and Training Programs Administered by the U.S. Department of Labor (DOL)," Mar. 25, 2019, https://wdr.doleta.gov/directives/corr_doc.cfm?docn=7611 (referring the title I non-core programs to TEGL No. 10–16 for a description of the pilot).

implemented WIOA's performance reporting requirements by requiring the title I non-core programs to use the Retention with the Same Employer definition of the effectiveness in serving employers performance indicator.

Under this final rule, the WIOA title I non-core programs will be subject to the same data collection and reporting requirements as they have been under TEGL No. 14–18. The TEGL specified that, starting in Program Year (PY) 2018 (or the point at which wage matching data becomes available to the program), the Job Corps, INA, NFJP, and YouthBuild programs were to begin tracking the effectiveness in serving employers performance indicator using the Retention with the Same Employer definition.

Consistent with related guidance issued in PYs 2016, 2017, and 2018,⁷ these programs were required to use the Workforce Integrated Performance System (WIPS), the online performance reporting system for the Department's employment and training grants,⁸ to submit information that would be used for calculating the effectiveness in serving employers performance indicator.⁹ These requirements are all included in an existing information collection, the WIOA Participant Individual Record Layout (PIRL) (ETA 9172), in the "DOL-Only Performance Accountability, Information, and Reporting System" ICR, approved under OMB Control Number 1205–0521.

By codifying the use of Retention with the Same Employer for this indicator, this final rule requires programs to use already-collected data and the existing performance reporting system, WIPS.

Thus, programs will not have additional burden to collect and report on any other type of additional data to calculate and report results for other possible approaches to defining this performance indicator.

Finally, TEGL No. 14–18 also put forth program-specific timelines for implementation of the WIOA reporting requirements factoring in data lags associated with the performance indicator as well as known implementation actions such as case management system development, which are further detailed in each program-specific section in the section-by-section discussion of the final rule below (Section II).

In summary, for the Job Corps, INA, and YouthBuild programs, this final rule codifies in regulation the existing practice of reporting Retention with the Same Employer in order to measure a program's effectiveness in serving employers and adds the option for WIOA title I grantees and Job Corps contractors to choose to provide supplemental wage information on the measure. The Department will use this same definition for the effectiveness in serving employers performance indicator for the NFJP program. Existing guidance in Appendix VI of TEGL No. 14–18 addresses the use of supplemental wage information for WIOA core performance indicators, so the use of supplemental wage information will not be new to the regulated community. The Department intends to issue updated guidance regarding use of supplemental wage information specifically for the effectiveness in serving employers performance indicator for these programs.

In the NPRM, the Department solicited comments to better inform implementation of the effectiveness in serving employers performance indicator for these programs, particularly challenges that they might face in implementing this proposed definition of the effectiveness in serving employers performance indicator; challenges they have faced under TEGL No. 14–18; and other definitions that might be more suitable.

E. Public Comments Received on the Proposed Rule

The NPRM invited written comments from the public concerning the proposed rule through November 14, 2022. No commenters requested an extension of the comment period. The comments received may be viewed by entering docket number ETA–2022–0005 at <https://www.regulations.gov>.

The Department received 18 comments in the docket for this rulemaking. Of these 18 comments, 10 were unique, 6 were form letter copies, 1 was a duplicate, and 1 was outside the scope of the proposed rule. Public sector commenters included State and local government agencies and one-stop operators. Non-profit sector commenters included professional associations and career or employment services providers. The Department also received comments from anonymous commenters.

This section of the final rule provides a general overview of the comments received. Section II (Section-by-Section Discussion of this Final Rule) describes the comments in more detail and provides the Department's responses to them.

Some commenters expressed overall concerns about and opposed the proposed Retention with the Same Employer definition of the effectiveness in serving employers performance indicator. Other commenters suggested that the Department consider other potential approaches for defining the effectiveness in serving employers performance indicator. The Department's responses to concerns about Retention with the Same Employer definition and suggestions for alternative are discussed below in Section II.A.

With regard to impact or concerns about the four specific WIOA title I non-core programs subject to this rule, the Department received a total of three comments. The Department did not receive any comments on the impacts of the proposed Retention with the Same Employer effectiveness in serving employers definition on three of the four programs: NFJP, Job Corps, or YouthBuild programs. The proposed regulatory changes for the INA programs received one comment submission that expressed concerns about reporting burden for INA programs under the proposed rule and requested that the Department consult with the WIOA sec. 166 programs, the Native American Employment and Training Council (NAETC), and Tribal officials to develop and establish the effectiveness in serving employers performance indicator. Another commenter discussed the impact of the proposed rule on non-core WIOA programs providing employment services to two specific target demographics: justice-involved individuals and older workers. The Department's responses to the INA-related comments are discussed below in Section II.B and responses to comments for programs serving justice-

⁷ ETA, Training and Employment Notice (TEN) No. 08–16, "Implementation of an Integrated Performance Reporting System for Multiple Employment and Training Administration (ETA) and Veterans' Employment and Training Service (VETS) Administered Programs," Aug. 24, 2016, https://wdr.doleta.gov/directives/attach/TEN/TEN_08-16.pdf; ETA, TEN No. 40–16, "Workforce Integrated Performance System (WIPS) User Resource Library Information Page," Apr. 11, 2017, https://wdr.doleta.gov/directives/attach/TEN/TEN_40-16_Acc.pdf; ETA, TEGL No. 14–18, "Aligning Performance Accountability Reporting, Definitions, and Policies Across Workforce Employment and Training Programs Administered by the U.S. Department of Labor (DOL)," Mar. 25, 2019, https://wdr.doleta.gov/directives/corr_doc.cfm?docn=7611.

⁸ ETA, "Workforce Integrated Performance System (WIPS)," <https://www.dol.gov/agencies/eta/performance/wips> (last visited October 30, 2023).

⁹ Specifically, the programs are required to report the Social Security Number (SSN) from the relevant participants who chose to disclose their SSN in order to obtain an unemployment insurance (UI) wage record match or may use available supplemental wage information, as directed in program-specific guidance. These data are used to identify whether a program participant's employer is the same in the second and fourth quarters after exit from the program.

involved individuals and older workers are discussed below, in Section II.F.

II. Section-by-Section Discussion of This Final Rule

Section II of this final rule provides the Department's responses to comments and explains the two changes in the final rule from the proposed rule. Section II.A discusses comments received on the proposed definition for and implementation of the effectiveness in serving employers performance indicator for the WIOA title I non-core programs. Sections II.B, II.C, II.D, and II.E address comments received on the proposed changes to ETA's INA program regulations (20 CFR part 684), NFJP regulations (20 CFR part 685), Job Corps program regulations (20 CFR part 686), and YouthBuild program regulations (20 CFR part 688) to adopt Retention with the Same Employer as the definition for the effectiveness in serving employers performance indicator, respectively. Section II.F discusses comments received relating to impacts that this final rule could have on other non-core WIOA programs for which the Department has applied the WIOA sec. 116 primary indicators of performance.

A. Comments Received on the Effectiveness in Serving Employers Performance Indicator, as Relevant to WIOA Title I Non-Core Programs

Support for Retention With the Same Employer Definition

Comments: Expressing support for Retention with the Same Employer, one commenter argued that Retention with the Same Employer is easy to administer and consistent across WIOA programs. Similarly, another commenter stated that it would be the least burdensome of the WIOA core programs' three piloted approaches to administer.

Department Response: We appreciate commenters supporting Retention with the Same Employer as the definition for effectiveness in serving employers. We agree that this definition best aligns with WIOA employment performance indicators by using existing PIRL terms and data elements (*i.e.*, use of "participants," "unsubsidized employment," and "exit") and measuring the same quarters as the employment rate indicators (*i.e.*, the second and fourth quarters after program exit). Additionally, we agree that Retention with the Same Employer is the least burdensome definition of the WIOA core programs' three piloted measures, effectively illustrates the workforce system's ability to serve employers by reducing new employee

turnover, and minimizes the burden on WIOA title I non-core grantees and Job Corps contractors and employers in measuring effectiveness in serving employers.

Retention With the Same Employer and Job Seeker/Worker Mobility

Comments: One commenter expressed concern that the Retention with the Same Employer measure could limit job seekers' ability to move from low-wage jobs into higher wage jobs. Another commenter stated that measuring success through Retention with the Same Employer is contrary to American Job Center (AJC) practice and DOL guidance encouraging job seekers to work to gain skills and experience that allow them to move to higher paying jobs. A third commenter also opposed the proposed definition, stating that service providers do not play a significant role in how long a participant decides to stay with the same employer. Another commenter stated that high housing costs and inflation have caused many workers to move and change employers, and Retention with the Same Employer is a particularly undesirable measure in States where many workers are transient.

Department Response: In the NPRM, the Department acknowledged that the limitations for Retention with the Same Employer could include the unintended consequences that this approach may be at odds with an employee seeking a higher paying job or employment benefits, and the possibility that the performance outcome for this indicator might not be the result of an employer receiving a service from the workforce development system. The Department agrees that many circumstances affect an employer's retention of employees, some of which may be outside the purview of WIOA services, including the general economy and business landscape of an area, which may include seasonal employers, transient worker populations, or industries with cyclical work cycles that could impact calculated retention rates. However, the Department determined that Retention with the Same Employer is the preferred approach of measuring effectiveness in serving employers, due to the prioritization of and weight placed on the advantages of Retention with the Same Employer: stable data collection mechanism, alignment with other employment performance indicators, and demonstrating maintained relationships between employers and employees. For these reasons, the Department defines effectiveness in serving employers for WIOA title I non-

core programs using Retention with the Same Employer in this final rule.

The Department notes that individuals who move to a new job with the same employer would be considered a successfully retained participant under this indicator because the indicator measures retention "with the same employer" in the second and fourth quarters; there is no requirement the participant remain in the same employment status (*e.g.*, full-time vs. part-time) or position with the employer to count as a positive outcome. The Department also notes that the employer that will be measured for purposes of this indicator for this particular participant is not always the same employer that received services from a WIOA title I non-core program and initially hired the participant.

The Department acknowledges that individuals may leave for higher wages with a new employer, but WIOA title I non-core grantees and program operators can seek to address these concerns in a variety of ways that are beneficial to both the employer and the participant, such as striving to find quality job placements or working with employers to develop career pathways and good jobs that more effectively incentivize participants they have hired to maintain their employment with the same employer. Despite these concerns, the Department is adopting the Retention with the Same Employer definition of the indicator for multiple reasons, specifically because it: is the least burdensome since it uses data elements reported by WIOA title I non-core grantees and Job Corps contractors for other performance indicators; has a stable data collection mechanism in that the requisite data are already reported via an OMB-approved information collection request; aligns with other employment performance indicators in that it uses similar terminology and data elements; and demonstrates maintained relationships between employers and employees, thereby demonstrating that the services provided by the WIOA programs not only meet the long-term needs of the participants but also the needs of employers in each State. The Department gives particular weight to reporting burden, especially for the competitive grantees with generally less reporting capacity than States, in order to allow WIOA title I non-core grantees and Job Corps contractors to focus on services and improve the accuracy and completeness of the data.

Retention With the Same Employer and Other Aspects of Effectiveness in Serving Employers

Comments: One commenter asserted that Retention with the Same Employer has no mechanism for linking the retention of a particular employee with instances of employer services being provided, therefore only indirectly reflecting effectiveness in serving employers and failing to inform strategic action to improve performance.

