

DEPARTMENT OF LABOR

Employment and Training
AdministrationConsultation Paper on Awarding
Incentive Grants and Applying
Sanctions for Title I Programs Under
Sections 503 and 136 of the Workforce
Investment Act (WIA)

AGENCY: Employment and Training
Administration, Labor.

ACTION: Notice.

SUMMARY: The purpose of this notice is to disseminate a consultation paper for interested parties on the awarding of Incentive Grants and application of Sanctions pertaining to the Performance Accountability Measurement System for Title I of WIA. This is the third of a series of consultation papers on the implementation of the Performance Accountability System under Title I of WIA. On March 24, 1999 two consultation papers were published in the **Federal Register**, the framework for Core Performance and Customer Satisfaction Measures and the framework for Negotiating State Adjusted Levels of Performance. Interested parties have 30 days to provide comments on this paper.

DATES: Comments must be received by May 27, 1999.

ADDRESSES: Send comments to Mr. Eric Johnson, Workforce Investment Implementation Taskforce Office, U.S. Department of Labor, 200 Constitution Avenue, NW, Room S-5513, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Johnson, Workforce Investment Implementation Taskforce Office, U.S. Department of Labor, 200 Constitution Avenue, NW, Room S5513, Washington, DC, Telephone: (202) 219-0316.(voice) (This is not a toll-free number), or 1-800 326-2577 (TDD). Information may also be found or comments provided, at the website—<http://usworkforce.org>.

SUPPLEMENTARY INFORMATION: The Workforce Investment Act, Pub. L. 105-220 (August 7, 1998) provides the framework for a reformed National workforce and employment system designed to meet the needs of the Nation's employers, job seekers and those who want to further their careers.

The Workforce Investment Act requires that a performance and accountability system be developed and implemented. The system must