Another commenter noted Retention with the Same Employer does not speak to “acuity” of a job placement (*e.g.*, how difficult a position was to fill, how in demand the position is, whether the role was seasonal specific and not intended to maintain retention, rarity of skill set, or time to hire).

One commenter asserted that the proposed measure is not a good indicator of WIOA program performance because it is significantly impacted by employers’ choices as to wages, working conditions, and workplace culture, over which WIOA programs have little control.

Another commenter expressed concern that Retention with the Same Employer would not capture all services provided to employers by workforce systems; in particular, services to employers that are not attached to WIOA-funded job seekers.

Department Response: The Department recognizes that there are many factors beyond the control of the programs that can impact a participant’s retention with the same employer. However, as noted previously, the Department has determined that an indication that an employee maintains employment with the same employer in both the second and fourth quarters after exiting from a WIOA program demonstrates a level of success for employers (*i.e.*, successfully preparing participants to fill jobs that meet employers’ needs), as well as a success for WIOA service providers in matching the employer with the job seeker.

Regarding the commenter’s concern that it would be inappropriate to only measure success for WIOA-enrolled customers, the Department notes that the services delivered by WIOA-funded program operators routinely benefit the broader employer community by increasing basic skills of the candidate pool, enhancing free job posting and search tools, and preparing workplaces and job seekers with disabilities for successful employment. Program participants who receive services that successfully prepare them to fill jobs that meet employers’ needs benefit all the employers in the local economy,

regardless of whether a specific employer directly received services from a grantee. Therefore, the Department has determined that excluding employers that have not received a service from a grantee under a non-core program or a Job Corps contractor within the reporting period is not an appropriate holistic measure of the workforce system’s impact on Retention with the Same Employer.

In fact, such an approach would be contrary to the purpose of the performance measure itself. For example, it would be possible for a participant to obtain employment as a result of services received under a WIOA title I non-core program, but change jobs within the first quarter after exiting the program to a new job where the participant remained for at least a year. In this final rule, the Department defines the effectiveness in serving employers performance indicator as the participant’s Retention with the Same Employer in the second and fourth quarters after exiting the program. In other words, in this example, the employer that will be measured for purposes of this indicator for this particular participant is not the same employer that received services from a WIOA title I non-core program and initially hired the participant. Regarding concerns that the Retention with the Same Employer indicator does not measure the acuity of the WIOA participant’s job placement, the Department acknowledges that this metric is one of many aspects of effectiveness in serving employers but believes that retention is an important aspect to measure as stated by employer representatives during stakeholder engagements. The Department encourages grantees and contractors under WIOA title I non-core programs to also measure effectiveness in serving employers using other methods for their own program management purposes, though these other methods are not required to be reviewed or submitted to the Department.

Regarding whether the proposed indicator measures all aspects of effectiveness in serving employers, the Department believes there are many aspects to a program’s effectiveness in serving employers, some of which are very difficult to quantify and report. Therefore, the Department chose one aspect of effectiveness that employers stated would be beneficial and can be measured across WIOA core programs and title I non-core programs with minimal burden to employers—employee retention.

Retention With the Same Employer Is Not a Good Fit for Certain Sectors

Comments: A commenter argued that Retention with the Same Employer would be particularly problematic for seasonal employment in agriculture, hospitality, and construction. This commenter urged the Department to modify the statistical adjustment model to account for fluctuations in the seasonal workforce.

Department Response: In cases of temporary seasonal work, WIOA title I non-core grantees and Job Corps contractors should strive to place participants into long-term employment opportunities when possible. While a seasonal employee may not be a positive outcome in the indicator, the Department understands this concern and does not expect grantees and Job Corps contractors to achieve a 100 percent positive outcome. The Department will take these factors into account when analyzing a grantee’s performance on this indicator. For example, the Department could exercise its discretion when establishing performance goals to set feasible targets for the grantee to meet taking into account that programs that have high placement in seasonal employment might have a lower retention rate than other programs. Furthermore, for the INA and NFJP programs, the WIOA statute requires the Department to use a statistical adjustment model, when practicable. When the Department uses a statistical adjustment model for establishing effectiveness in serving employers indicator targets for WIOA title I non-core programs, the Department anticipates that the statistical adjustment model will adjust for these issues.

Performance Goals for Retention With the Same Employer

Comment: One commenter asserted that, while the proposed measure might be the least burdensome of the piloted measures, meeting performance goals under it would be challenging and negate any cost savings.

Department Response: The Department recognizes that drawbacks to this definition exist for the WIOA title I non-core programs, especially due to the unique nature of each of these programs. Nevertheless, the Department believes that the benefits of this approach outweigh those drawbacks. As explained above, the benefits of this definition are that Retention with the Same Employer will be straightforward to implement because the measure uses already-collected data and the existing performance reporting system, thereby

avoiding any additional burden. Moreover, the Department intends to mitigate any drawbacks, if necessary, by exercising its discretion, to establish appropriate performance goals and place appropriate weight on the effectiveness in serving employers performance indicator. WIOA title I non-core programs that serve youth, for example, focus on employment, career readiness, retention in education, and life skills to support youth participants in obtaining academic and career skills necessary to be successful in the job market, and success for youth is more likely to include progression in jobs. Recognizing the unique circumstances WIOA title I non-core programs may face, the Department expects variability in the reported outcomes from program to program, especially for programs serving youth, and intends to take this variability into account when negotiating levels of performance. These considerations are consistent with TEGL No. 14–18 guidance for applicability of primary performance indicators, which specifies that, as a general matter, participants' outcomes on the applicable primary indicators of performance may be relevant for negotiating levels of performance, decisions related to contract awards and renewal, and the award of competitive grants.¹⁰

Other Approaches To Measuring Effectiveness in Serving Employers

Comments: One commenter opposed to the proposed Retention with the Same Employer definition and stated that the other piloted measures for the WIOA core programs more directly relate to WIOA employer services delivered. The commenter stated that the Repeat Business Customer measure would reflect the employer's perception or experience of the quality of services received and that the Employer Penetration measure would represent the level of impact of employer services in a State. Another commenter remarked that Retention with the Same Employer was the least selected approach among the piloted measures for the WIOA core programs.

Another commenter recommended that the Department review other methods of assessing effectiveness in serving employers, including: measuring the use of incumbent worker training to serve local businesses, scored based on the overall percentage of WIOA funds used and the number of

businesses served. Another commenter recommended that effectiveness in serving employers should positively count any individual who is employed in the fourth quarter after exit and who has improved either their wages, benefits, or working conditions since the second quarter after exit, rather than only those with the same employer. Another commenter asserted that the proposed rule does not establish an objective standard for measuring effectiveness in serving employers, and suggested that the measure could address timeliness, professionalism, or English proficiency.

Department Response: The Department appreciates these suggestions and acknowledges the potential benefits of the different proposed approaches for measuring the effectiveness in serving employers indicator, however the Department does not think that these metrics apply well to the WIOA title I non-core programs due to differences in program design. Additionally, the Department considered the possibility of implementing more than one metric for measuring effectiveness in serving employers. However, the Department determined a single indicator approach is most logistically feasible due to its alignment with the existing performance indicator structure (*i.e.*, the performance indicators for employment in the second and fourth quarters after exit, which are existing performance indicators on which all programs already report) and its reporting burden to WIOA title I non-core program grantees and contractors and employers relative to the other definitions piloted by the core programs.

The suggested alternative approaches mentioned in the comments, such as Employer Penetration and Repeat Business Customer, were ultimately not selected as the definition for the effectiveness in serving employer performance indicator due to: (1) the nature of a very low employer penetration rate compared to all businesses within a State, leading to difficulties in improving the measure over time; and (2) the fact that a satisfied business may not need to partner with the State workforce system again. Additionally, these alternative measures are not based on existing standardized reporting mechanisms and would be impractical to apply to all grantees across WIOA core programs and WIOA title I non-core programs.

Regarding the commenter's observation that the fewest number of States selected Retention with the Same Employer measure for the WIOA core program pilot and the commenter's

interpretation that this lowest adoption rate indicates that States did not think it was a useful measure for the WIOA core program, the Department did not inquire why States chose certain measures during the pilot period and notes that there is no evidence that a lower adoption rate correlates with a lack of usefulness in measuring effectiveness in serving employers in the State. The Department notes that Retention with the Same Employer was the easiest measure for States to implement for the WIOA core programs based on it being calculated from existing PIRL elements. Therefore, it is plausible that fewer States chose to pilot this measure for WIOA core programs because they already knew how to calculate this measure and would not have needed to test how to implement it in their State. They may have wanted to assess how the two other pilot measures would work for WIOA core programs.

The Department appreciates the commenters' ideas for additional data points to be collected and encourages WIOA title I non-core program grantees and Job Corps contractors to do so where it aids in guiding service delivery policies. Specifically, a commenter recommended including collecting and reporting data on: the number of job orders posted and number of candidates referred per posting; use of incumbent worker training (by percentage of WIOA funds used and number of businesses served); number, array, and availability of business services offered by a workforce development board or AJC; funding passed from workforce development boards or AJCs through to local businesses; or number of businesses engaged with Registered Apprenticeship opportunities through workforce development boards or AJCs. The Department declines to use these additional data points in defining the effectiveness in serving employers indicator because they are not applicable to all of the WIOA title I non-core programs and would, therefore, not further the goal of consistent performance measurement across all WIOA programs. In cases where the metric is a count of services, these suggested data collection points would merely measure the quantity of services provided to employers rather than the effectiveness of those services rather than quality or effectiveness. The Department believes these suggestions would measure outputs compared to an outcome. In most cases, an output like the number of services provided may not correlate to the ultimate goal, placing and retaining quality employees

¹⁰ ETA, TEGL No. 14–18, "Aligning Performance Accountability Reporting, Definitions, and Policies Across Workforce Employment and Training Programs Administered by the U.S. Department of Labor (DOL)," p. 8, Mar. 25, 2019, https://wdr.doleta.gov/directives/corr_doc.cfm?docn=7611.

in this case, and therefore is not ideal for measuring effectiveness in serving employers.

Regarding suggestions that the measure could address timeliness, professionalism, or English proficiency of participants, the Department has considered these approaches, but rejects them and declines to make revisions. These types of factors are subjective, not easily measurable, and may require the use of surveys. The Department notes that employer satisfaction surveys introduce a higher level of burden and potentially inconsistent results compared to the Retention with the Same Employer metric. Furthermore, during previous webinars and town halls with State workforce agencies, members of the employer community, and other stakeholders that the Departments held in September and October 2014 to inform the development of the Joint WIOA NPRM (80 FR 20609) and the Joint WIOA Final Rule (81 FR 55848), employers specifically commented that they consider satisfaction surveys burdensome and recommended they not be used in this indicator.

After careful consideration of public comment opportunities, ongoing stakeholder engagement efforts,¹¹ review of WIOA core program pilot data and narrative input submitted since 2017 through required annual performance reports for WIOA core programs,¹² and a third-party study, the Department is not persuaded to change course and adopt either of the other alternative definitions for the effectiveness in serving employers performance indicator for the WIOA title I non-core programs. Instead, as discussed above, the Department concluded that the Retention with the Same Employer approach provided a valid and reliable approach to measuring the indicator while placing the least amount of burden on WIOA

title I non-core program grantees and Job Corps contractors to implement.

Data Sources for Retention With Same Employer

Comment: One commenter stated that workforce programs may not receive hiring outcome information and may be unable to report data for performance measures. The commenter also expressed concern that wage records are not readily available for Federal, military, and self-employment, which could significantly impact the reported performance of States with high proportions of such employment.

Department Response: The Department proposed that the effectiveness in serving employers indicator only include participants whose employment status is obtainable through wage records because wage records are the least burdensome records to use and they are the most standardized and statistically valid records available. Most employers are covered through unemployment insurance (UI) wage records and, therefore, wage records remain the most accurate and least burdensome method of calculating this indicator.

However, the Department acknowledges that certain categories of employment, such as entrepreneurial employment, Federal employment, employment with the U.S. Postal Service and the military, and farmwork, are not reflected in State UI wage record databases. Additionally, participants are not required to provide Social Security numbers, which are needed to use wage records, to obtain services and some participants may be reluctant to share this information.

To ensure that effectiveness in serving these additional employers is assessed, the Department concurs with commenters that the Retention with the Same Employer measure should be expanded to include the number of participants with wage records or supplemental wage information who exit during the reporting period and were employed by the same employer during the second quarter after exit and the fourth quarter after exit divided by the number of participants with wage records or supplemental wage information who exit and were employed during the second quarter after exit. Organizations collecting supplemental wage information for the purposes of calculating Retention with the Same Employer must be able to ascertain that the participant's wage information reflects the same establishment (which may include tax documents, payroll records, employer records, and follow-up surveys from

program participants) in both the second and fourth quarters after exit.

The Department agrees that supplemental wage information could play a vital role when wage records are either unavailable for a participant or difficult to obtain. For this reason, we have revised proposed §§ 684.460(a)(6), 684.620(a)(6), 686.1010(f), and 688.400(f) to remove the requirement that wage records be used to document a participant's employment status for purposes of the effectiveness in serving employers performance indicator. This change allows for the effectiveness in serving employers indicator to include the same data sources as other employment-based primary indicators of performance, including supplemental wage information.

As noted above, the Department also wants to make clear the final rule uses the term "unsubsidized employment" to align the effectiveness in serving employers performance indicator to WIOA statutory language, specifically referring to unsubsidized employment in the second and fourth quarters after exit, which are key inputs to this indicator's definition of Retention with the Same Employer. These changes to the § 677.155 regulatory text for WIOA core programs have been carried over to this final rule at revised § 684.460(a)(6) for INA Youth, revised § 684.620(a)(6) for INA, revised § 686.1010(f) for Job Corps, and revised § 688.400(f) for YouthBuild, where the regulatory text changes were intended to align with the § 677.155 WIOA core programs definition of the effectiveness in serving employers performance indicator.

B. Part 684 – Indian and Native American Programs

Part 684 governs the INA programs authorized under WIOA sec. 166, including programs for Native American youth (INA Supplemental Youth Services). The INA programs are intended to support employment and training activities for INA program participants in order to develop more fully academic, occupational, and literacy skills and to serve unemployed and low-income Indian and Native American populations seeking to achieve economic self-sufficiency consistent with the goals and values of the particular communities. Where active, INA programs are required one-stop center partners. The Department administers these programs to maximize Federal commitment to support the growth and development of INAs and their communities as determined by representatives of such communities while meeting the applicable statutory and regulatory requirements.

¹¹ ETA's WorkforceGPS technical assistance website provides access to materials from trainings and stakeholder engagements, including: (1) the Effectiveness in Serving Employers Resource Page accessible at <https://performancereporting.workforcegps.org/resources/2018/01/29/21/13/Effectiveness-in-Serving-Employers-Resource-Page>; (2) the 2019 Performance Accountability Training accessible at https://performancereporting.workforcegps.org/resources/2019/10/03/20/25/WIOA_2019_Performance_Accountability_Training; and (3) the January 2020 Peer Learning Group event accessible at <https://www.workforcegps.org/events/2020/01/13/17/40/WIOA-Performance-Peer-Learning-Group-Effectiveness-in-Serving-Employers>.

¹² Annual performance reports can be found on ETA's website. ETA, "Workforce Performance Results," <https://www.dol.gov/agencies/eta/performance/results> (last visited Oct 30, 2023).

WIOA sec. 166(h)(2) requires the Department to reach an agreement with the entities described in WIOA sec. 166(c) as to the levels of performance required for each core indicator, including an effectiveness in serving employers performance indicator. The Department is also required to work with the NAETC to develop a set of performance indicators and standards for the INA adult and youth programs in addition to the primary indicators used to measure performance (WIOA sec. 166(h)(1)(A)).

Section III.F of this document, which pertains to Executive Order (E.O.) 13175 (Indian Tribal Governments), summarizes details from the Department's efforts to engage with INA program grantees and representatives of Tribal entities to explain how the indicator works and receive feedback on concerns INA program grantees may have with the effectiveness in serving employers performance indicator.

In response to the NPRM, the Department received feedback on the proposed use of Retention with the Same Employer as the effectiveness in serving employers performance indicator for INA programs.

Comments: A commenter expressed concern that the proposed rule would increase the reporting burden for the INA programs under WIOA sec. 166 due to the greater complexity of the performance measures used and urged the Department to consider how effectiveness in serving employers performance indicator will be implemented and managed. The commenter suggested that grantees should not be penalized if reported outcomes do not meet established target levels for the effectiveness in serving employers performance indicator, and that the indicator should instead serve only as "credit for job retention as required by the program."

The commenter also discussed the regulatory background requiring WIOA sec. 166 programs to be consistent with the self-determined economic and social development goals of the Indian, Alaska Native, and Hawaiian communities served, the Indian Self-Determination and Education Assistance Act, and the government-to-government relationship between the Federal Government and Indian Tribal Governments, and concluded that the effectiveness in serving employers performance measure does not meet the needs of the communities represented and should not be applied to the WIOA INA programs for adult and youth.

Department Response: The Department appreciates concerns about reporting burden and acknowledges the

challenges related to reporting for INA program grantees. The Department continues to work to ensure that all INA program grantees have the systems and resources needed to report the information required for this performance indicator. Part of this is accomplished by the Department continuing to conduct UI wage record matching on behalf of grantees for all employment-related performance indicators to mitigate any reporting burdens. Because the final rule adds the option for grantees to provide supplemental wage information, but does not require use of supplemental information, grantees may elect to rely on UI wage record matching as the Department conducts wage matching on behalf of INA grantees. The Department also notes that this final rule is codifying in regulations what is already required of grantees currently in the "DOL-Only Performance Accountability, Information, and Reporting System" ICR, approved under OMB Control Number 1205-0521, and therefore grantees should not see an increased burden in reporting on the effectiveness in serving employers indicator.

The Department acknowledges the commenter's concern about the impact of the effectiveness in serving employers indicator on grantee performance reports. The Department intends to exercise its discretion to place appropriate weight on the effectiveness in serving employers performance indicator relative to other indicators of performance in assessing current or past grantee performance. For example, the Department could exercise its discretion when reviewing grantee performance during monitoring in order to take all indicators into consideration including the additional measures described in TEGL No. 04-19, "Waiver Authority for the INA Program and Implementation of Additional Indicators of Performance," discussed further below. The Department could also exercise its discretion when setting criteria in grant competitions, such as limiting the weight the Department places on previous performance of this measure or only considering it alongside the employment goals, economic situation, and unique circumstances of the individuals the grantee serves. Recognizing the unique circumstances WIOA title I non-core programs may face, the Department expects variability in the reported outcomes from program to program, especially for programs serving youth, and intends to take this variability into account when establishing levels of performance.

These considerations are consistent with TEGL No. 14-18 guidance for applicability of primary performance indicators, which specifies that, as a general matter, participants' outcomes on the applicable primary indicators of performance may be relevant for establishing levels of performance, decisions related to contract awards and renewal, and the award of competitive grants.¹³

The Department also notes that WIOA sec. 166(i)(3) and the WIOA regulations at 20 CFR part 684, subpart I allow the Department to waive requirements, including performance requirements, that are inconsistent with the specific needs of INA grantees if certain conditions are met. Based on consultation with the NAETC, the Department issued guidance TEGL No. 04-19, "Waiver Authority for the INA Program and Implementation of Additional Indicators of Performance,"¹⁴ which explains how INA grantees can request waivers of performance indicators. With this final rule and consistent with this waiver guidance, the Department will accept and promptly make determinations on requests submitted by grantees for waivers of performance indicators, including effectiveness in serving employers, so that grantees can structure their performance indicators to best fit the economic circumstances of the communities served and improve positive outcomes.

The Department appreciates the commenter's suggestion to use the effectiveness in serving employers indicator as a "credit," rather than for assessing the performance of the grantee. However, the Department has determined that WIOA sec. 166(h) requires the use of all performance indicators under WIOA sec. 116(b)(2)(A), including the indicator on effectiveness in serving employers at sec. 116(b)(2)(A)(i)(VI), for assessing performance. Moreover, the Department disagrees that using this measure as a "credit" is appropriate. The Department recognizes that there are many ways to consider the success of grantees in addition to performance measurement outcomes. The Department gathers qualitative information from grantees in grant competitions and through grant

¹³ ETA, TEGL No. 14-18, "Aligning Performance Accountability Reporting, Definitions, and Policies Across Workforce Employment and Training Programs Administered by the U.S. Department of Labor (DOL)," p. 8, Mar. 25, 2019, https://wdr.doleta.gov/directives/corr_doc.cfm?docn=7611.

¹⁴ ETA, TEGL No. 04-19, "Waiver Authority for the INA Program and Implementation of Additional Indicators of Performance," Aug. 29, 2019, https://wdr.doleta.gov/directives/attach/TEGL/TEGL_4-19_acc.pdf.

monitoring to consider the totality of grantee performance. Therefore, the Department will not use this indicator as a “credit.” The Department notes that WIOA sec. 116(h)(2) requires the Department to reach agreement on the levels of performance with grantees taking into account economic conditions, characteristics of the individuals served, and other appropriate factors. The Department will take these factors into consideration in establishing the anticipated level of performance on this indicator and, as mentioned above, the Department intends to exercise its discretion and apply appropriate weight to the effectiveness in serving employers performance indicator relative to the other primary indicators of performance in assessing current or past grantee performance.

Regarding the commenter’s conclusion that performance measures do not meet the needs of the communities represented and should not be applied to the WIOA INA programs for adult and youth, the Department acknowledges the concerns of Tribal communities and their unique needs. The Department notes that WIOA makes provision for the Department to negotiate additional performance indicators and standards taking into account the needs of participants and the economic circumstances of the communities INA program grantees serve. See WIOA sec. 166(h)(1). The Department has negotiated these additional performance indicators which are described in TEGL No. 04–19. INA program grantee performance also is assessed based on these outcomes. Effectiveness in serving employers is not the only metric for assessing INA program grantee performance.

We also note that WIOA requires the performance of these programs to be measured using the WIOA sec. 116 six statutory indicators of performance, including effectiveness in serving employers. Specifically, WIOA sec. 166(h)(2) requires the Secretary to reach agreement on the levels of performance for each of the primary indicators of performance described in WIOA sec. 116(b)(2)(A), which includes the effectiveness in serving employers indicator.

Further, as explained above, the benefits of defining this measure using Retention with the Same Employer, including that it minimizes reporting burdens for INA program grantees, outweigh the drawbacks, as well as providing more benefits than the use of either of the other performance indicator definitions piloted by the core programs. To fulfill the intent of

WIOA’s common performance accountability system, the final rule defines effectiveness in serving employers for the INA programs using the Retention with the Same Employer approach so that the Department can measure effectiveness in serving employers consistently across core programs and the WIOA title I non-core programs.

The commenter also requested that the Department consult with the WIOA sec. 166 programs, the NAETC, and Tribal officials in the development and establishment of the effectiveness in serving employers performance indicator definition. As further detailed below in Section III.F, the Department conducted a Tribal consultation to consult with Tribal leaders and WIOA sec. 166 grantees.

Section 684.460—What performance indicators are applicable to the supplemental youth services program?

Section 684.460(a) sets out the performance indicators that apply to INA youth programs, including an indicator of the effectiveness of serving employers—specifically in paragraph (a)(6)—as established under WIOA sec. 116(b)(2)(A)(iv). The NPRM proposed to change the language in paragraph (a)(6) to align with the effectiveness in serving employers performance indicator language proposed at § 677.155(a)(1)(vi) in the Joint WIOA Effectiveness in Serving Employers NPRM. For the reasons discussed earlier in this section, the Department affirms the approach of aligning changes to § 684.460(a)(6) with the effectiveness in serving employers performance indicator language adopted for WIOA core programs in the Joint WIOA Effectiveness in Serving Employers Final Rule.

The final rule implements the § 684.460(a)(6) changes as proposed, except with minor modifications reflecting the revisions made to § 677.155(a)(1)(vi) in the Joint WIOA Effectiveness in Serving Employers Final Rule. Specifically, § 684.460(a)(6) defines the required effectiveness in serving employers performance indicator as the percentage of participants in unsubsidized employment during the second quarter after exit from the program who were employed by the same employer in the second and fourth quarters after exit. As discussed above, these revisions from the proposed rule align the regulations for INA youth program with the Joint WIOA Effectiveness in Serving Employers Final Rule and remove the requirement that wage records be used to document a participant’s employment status for purposes of the effectiveness

in serving employers performance indicator, thereby allowing for the use of supplemental wage information. Additionally, § 684.460(a)(6) now uses the term “unsubsidized employment” to better align with WIOA statutory language, specifically referring to unsubsidized employment in the second and fourth quarters after exit, which are key inputs to the definition of Retention with the Same Employer.

Section 684.620—What performance indicators are in place for the Indian and Native American program?

Section 684.620(a) lists the performance indicators used to evaluate the INA programs, including an effectiveness in serving employers performance indicator. Like the changes to § 684.460(a)(6), the Department is revising the language at § 684.620(a)(6) to define the required effectiveness in serving employers performance indicator as the percentage of participants in unsubsidized employment during the second quarter after exit from the program who were employed by the same employer in the second and fourth quarters after exit. This definition of effectiveness in serving employers at § 684.620(a)(6) aligns with the effectiveness in serving employers performance indicator language at § 677.155(a)(1)(vi), as discussed above.

C. Part 685—National Farmworker Jobs Program

Part 685 establishes regulations for NFJP, authorized in title I, subtitle D of WIOA. The NFJP is a nationally directed, locally administered program of services for migrant and seasonal farmworkers (MSFW) and their dependents. Grant recipients help program participants acquire new skills to either stabilize or advance their agricultural careers or obtain employment in a new industry. The program also works to meet the critical need of safe and sanitary permanent and temporary housing for farmworkers and their families.

Section 167(c)(3) of WIOA (29 U.S.C. 3222) requires the Department to use the six WIOA primary indicators of performance, including the effectiveness in serving employers performance indicator, to assess the performance of the NFJP. As explained in the proposed rule, part 685 specifies that NFJP grantees providing career services and training must use the indicators of performance described in WIOA sec. 116(b)(2)(A) (§ 685.400(a) and (b)) but does not list each performance indicator. Therefore, the Department did not propose any changes to part 685.

NFJP housing grantees, which provide housing assistance rather than training and employment placement services, are required to report a different set of performance indicators as defined in § 685.400(c), specifically the total number served of eligible MSFWs, other individuals, eligible MSFW families, and other families. Therefore, the revised definition of the effectiveness in serving employers performance indicator in 20 CFR part 677 finalized in the Joint WIOA Effectiveness in Serving Employers Final Rule applies to NFJP career services grantees but not housing grantees.

The Department notes that this will have no noticeable change to procedures for career services grantees, as they already report this information in accordance with TEGL No. 14–18, using the Retention with the Same Employer definition of the performance indicator.

No comments were received on the applicability of the effectiveness in serving employers performance indicator to the NFJP in response to the proposed rule. With the Joint WIOA Effectiveness in Serving Employers Final Rule, NFJP career services grantees will use the revised definition of the effectiveness in serving employers performance indicator in 20 CFR part 677.

D. Part 686 – Job Corps Program

Part 686 establishes regulations for the Job Corps program, authorized in title I, subtitle C of WIOA. Job Corps is a no-cost education and career technical training program administered by the Department, which includes 121 Job Corps centers across the United States. The program aims to help young people—ages 16 to 24—gain academic credentials and career technical training skills and secure quality employment. No comments were received on the proposed changes to part 686 and, thus, the Department adopts the proposed changes to § 686.1010, with minor revisions, as described below.

Job Corps historically has used post-separation surveys to capture post-program employment results. Job Corps' current surveys (OMB Control Number 1205–0426) are administered to participants immediately following the second and fourth quarters after exit and capture information related to whether they are employed or in an educational or training program during those quarters and if they have attained any additional certifications or credentials after exit from the program. In PY 2018, Job Corps revised the reporting periods in the post-separation surveys to replace program-specific definitions of the second and fourth quarters after exit

with the same definitions used by other DOL employment and training programs.

This definitional shift created alignment with quarterly wage records and facilitated calculation of common exit and outcomes across WIOA programs. With this change in definition, Job Corps has been able to apply the effectiveness in serving employers performance indicator as it is described in TEGL No. 14–18, using the Retention with the Same Employer definition of the performance indicator. While the post-separation surveys are a supplemental data source for reporting on the primary indicators of performance, Job Corps did not gain access to wage record matches, the primary data source, until the fourth quarter of PY 2020. All reported outcomes for Job Corps prior to this period were based solely on the supplemental data source. Job Corps began certifying its program results in WIPS for all the primary measures of performance, including the Retention with the Same Employer indicator, in the first quarter of PY 2020.

Starting with the fourth quarter of PY 2020, Job Corps obtained quarterly wage record matches and, combined with the supplemental data from the surveys, has been able to report fully on the primary measures of performance, including the Retention with the Same Employer indicator.

Section 686.1010—What are the primary indicators of performance for Job Corps centers and the Job Corps program?

Section 686.1010 lists the primary indicators used to measure the performance of Job Corps centers, which includes the effectiveness in serving employers performance indicator. This performance indicator is reported based on data collected from former students during the second and fourth quarters after exit.

No comments were received on the applicability of the effectiveness in serving employers performance indicator to the Job Corps Program in response to the proposed rule. However, as discussed above, the final rule implements the § 686.1010(f) changes as proposed, but with minor modifications reflecting the revisions made to § 677.155(a)(1)(vi) in the Joint WIOA Effectiveness in Serving Employers Final Rule. Specifically, revised § 686.1010(f) defines the required effectiveness in serving employers performance indicator as the percentage of participants in unsubsidized employment during the second quarter after exit from the program who were

employed by the same employer in the second and fourth quarters after exit.

E. Part 688 – YouthBuild Programs

Part 688 establishes regulations for the YouthBuild programs, authorized in title I, subtitle D of WIOA. YouthBuild is a pre-apprenticeship program that provides education and job training opportunities for at risk youth (ages 16–24) who have dropped out of school, or subsequently re-enrolled, and meet certain other requirements. Program participants learn vocational skills focused on the construction industry, as well as other in-demand industries including healthcare, information technology, and hospitality, while also earning their high school diploma. No comments were received on the proposed changes to part 688 and, thus, the Department adopts the proposed changes to § 688.400, with minor revisions, as described below.

Section 688.400—What are the performance indicators for YouthBuild grants?

Section 688.400 lists the primary indicators used to measure the performance of YouthBuild programs, which also includes a performance indicator for effectiveness in serving employers.

No comments were received on the applicability of the effectiveness in serving employers performance indicator to the YouthBuild programs in response to the proposed rule. However, as discussed above, the final rule implements the § 688.400(f) changes as proposed, but with minor modifications reflecting the revisions made to § 677.155(a)(1)(vi) in the Joint WIOA Effectiveness in Serving Employers Final Rule. Specifically, finalized § 688.400(f) defines the required effectiveness in serving employers performance indicator as the percentage of participants in unsubsidized employment during the second quarter after exit from the program who were employed by the same employer in the second and fourth quarters after exit.

F. Impacts of the Final Rule on Other Non-Core WIOA Programs for Which the Department Has Applied WIOA Sec. 116 Primary Indicators of Performance

Although WIOA only mandated the use of the sec. 116 performance indicators for the four non-core programs addressed in this final rule, the Department has chosen to apply the sec. 116 performance indicators to other non-core programs to assess program performance, including REO grants (authorized under WIOA sec. 169 and

annual appropriations acts).¹⁵ The NPRM stated that, for these programs, the proposed definition of the effectiveness in serving employers performance indicator also would be applied. The Department maintains this same position in this final rule and intends to continue to apply the same definition of effectiveness in serving employers to these other non-core programs after publication of this final rule.

Comment: One commenter discussed the impact of the proposed rule on the REO grants program, which provides employment services to justice-involved individuals. The commenter argued that performance accountability for the WIOA non-core programs should reflect the distinct populations served by those programs (e.g., reentry programs help justice-involved individuals overcome barriers to employment). As the NPRM noted, the commenter remarked, a limitation of the Retention with the Same Employer measure of effectiveness in serving employers is that it may not reflect the career path of greatest opportunity for those employment program participants who seek to change their jobs for improved opportunities, which the commenter said is a point of particular concern for REO grant program participants who are reentering the job market after leaving the justice system. The commenter wrote that while gaining work experience is “an important first step toward a rewarding career” for justice-involved individuals, continuing with the same employer could deny them opportunities to achieve greater financial stability and advance in their careers.

The commenter also stated a concern with the proposed requirement that REO programs collect and report supplemental wage information, discussing the ways this requirement to retain paystubs or other wage documentation would put a distinct burden on REO program staff to collect additional information and follow up with program participants. The commenter also expressed concern that disclosure of a program participant’s criminal background to an employer could limit the participant’s prospects

for job placement. The commenter suggested that supplemental wage data should be accessible from the employment programs themselves, not the employers, in order to give program participants the best chance at moving forward and to best fulfill the missions of these programs.

To address these concerns, the commenter recommended the Department do the following:

- Provide clear program guidance for REO program grantees on regulatory definitions.
- Determine that grantees can access wage record data in order to report employment outcomes of program participants.
- Consider other performance outcomes that would capture effectiveness in serving employers and provide a benefit to fair-chance employers, like the Federal bonding program and Work Opportunity Tax Credit do.
- Find measures of program performance that align with the goals of providing the best chances for success for justice-involved individuals.

Department Response: While reporting this performance indicator contributes to the holistic data analysis of the workforce system, the Department recognizes that drawbacks to this proposed definition exist for the title I non-core programs, especially due to the unique nature of programs focused on youth and justice-involved individuals. Nevertheless, the Department believes that the benefits of this approach outweigh those drawbacks. Moreover, the Department intends to mitigate these drawbacks, if necessary, by exercising its discretion to place appropriate weight on the effectiveness in serving employers performance indicator relative to the other primary indicators of performance in assessing current or past grantee performance.

As the commenter mentions, success for justice-involved individuals is more likely to include progression in jobs. Recognizing the unique circumstances such as this, the Department expects variability in the reported outcomes from program to program and intends to take this variability into account when negotiating levels of performance. These considerations are consistent with TEGL No. 14–18 guidance for applicability of primary performance indicators, which specifies that, as a general matter, participants’ outcomes on the applicable primary indicators of performance may be relevant for negotiating levels of performance, decisions related to

contract awards and renewal, and the award of competitive grants.¹⁶

It should be kept in mind that the effectiveness in serving employers performance indicator is unique among all other indicators in that it is employer-focused. Employers are critical partners with WIOA title I non-core programs in providing quality services and employment opportunities to program participants. Furthermore, there is anecdotal evidence from employers, as well as a few small studies that suggest justice-involved individuals tend to have lower turnover rates relative to the average employee.¹⁷ Tracking this performance indicator will provide further evidence to evaluate the potential employer benefit for hiring justice-involved individuals.

The Department also notes that while this indicator allows for the use of supplemental wage information, collecting such information is not mandatory. ETA will continue to conduct UI wage matching on behalf of reentry grantees for this and other employment-related performance indicators to reduce the burden of collecting this information manually. Therefore, it is not necessary for grantees to have access to wage record data to comply with this reporting requirement.

¹⁶ ETA, TEGL No. 14–18, “Aligning Performance Accountability Reporting, Definitions, and Policies Across Workforce Employment and Training Programs Administered by the U.S. Department of Labor (DOL),” p. 8, Mar. 25, 2019, https://wdr.doleta.gov/directives/corr_doc.cfm?docn=7611.

¹⁷ Patricia M. Harris and Kimberly S. Keller, “Ex-Offenders Need Not Apply: The Criminal Background Check in Hiring Decisions,” *Journal of Contemporary Criminal Justice*, 2005, pages 6–30, <https://journals.sagepub.com/doi/10.1177/1043986204271678>; Jennifer Hickes Lundquist, Devah Pager, and Eiko Strader, “Does a Criminal Past Predict Worker Performance? Evidence from One of America’s Largest Employers,” *Social Forces*, March 2018, pages 1039–1068, <https://academic.oup.com/sf/article-abstract/96/3/1039/4802355?redirectedFrom=fulltext>; Dylan Minor, Nicola Persico, and Deborah M. Weiss, “Criminal Background and Job Performance,” Feb. 3 2017, <https://insight.kellogg.northwestern.edu/article/should-you-hire-someone-with-a-criminal-record>; Oluwasegun Obatusin and Debbie Ritter-Williams, “A phenomenological study of employer perspectives on hiring ex-offenders,” *Cogent Social Sciences*, Feb. 14, 2019, <https://doi.org/10.1080/23311886.2019.1571730>; Pamela D. Paulk, “The Johns Hopkins Hospital Success in Hiring Ex-Offenders,” May 2015, https://www.bgcheckinfo.org/sites/default/files/public/5thMtg_1-0c-Plenary_Pamela_Paulk_Presentation.pdf; SHRM Foundation, “2021 Getting Talent Back to Work Report,” 2021, https://www.gettingtalentbacktowork.org/wp-content/uploads/2021/05/2021-GTBTW_Report.pdf; Prison Fellowship, “6 Lessons for Employers Considering Hiring Former Prisoners,” *Prison Fellowship*, <https://www.prisonfellowship.org/resources/support-friends-family-of-prisoners/supporting-successful-prisoner-reentry/6-lessons-for-employers-considering-hiring-former-prisoners/> (last visited Nov. 9, 2023).

¹⁵ Pages 2 through 5 of TEGL No. 14–18, “Aligning Performance Accountability Reporting, Definitions, and Policies Across Workforce Employment and Training Programs Administered by the U.S. Department of Labor (DOL),” provide the current list of DOL-administered non-core programs for which DOL has chosen to apply these performance reporting requirements, which include programs authorized by WIOA, as well as programs authorized by other Federal legislation. ETA, TEGL No. 14–18, Mar. 25, 2019, https://wdr.doleta.gov/directives/corr_doc.cfm?docn=7611.

The Department considered the commenter's request that the other performance outcomes be used such as is done with the Federal bonding program and the Work Opportunity Tax Credit. However, the Department has determined Retention with the Same Employer is appropriate after piloting three approaches of the effectiveness in serving employers performance indicator. The Department concluded that the Retention with the Same Employer approach provides a valid and reliable approach to measuring the indicator, while also placing the least amount of burden on REO grant recipients to implement.

The Department will update guidance and technical assistance on this topic for reentry grantees as needed following the publication of the final rule.

Comment: One commenter discussed the impact of the proposed rule on Senior Community Service Employment Program (SCSEP), which provides employment services to older workers. The commenter discussed the unique needs and employment patterns of the older workers served by SCSEP programs, who may have more "fluid" employment patterns than other workers due to health issues, caregiving obligations, or preferences for part-time employment. The commenter wrote that the SCSEP program it administers uses surveys to assess employer satisfaction and expressed interest in continuing this practice, stating that it provides depth of analysis and affords careful delivery of targeted programs utilizing strong employer partnerships. The commenter urged the Department to allow these assessment practices to continue in order to best maintain targeted SCSEP program deliverables for the target population of older workers.

To address these concerns, the commenter recommended the Department do the following:

- Retain the current definition and practices for assessing effectiveness of SCSEP programs in serving employers.
- Provide clear guidance on any intentions to change definitions of the performance indicator of effectiveness in serving employers for SCSEP programs.

Department Response: The Department notes that this indicator does not apply to the SCSEP program grantees, and the Department will not be making changes to any SCSEP definitions as a result of this rule.

Comment: Discussing the impact of the proposed rule on non-core WIOA programs providing employment services to justice-involved individuals and older workers, a commenter argued that the Department has an obligation to

provide clear guidance to program grantees working with these target populations on the implications of the rulemaking process and possible implementation of rule changes. Relatedly, the commenter suggested that the Department should continue to work with reentry service providers, SCSEP providers, and related stakeholders to best address the needs of the target populations by providing further opportunities to share insights, present feedback, and raise concerns and questions on the proposed rule.

Department Response: The Department is committed to providing clear guidance and technical assistance to grantees in implementing any changes, and notes that this rule does not change any current practices for reentry providers and SCSEP providers.

III. Regulatory Analysis and Review

A. Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review), and 14094 (Modernizing Regulatory Review) and Subtitle E of the Small Business Regulatory and Fairness Act of 1996)

Under E.O. 12866, the Office of Information and Regulatory Affairs (OIRA) determines whether a regulatory action is significant and, therefore, subject to the requirements of the E.O. and review by OMB. See 58 FR 51735 (Oct. 4, 1993). Section 1(b) of E.O. 14094 amends sec. 3(f) of E.O. 14094 to define a "significant regulatory action" as an action that is likely to result in a rule that may: (1) have an annual effect on the economy of \$200 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or tribal governments or communities (also referred to as economically significant); (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise legal or policy issues for which centralized review would meaningfully further the President's priorities or the principles set forth in the E.O. See 88 FR 21879 (Apr. 11, 2023). This final rule is a significant regulatory action under section 3(f) of E.O. 12866, as amended by E.O. 14094.

E.O. 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; the regulation is tailored

to impose the least burden on society, consistent with achieving the regulatory objectives; and in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits. E.O. 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

1. Outline of the Analysis

Section III.A.2 provides a summary of the results of the RIA. Section III.A.3 describes the need for the final rule, and Section III.A.4 describes the process used to estimate the costs of the final rule and the general inputs used, such as wages and number of affected entities. Section III.A.5 explains how the provisions of the final rule will result in quantifiable costs and presents the calculations the Department used to estimate them. In addition, Section III.A.5 describes the qualitative benefits of the final rule. Section III.A.6 summarizes the estimated first-year and 10-year total and annualized costs of the final rule. Finally, Section III.A.7 describes the regulatory alternatives considered when developing the final rule.

2. Analysis Overview

The Department did not receive comments on the proposed rule economic analysis. Changes in this final rule economic analysis include updating wage rates and the number of affected entities to reflect the most recent data available. The new wage rates and affected entities are presented in Section III.A.4.

The Department estimates that the final rule will result in costs and qualitative benefits. As shown in Exhibit 1, the final rule is expected to have a one-time cost of \$52,223. The Department estimates that the final rule will result in an annualized net quantifiable cost of \$7,435 at a discount rate of 7 percent and expressed in 2022 dollars.

EXHIBIT 1—ESTIMATED MONETIZED COSTS OF THE FINAL RULE
[2022 dollars]

	Cost
10-Year Total with a Discount Rate of 3%	\$52,223
10-Year Total with a Discount Rate of 7%	52,223
10-Year Average	5,222

EXHIBIT 1—ESTIMATED MONETIZED COSTS OF THE FINAL RULE—Continued

[2022 dollars]

	Cost
Annualized at a Discount Rate of 3%	6,122
Annualized at a Discount Rate of 7%	7,435

The cost of the final rule is associated with rule familiarization for all 121 Job Corps centers and 97 career transition service providers for a total of 218 Job Corps entities, 53 NFJP career service and training grantees, 64 INA youth grantees, 97 INA adult grantees, and 237 YouthBuild grantees.¹⁸ See the costs subsections of Section III.A.5 (Subject-by-Subject Analysis) below for a detailed explanation.

The Department cannot quantify the benefits of the final rule; therefore, Section III.A.5 (Subject-by-Subject Analysis) describes the benefits qualitatively.

3. Need for Regulation

This final rule is necessary to complete implementation of the performance accountability requirements as discussed in the Joint WIOA Final Rule and required by statute. WIOA included a common performance accountability system, consisting of six statutory primary indicators of performance, applicable to all WIOA core programs: adult, dislocated worker, and youth programs under title I of WIOA; the AEFLA program under title II; the ES program authorized under the Wagner-Peyser Act as amended by WIOA title III; and the VR program authorized under title I of the Rehabilitation Act, as amended by WIOA title IV. WIOA also required that the six statutory primary indicators of performance apply to four WIOA title I, DOL-administered non-core programs: INA, NFJP, Job Corps, and YouthBuild ("title I non-core programs"). The statute defines five of the six performance indicators. However, WIOA did not specify how effectiveness in serving employers should be measured. Instead, WIOA directed the Departments to develop a definition for the effectiveness in serving employers performance indicator (WIOA sec. 116(b)(2)(A)(iv)). In the Joint WIOA Final Rule, the Departments determined that it was prudent to pilot three

definitions for the sixth performance indicator, which measures a State's effectiveness in serving employers through its WIOA-authorized programs. As explained earlier in this final rule, that pilot, as well as a study of the results from the pilot, *Measuring the Effectiveness of Services to Employers: Options for Performance Measures Under the Workforce Innovation and Opportunity Act*¹⁹ (Final Pilot Study Report), is now complete. The Departments are engaging in two rulemakings to incorporate into the WIOA regulations a standard definition of the performance indicator for effectiveness in serving employers. This performance indicator definition is meant to apply to both WIOA core programs—which are addressed in the concurrently published Joint WIOA Effectiveness in Serving Employers Final Rule—as well as the four title I non-core programs, which are addressed in this final rule. This rule codifies the use of all the primary performance indicators for the evaluation of title I non-core program performance—including the effectiveness in serving employers indicator—just as with the WIOA core programs.

4. Analysis Considerations

a. Baseline for Title I Non-Core Programs: Indian and Native American, National Farmworker Jobs, Job Corps, and YouthBuild

The Department estimated the costs of the final rule relative to the existing baseline. The Department determined that the final rule will result in no change from the baseline for the title I non-core programs. As a result, the Department estimates only the costs of rule familiarization for the title I non-core programs.

WIOA secs. 159(c)(1) (Job Corps), 166(e)(5) (INA), 167(c)(2)(C) (NFJP), and 171(f)(1) (YouthBuild) specify that performance for these title I non-core programs must be assessed using the WIOA sec. 116 primary indicators of performance for WIOA core programs. In this final rule, the Department is codifying the approach for evaluating a program's effectiveness in serving employers, as put into practice through previously issued guidance²⁰ and the

"DOL-Only Performance Accountability, Information, and Reporting System" ICR, approved under OMB Control Number 1205-0521 for the title I non-core programs.

All title I non-core programs, except the INA Supplemental Youth Services program, are able to report the Retention with the Same Employer definition of effectiveness in serving employers performance indicator, as required in TEGL No. 14-18, through WIPS or GPMS. Unlike the other title I non-core programs, the INA Supplemental Youth Services program is not currently reporting, and will not immediately be able to report, the effectiveness in serving employers performance indicator. The INA Supplemental Youth Services case management system is available for grantees to enter data for youth participants who were served on or after April 15, 2023, and produces program reports. Because grantees are still tracking in legacy systems the data for participants whose services began before April, INA youth grantees will, for a period of time, use WIOA transition authority with regard to collecting and reporting on WIOA performance indicators, including the effectiveness in serving employers performance indicator. The Department is continuing, independent of this rulemaking, to build new functionality into the recent case management system for INA youth grantees that provides for the collection and reporting of the effectiveness in serving employers performance indicator. Therefore, this final rule does not impose any new cost associated with the case management system. When the case management system is built, the INA youth grantees will use it to collect and report the outcomes for the effectiveness in serving employers performance indicator. The use of the new system to report the effectiveness in serving employers performance indicator will impose a de minimis cost for the INA youth grantees. When the INA Supplemental Youth Services case management system is complete, the INA youth program grantees would face a de minimis cost associated with reporting the effectiveness in serving employers performance indicator in the new system.

Exhibit 2 presents the number of entities the Department expects the final rule to affect. The Department provides these estimates and uses them to

¹⁸ The 237 YouthBuild entities consist of grantees within each of the four currently active grant classes (68 grantees in the 2022 class, 68 grantees in the 2021 class, 68 grantees in the 2020 class, and 34 grantees in the 2019 grant class).

¹⁹ See S. Spaulding, et al., "Measuring the Effectiveness of Services to Employers: Options for Performance Measures under the Workforce Innovation and Opportunity Act," Jan. 2021, Chapter 5 (Alternative Measures and Data Sources), [https://wdr.doleta.gov/research/FullText_Documents/ETAOP2021-](https://wdr.doleta.gov/research/FullText_Documents/ETAOP2021-17%20Measures%20of%20Effectiveness%20in%20Serving%20Employers_Final%20Report.pdf)

[17%20Measures%20of%20Effectiveness%20in%20Serving%20Employers_Final%20Report.pdf](https://wdr.doleta.gov/research/FullText_Documents/ETAOP2021-17%20Measures%20of%20Effectiveness%20in%20Serving%20Employers_Final%20Report.pdf).

²⁰ ETA, TEGL No. 14-18, "Aligning Performance Accountability Reporting, Definitions, and Policies

Across Workforce Employment and Training Programs Administered by the U.S. Department of Labor (DOL)," Mar. 25, 2019, https://wdr.doleta.gov/directives/corr_doc.cfm?docn=7611.

calculate the cost of rule familiarization for the title I non-core programs.

EXHIBIT 2—TITLE I NON-CORE PROGRAMS NUMBER OF AFFECTED ENTITIES BY TYPE

Entity type	Number
Job Corps:	
Current centers	121
Career transition service providers	97
NFJP:	
Career services and training grantees	53
Indian and Native American:	
Number of INA youth grants awarded under WIOA sec. 166	64

EXHIBIT 2—TITLE I NON-CORE PROGRAMS NUMBER OF AFFECTED ENTITIES BY TYPE—Continued

Entity type	Number
Grantees for the Comprehensive Services Program/INA adult program	97
YouthBuild:	
Grantees in active grant classes	237

b. Compensation Rates

In Section III.A.5 (Subject-by-Subject Analysis), the Department presents the costs, including labor, associated with the final rule. Exhibit 3 presents the hourly compensation rates for the

occupational categories expected to experience a change in level of effort (workload) due to the final rule. We use the Bureau of Labor Statistics (BLS) mean hourly wage rate for local government employees.²¹ To reflect total compensation, wage rates include nonwage factors such as overhead and fringe benefits (*e.g.*, health and retirement benefits). We use an overhead rate of 17 percent²² and a fringe benefits rate of 62 percent,²³ which represents the ratio of average total compensation to average wages for State and local government workers in March 2022. We then multiply the sum of the loaded wage factor and overhead rate by the corresponding occupational category wage rate to calculate an hourly compensation rate.

EXHIBIT 3—COMPENSATION RATES
[2022 dollars]

Position	Grade level	Base hourly wage rate	Loaded wage factor	Overhead costs	Hourly compensation rate
		(a)	(b)	(c)	d = a + b + c
Management Analyst	N/A	\$43.61	\$27.04 (\$43.61 × 0.62)	\$7.41 (\$43.61 × 0.17)	\$78.06

5. Subject-by-Subject Analysis

The Department's analysis below covers the estimated cost of the final rule.

c. Costs

The following sections describe the costs of the final rule.

(1) DOL-Only Non-Core Programs Rule Familiarization

INA, YouthBuild, NFJP, and Job Corps programs would need to familiarize themselves with the new regulation. Consequently, this will impose a one-time cost in the first year.

To estimate the first-year cost of rule familiarization for INA, YouthBuild, NFJP, and Job Corps programs, the Department multiplied the estimated number of management analysts (1) by the time required to read and review the rule (1 hour), and by the applicable hourly compensation rate (\$78.06/hour). We multiplied this result by the number

Job Corps active centers (218), NFJP grantees (53), INA Youth program grantees (64), INA Adult program grantees (97), and the number of YouthBuild grantees (237). This calculation yields \$52,536 in one-time labor costs for Job Corps, NFJP, YouthBuild, INA Youth, and INA Adult programs to read and review the rule. Over the 10-year period of analysis, these estimated one-time costs result in an average annual cost of \$5,222 undiscounted, or \$6,122 and \$7,435 at discount rates of 3 and 7 percent, respectively.

d. Qualitative Benefits Discussion

(1) General Benefits of Measuring Effectiveness in Serving Employers

The Department cannot quantify the final rule's benefits associated with improving the title I non-core programs' effectiveness in serving employers. Measuring effectiveness in serving employers allows title I non-core

programs to set goals, monitor, and learn how to serve employers more effectively.²⁴ Reporting a measure of effectiveness in serving employers also helps Federal, State, and local policymakers evaluate program performance and inform future policy changes to better meet program goals, particularly providing employers with skilled workers and other services.

The Department cannot quantify these estimated benefits because we do not have quantitative data on how the effectiveness in serving employers performance indicator has influenced program implementation and how much it would influence future policies.

(2) Specific Benefits of Reporting Retention With the Same Employer

Requiring the calculation and reporting of Retention with the Same Employer as the effectiveness in serving employers performance indicator will make it easier to compare WIOA title I

²¹ BLS, "May 2022 National Industry-Specific Occupational Employment and Wage Estimates: NAICS 999300—Local Government, excluding schools and hospitals (OEWS Designation)," https://www.bls.gov/oes/current/naics4_999300.htm (last updated April 25, 2023).

²² U.S. Environmental Protection Agency, "Wage Rates for Economic Analyses of the Toxics Release Inventory Program," June 10, 2002, <https://www.regulations.gov/document/EPA-HQ-OPPT-2018-0321-0046>. DOL has used 17 percent in prior final rules including the Adverse Effect Wage Rate

Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States Final Rule (RIN 1205-AC05), Temporary Agricultural Employment of H-2A Nonimmigrants in the United States (RIN 1205-AB89), Cranes and Derricks in Construction: Railroad Roadway Work (RIN 1218-AD07), and Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors Final Rule (RIN 1218-AD29).

²³ BLS, "Employer Costs for Employee Compensation—March 2022," June 16, 2022,

https://www.bls.gov/news.release/archives/ecce_06162022.pdf. Calculated using Table 1. Employer Costs for Employee Compensation by ownership

²⁴ S. Spaulding, et al., "Measuring the Effectiveness of Services to Employers: Options for Performance Measures under the Workforce Innovation and Opportunity Act (Research Report)," Jan. 2021, https://www.urban.org/sites/default/files/publication/104160/measuring-the-effectiveness-of-services-to-employers_1_0.pdf.

non-core programs’ effectiveness in serving employers performance across grant programs. Retention with the Same Employer demonstrates a continued relationship between the employer and participants who have exited WIOA programs. While many circumstances can have an impact on an employer’s retention of employees, an indication that an employee is still working for the same employer in both the second and fourth quarters after exiting from a WIOA program demonstrates a level of success for both parties, as retention of an employee reduces the costs to the employer associated with employee turnover and retraining. Thus, reporting Retention with the Same Employer can help inform design and implementation of program services to reduce job turnover and improve employer-employee match quality. Improved matching and reduced turnover allow employees and employers to operate closer to their productive potential and can make it more worthwhile for employers to invest in training its employees and for employees to invest in learning employer-specific skills.

6. Summary of the Analysis

The Department estimates the total net cost of the final rule at \$52,223 at a discount rate of 7 percent. The Department estimates the annualized net cost of the final rule at \$7,435 at a discount rate of 7 percent. Exhibit 4 summarizes the estimated cost of the final rule over the 10-year analysis period.

EXHIBIT 4—ESTIMATED MONETIZED COSTS OF THE FINAL RULE
[2022 dollars]

	Costs
2024	\$52,223
2025	0
2026	0
2027	0
2028	0
2029	0
2030	0
2031	0
2032	0
2033	0
10-Year Total with a Discount Rate of 3%	52,223
10-Year Total with a Discount Rate of 7%	52,223
10-Year Average	5,222
Annualized with a Discount Rate of 3%	6,122
Annualized with a Discount Rate of 7%	7,435

7. Regulatory Alternatives

The Department considered two alternatives to the finalized definition of the effectiveness in serving employers performance indicator. First, the Department considered requiring use of the Employer Penetration pilot approach, which reports the percentage of employers using services out of all employers in the State. This approach would have required counts of services provided to employers requiring States and local areas to report unique counts of employer establishments receiving services through WIOA’s programs. Employer Penetration would require a more data-intensive analysis than the Retention with the Same Employer approach. Employer Penetration would have the benefit of capturing the extent to which employers within a State are engaged with WIOA-funded services and would provide State programs an incentive to work with additional employers. In the Final Pilot Report Study, the Department found weaknesses in this pilot approach including: (1) emphasis on quantity rather than quality or intensity of the employer service provided; (2) reliability issues associated with data entry and the process to count unique establishments; (3) measurement of program output rather than outcome; (4) potential for creation of perverse incentives to prioritize program breadth rather than depth in service and delivery; and (5) lack of sensitivity to industry sectors targeted by State and local workforce agencies.²⁵

The Department considered a second regulatory alternative that would require the use of the Repeat Business Customer approach to the effectiveness in serving employers performance indicator, which reports the percentage of employers receiving services in a year who also received services within the previous 3 years. This approach to the effectiveness in serving employers measure requires counts of services provided to employers through WIOA’s programs. Repeat Business Customer requires a more data-intensive analysis than the proposed approach of Retention with the Same Employer. Repeat Business Customer captures the extent to which employers within a State can find workers and the employer’s level of satisfaction with the public workforce system services. In the Final Pilot Study Report, the

²⁵ S. Spaulding, et al., “Measuring the Effectiveness of Services to Employers: Options for Performance Measures under the Workforce Innovation and Opportunity Act (Research Report),” Jan. 2021, https://www.urban.org/sites/default/files/publication/104160/measuring-the-effectiveness-of-services-to-employers_1_0.pdf.

Department found weaknesses in this pilot approach including that it: (1) may provide a disincentive to reach out to new employers; (2) is subject to variation in industry and sector economic conditions; and (3) may require a SAM to mitigate the weaknesses and improve implementation and interpretation.²⁶

The Department prefers the Retention with the Same Employer approach because it has data more readily available and, therefore, it is less burdensome. The Retention with the Same Employer approach better aligns with workforce system goals of matching employers with job seekers and reducing turnover without the weaknesses associated with the other two approaches to defining the effectiveness in serving employers performance indicator. In addition, because title I non-core programs are already required to report the Retention with the Same Employer measure, the two alternative measures would impose new costs to affected entities associated with collecting data, calculation of, and reporting the alternative measure.

B. Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, and Executive Order 13272 (Proper Consideration of Small Entities in Agency Rulemaking)

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (Mar. 29, 1996), requires Federal agencies engaged in rulemaking to consider the impact of their proposals on small entities, consider alternatives to minimize that impact, and solicit public comment on their analyses. The RFA requires the assessment of the impact of a regulation on a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions. Agencies must perform a review to determine whether a proposed or final rule would have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603 and 604.

The Department finds that this final rule will not have a significant economic impact on a substantial number of small entities. Based on this determination, the Department certifies

²⁶ S. Spaulding, et al., “Measuring the Effectiveness of Services to Employers: Options for Performance Measures under the Workforce Innovation and Opportunity Act,” Jan. 2021, https://wdr.doleta.gov/research/FullText_Documents/ETAOP2021-17%20Measures%20of%20Effectiveness%20in%20Serving%20Employers_Final%20Report.pdf.

that this final rule does not have a significant economic impact on a substantial number of small entities. This finding is supported, in large measure, by the fact that small entities are already receiving financial assistance under WIOA. In addition, the calculated cost of this rule is a one-time per-entity cost of \$78.06 associated with rule familiarization and would therefore have a de minimis impact on any particular entity.

This final rule can be expected to impact small entities within the Job Corps, NFJP, and INA programs. These small entities can be, for example, Tribal or non-profit grantees, including regionally focused entities. The Department has estimated costs that are new to this final rule. As discussed in Section III.A, the calculated cost of this rule is a one-time per-entity cost of \$78.06 associated with rule familiarization and would, therefore, have a de minimis impact on any one particular entity. Therefore, the Department certifies that this final rule does not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The Department previously submitted and received OMB approval for the information collection discussed above (OMB Control Number 1205-0521) in Section I, Background and Rulemaking Authority. See ICR Reference Number 202104-1205-003 (OMB Control Number 1205-0521). This final rule does not modify any of the content in the exiting OMB Control Number 1205-0521.

D. Executive Order 13132 (Federalism)

E.O. 13132 aims to guarantee the division of governmental responsibilities between the National Government and the States and to further the policies of the Unfunded Mandates Reform Act of 1995 (UMRA). Accordingly, E.O. 13132 requires executive departments and agencies to ensure that the principles of federalism guide them in the formulation and implementation of policies. Further, agencies must adhere to constitutional principles, examine the constitutional and statutory authority supporting a regulation that would limit the policymaking discretion of the States, and assess the need for such a regulation. To the extent practicable, agencies must consult State and local officials before implementing any such regulation.

E.O. 13132 further provides that agencies must implement a regulation that limits the policymaking discretion

of the States only where there is constitutional and statutory authority for the regulation and it addresses a problem of national significance. For a regulation administered by the States, the National Government must grant the States the maximum administrative discretion possible to avoid intrusive Federal oversight of State administration, and agencies must adhere to special requirements for a regulation that preempts State law. E.O. 13132 also sets forth the procedures that agencies must follow for certain regulations with federalism implications, such as preparation of a summary impact statement.

Accordingly, the Department has reviewed this WIOA-required final rule and has concluded that the rule has no Federalism implications. This final rule has no substantial direct effects on States, on the relationships between the States, or on the distribution of power and responsibilities among the various levels of government as described by E.O. 13132. Therefore, the Department has concluded that this final rule does not have a sufficient Federalism implication to warrant the preparation of a summary impact statement.

E. Unfunded Mandates Reform Act

UMRA directs agencies to assess the effects of Federal regulatory actions on State, local, and Tribal governments, as well as the private sector. A Federal mandate is any provision in a regulation that imposes an enforceable duty upon State, local, or Tribal governments, or imposes a duty upon the private sector that is not voluntary.

Following consideration of the above factors, the Department has concluded that this final rule contains no unfunded Federal mandates, which are defined in 2 U.S.C. 658(6) to include either a "Federal intergovernmental mandate" or a "Federal private sector mandate." No additional burden related to reporting the effectiveness in serving employers performance indicator is being placed on State, local, and Tribal governments, as this information already is being collected and reported on. Furthermore, the reporting is a contingent to receiving Federal program funding. Any associated reporting mandate cannot, therefore, be considered "unfunded." Because the decision by a private training entity to participate as a provider under a WIOA core program is purely voluntary, the information collection burden does not impose a duty on the private sector that is not voluntarily assumed.

F. Executive Order 13175 (Indian Tribal Governments)

The Department reviewed this final rule, as well as the Joint WIOA Effectiveness in Serving Employers Final Rule published concurrently with this final rule elsewhere in this issue of the **Federal Register**, under the terms of E.O. 13175 and DOL's Tribal Consultation Policy (77 FR 71833 (Dec. 4, 2012)) and has determined that it will have Tribal implications, because the final rule would have substantial direct effects on: one or more Indian Tribes; the relationship between the Federal Government and Indian Tribes; or the distribution of power and responsibilities between the Federal Government and Indian Tribes. Therefore, the Department prepared a Tribal summary impact statement.

Engagement With Indian Tribes

The Department engaged with INA grantees and the Tribal community at several points in this rulemaking. Prior to issuing the NPRM, the Department held two events to consult with INA program grantees and representatives of Tribal institutions about their experiences with the implementation and operation of the effectiveness in serving employers performance indicator. These two events consisted of a town hall meeting attended both in person and virtually and a formal consultation webinar. The town hall, entitled "Town Hall Discussion: Effectiveness in Serving Employers Performance Indicator," occurred on September 21, 2021, at the 41st National Indian and Native American Employment and Training conference.²⁷ The consultation webinar, entitled "Tribal Consultation for WIOA Effectiveness in Serving Employers Indicator Proposed Rulemaking," occurred on October 19, 2021.²⁸ At the consultation webinar, the Department provided an opportunity for stakeholders to submit written feedback through DOL's Tribal consultation email account by October 29, 2021. The Department did not receive any written

²⁷ NAETC, "41st National Indian and Native American Employment and Training Program," Sept. 20-23, 2021, http://www.ninaetc.net/41%20NINAETC%20PROGRAM_FINAL.pdf.

²⁸ DOL, "Tribal Consultation for WIOA Effectiveness in Serving Employers Indicator Proposed Rulemaking," <https://www.workforcecps.org/events/2021/09/14/13/57/Tribal-Consultation-for-WIOA-Effectiveness-in-Serving-Employers-Indicator-Proposed-Rulemaking> (last visited Nov. 10, 2023); see also "Tribal Consultation; Workforce Innovation and Opportunity Act, Implementation of the Effectiveness in Serving Employers Performance Indicator; Notice of Tribal Consultation; Virtual Meeting," 86 FR 54244 (Sept. 30, 2021).

feedback through DOL's Tribal consultation email account but received one letter after the consultation period for October 2021 consultation webinar, which raised similar issues to those articulated at the consultation event and summarized below. This letter was not formally considered during the development of the NPRM due to the late nature of its submission, though it raised similar issues to those articulated at the consultation event and summarized below.

After the release of the NPRM, the Department discussed the NPRM with NAETC at the October 2022 NAETC meeting.²⁹ During this discussion, the Department encouraged submission of comments on the NPRM. In response to the NPRM, the Department received one public comment submission, which is discussed above in Section III.F, and that requested that the Department consult with the WIOA sec. 166 programs, the NAETC, and Tribal officials in order to develop and establish the performance indicator.

Summary of Concerns

These various engagements provided the Department with feedback from the INA community, Tribal representatives, and the general public that indicating several areas of interest concerning the definition of the effectiveness in serving employers performance indicator for WIOA programs. These concerns are summarized below.

Employer, Wage, or Position Changes

Consultation participants expressed concern about impacts of individuals changing employers for higher wages or different positions. Specifically, several consultation participants asked how the Retention with the Same Employer definition of the performance indicator would apply to individuals who have continuous employment through the second and fourth quarters, but with different employers. Some consultation participants expressed concern that this definition of the performance indicator would not consider individuals who advance to better employment opportunities. One consultation participant expressed concern that the program would be penalized if employees change employers.

Temporary, Seasonal, and Youth Employment

Many consultation participants expressed concern about how temporary jobs, such as seasonal or contract-based

employment, would be considered. Specifically, one consultation participant gave an example of contractor jobs where individuals may not stay with the same employer and instead change from job to job, such as in construction. Additionally, another consultation participant stated that employers that regularly lay off and then rehire employees would affect outcomes.

A consultation participant asked if this measure applies to the INA youth program. Another consultation participant expressed concern about the impact on performance of limited-duration summer employment opportunities for high school students within INA youth programs. The consultation participants also questioned DOL's willingness to invest in developing a data collection and reporting process for INA youth programs.

Other consultation participants expressed concern about how seasonal jobs would be addressed and that certain areas have more seasonal employment than other areas do. Another consultation participant stated that individuals who participate in the program on a short-term basis while serving time with the Department of Corrections and later return to a different State may impact the performance indicator calculation. A different consultation participant stated that many participating employers primarily provide entry-level positions focused on gaining work experience.

Performance Indicator Calculation

Many consultation participants inquired about how the performance indicator is calculated. One consultation participant asked a question in which the sound quality of the audio was not clear. However, the subject-matter expert interpreted the question to ask if supplemental wages are considered. One consultation participant stated that UI records may not capture individuals who are self-employed. Another consultation participant said that certain States do not have access to UI information that would enable them to calculate the performance indicator.

Many consultation participants suggested other ways to calculate the performance indicator. Examples provided by one consultation participant included employer satisfaction surveys, number of employers served, number of repeat employers, and number of job fairs coordinated with employers. Another consultation participant said they measure success when an employer enquires about recent graduates to fill

open positions. A different consultation participant stated that they understood the options DOL considered for how to measure effectiveness in serving employers to include how well programs have assisted employers in hiring new employees through job fairs, work experience to full-time hires, pre-screening of candidates, and individual hiring events for specific employers.

Tribal Community Impacts

Some consultation participants had questions and comments about how the performance indicator would specifically impact Tribal communities. One consultation participant expressed the need for consideration of all Tribal communities and their unique needs. The consultation participant stated that measures used for all INA programs must not only satisfy the intent of the performance indicator but also be meaningful, which is part of the purpose of WIOA sec. 166. The commenter also suggested that grantees should establish a work group within the NAETC to develop information to share with Tribal leaders so that they have background and can communicate what these performance indicators would mean for INA programs.

Another consultation participant cited the DOL-commissioned third-party study of the performance indicator, "Measuring the Effectiveness of Service to Employers," and questioned why some States with many Indian and Native American participants were not included in the pilot study. The consultation participant also asked if any INA WIOA programs were included in the study. Additionally, a consultation participant said that DOL is seeking support from Tribes on how to measure a performance indicator they may not want.

Process Questions and Other Observations

Many consultation participants asked questions about the rulemaking process and how the Department decided on the proposed definition of the performance indicator. Some consultation participants asked if this performance indicator is required. One consultation participant asked if the performance indicator can be customized based on the grantee's status, for example with different requirements for rural and urban programs. A different consultation participant asked if DOL would decide after consultation with Tribes whether or not to apply the performance indicator to INA programs. Other consultation participants asked if the definition of this performance

²⁹ Meeting proceedings are located on the NAETC web page. ETA, "Native American Employment and Training Council," <https://www.dol.gov/agencies/eta/dinap/council> (last visited Nov. 10, 2023).

indicator would be permanent or if it would be re-evaluated in the future. Additionally, a consultation participant asked if they could review the draft rule with others before it is published, when the proposed rule would be published, and when the final rule would take effect.

A consultation participant asked if other performance indicator definitions have been submitted for consideration, for example from the NAETC. Another consultation participant stated that grantees with direct employer relationships differ from grantees that work with AJCs to facilitate employment for employers. Additionally, a consultation participant asked how grantees can assist participants who are facing issues at a new employment site, such as being picked on or treated unfairly, and whether it would be appropriate to act as a mediator between the employer and the participant.

Need for the Regulation

The Department appreciates the valuable feedback received through these engagements with INA program grantees and representatives of Tribal institutions and has considered this feedback carefully in crafting this final rule and its planned implementation. The effectiveness in serving employers performance indicator is required by the WIOA statute for the INA program, as WIOA sec. 166(h)(2) requires using the primary indicators of performance described in sec. 116(b)(2)(A). Therefore, the Department has determined that a standard definition for the effectiveness in serving employers performance indicator would be proposed and finalized for the INA program. As such, the Department is aligning its definition of this indicator for the sec. 166 INA program with the WIOA Effectiveness in Serving Employers Joint Final Rule.

However, the Department acknowledges the concerns raised through the consultations. In recognition of these concerns, the Department intends to take several steps to address these matters. First, as discussed above in Section III.F, the Department will exercise its discretion to place appropriate weight on the effectiveness in serving employers performance indicator in assessing INA grantee performance. The Department recognizes the unique circumstances INA grantees may face and the expects variability in the reported outcomes from program to program, especially for programs serving youth, and intends to take this variability into account when establishing levels of performance.

These considerations are consistent with TEGL No. 14–18 guidance for applicability of primary performance indicators, which specifies that, as a general matter, participants' outcomes on the applicable primary indicators of performance may be relevant for establishing levels of performance, decisions related to contract awards and renewal, and the award of competitive grants.

Second as explained above in Section I.D and III.F, the Department notes that the selected measure should not impose any additional burden on INA program grantees as the definition of the effectiveness in serving employers measure will not require any additional reporting from INA program grantees above what is currently collected for the approved "DOL-Only Performance Accountability, Information, and Reporting System" ICR.

Finally, the Department reaffirms the ability of INA program grantees to request a waiver of performance indicators as described in TEGL No. 04–19, "Waiver Authority for the INA Program and Implementation of Additional Indicators of Performance," and discussed above in Section III.F. As part of the implementation of this final rule, the Department will provide dedicated technical assistance to INA program grantees regarding the use of this indicator.

List of Subjects

20 CFR Part 684

Employment, Grant programs—labor, Indians, Reporting and recordkeeping requirements.

20 CFR Part 686

Employment, Grant programs—labor, Job Corps.

20 CFR Part 688

Employment, Grant programs—labor, Youth, YouthBuild.

For the reasons discussed in the preamble, the Department of Labor proposes to amend 20 CFR parts 684, 686, and 688 as follows:

PART 684—INDIAN AND NATIVE AMERICAN PROGRAMS UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

■ 1. The authority citation for part 684 continues to read as follows:

Authority: Secs. 134, 166, 189, 503, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

Subpart D—Supplemental Youth Services

■ 2. Amend § 684.460 by revising paragraph (a)(6) to read as follows:

§ 684.460 What performance indicators are applicable to the supplemental youth services program?

(a) * * *

(6) The percentage of participants in unsubsidized employment during the second quarter after exit from the program who were employed by the same employer in the second and fourth quarters after exit.

* * * * *

Subpart F—Accountability for Services and Expenditures

■ 3. Amend § 684.620 by revising paragraph (a)(6) to read as follows:

§ 684.620 What performance indicators are in place for the Indian and Native American program?

(a) * * *

(6) The percentage of participants in unsubsidized employment during the second quarter after exit from the program who were employed by the same employer in the second and fourth quarters after exit.

* * * * *

PART 686—THE JOB CORPS UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

■ 4. The authority citation for part 686 continues to read as follows:

Authority: Secs. 142, 144, 146, 147, 159, 189, 503, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

Subpart J—Performance

■ 5. Amend § 686.1010 by revising paragraph (f) to read as follows:

§ 686.1010 What are the primary indicators of performance for Job Corps centers and the Job Corps program?

* * * * *

(f) The percentage of participants in unsubsidized employment during the second quarter after exit from the program who were employed by the same employer in the second and fourth quarters after exit.

PART 688—PROVISIONS GOVERNING THE YOUTHBUILD PROGRAM

■ 6. The authority citation for part 688 continues to read as follows:

Authority: Secs. 171, 189, 503, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

Subpart D—Performance Indicators

■ 7. Amend § 688.400 by revising paragraph (f) to read as follows:

§ 688.400 What are the performance indicators for YouthBuild grants?

* * * * *

(f) The percentage of participants in unsubsidized employment during the second quarter after exit from the program who were employed by the same employer in the second and fourth quarters after exit; and

* * * * *

Julie A. Su,

Acting Secretary of Labor.

[FR Doc. 2024–03279 Filed 2–22–24; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Parts 28, 30, 87, 180, and 3282**

[Docket No. FR–6446–F–01]

Adjustment of Civil Monetary Penalty Amounts for 2024

AGENCY: Office of the General Counsel, HUD.

ACTION: Final rule.

SUMMARY: This rule provides for 2024 inflation adjustments of civil monetary penalty amounts required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act).

DATES: Effective date for 2024 inflation adjustment: March 25, 2024.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:**I. Background**

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act) (Pub. L. 114–74, Sec. 701), which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410), requires agencies to make annual adjustments to civil monetary penalty (CMP) amounts for inflation “notwithstanding section 553 of title 5, United States Code.” Section 553 refers to the Administrative Procedure Act, which provides for advance notice and public comment during the rulemaking process. However, as explained in Section III below, HUD has determined that advance notice and public comment on this final rule is unnecessary.

This annual adjustment is for 2024. The annual adjustment is based on the percent change between the U.S. Department of Labor’s Consumer Price Index for All Urban Consumers (“CPI–U”) for the month of October preceding the date of the adjustment, and the CPI–U for October of the prior year (28 U.S.C. 2461 note, section (5)(b)(1)). Based on that formula, the cost-of-living adjustment multiplier for 2024 is 1.03241.¹ Pursuant to the 2015 Act, adjustments are rounded to the nearest dollar.²

II. This Final Rule

This final rule makes the required 2024 inflation adjustment of HUD’s civil money penalty amounts. The 2024 increases apply to penalties assessed³ on or after this rule’s effective date (if the violation occurred after the enactment of the 2015 Act). HUD provides a table showing how, for each component, the penalties are being adjusted for 2024 pursuant to the 2015 Act. In the first column (“Description”), HUD provides a description of the penalty. In the second column (“Statutory Citation”), HUD provides the United States Code statutory citation providing for the penalty. In the third column (“Regulatory Citation”), HUD provides the Code of Federal Regulations citation under Title 24 for the penalty. In the fourth column (“Previous Amount”), HUD provides the amount of the penalty pursuant to the rule implementing the 2023 adjustment (88 FR 9745, February 15, 2023). In the fifth column (“2024 Adjusted Amount”), HUD lists the penalty after applying the 2024 inflation adjustment.

Description	Statutory citation	Regulatory citation (24 CFR)	Previous amount	2024 Adjusted amount
False Claims	Omnibus Budget Reconciliation Act of 1986 (31 U.S.C. 3802(a)(1)).	§ 28.10(a)	\$13,508	\$13,946.
False Statements	Omnibus Budget Reconciliation Act of 1986 (31 U.S.C. 3802 (a)(2)).	§ 28.10(b)	\$13,508	\$13,946.
Advance Disclosure of Funding	Department of Housing and Urban Development Act (42 U.S.C. 3537a(c)).	§ 30.20	\$23,727	\$24,496.
Disclosure of Subsidy Layering	Department of Housing and Urban Development Act (42 U.S.C. 3545(f)).	§ 30.25	\$23,727	\$24,496.
FHA Mortgagees and Lenders Violations.	HUD Reform Act of 1989 (12 U.S.C. 1735f–14(a)(2)).	§ 30.35	Per Violation: \$11,864; Per Year: \$2,372,677.	Per Violation: \$12,249; Per Year: \$2,449,575.
Other FHA Participants Violations.	HUD Reform Act of 1989 (12 U.S.C. 1735f–14(a)(2)).	§ 30.36	Per Violation: \$11,864; Per Year: \$2,372,677.	Per Violation: \$12,249; Per Year: \$2,449,575.
Indian Home Loan Guarantee Lender or Holder Violations.	Housing Community Development Act of 1992 (12 U.S.C. 1715z–13a(g)(2)).	§ 30.40	Per Violation: \$11,864; Per Year: \$2,372,677.	Per Violation: \$12,249; Per Year: \$2,449,575.
Multifamily & Section 202 or 811 Owners Violations.	HUD Reform Act of 1989 (12 U.S.C. 1735f–15(c)(2)).	§ 30.45	\$59,316	\$61,238.
Ginnie Mae Issuers & Custodians Violations.	HUD Reform Act of 1989 (12 U.S.C. 1723i(a))	§ 30.50	Per Violation: \$11,864; Per Year: \$2,372,677.	Per Violation: \$12,249; Per Year: \$2,449,575.

¹ Office of Management and Budget, M–24–07–, Memorandum for the Heads of Executive Departments and Agencies, Implementation of Penalty Inflation Adjustments for 2024, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. (<https://www.whitehouse.gov/wp-content/uploads/2023/12/>

M–24–07–Implementation-of-Penalty-Inflation-Adjustments-for-2024.pdf). (October 2023 CPI–U (307.671)/October 2022 CPI–U (298.012) = 1.03241).

² 28 U.S.C. 2461 note.

³ For certain programs including Multifamily, Section 202, and Section 811 mortgagors under 24 CFR 30.45 and Section 8 owners under 24 CFR

30.68, penalty amounts provided in a pre-penalty notice to a respondent pursuant to 24 CFR 30.70 is not considered having been assessed under this rule. For these programs, penalty amounts are considered to be assessed once the penalty amounts have been adjudicated as final or agreed upon under a settlement agreement.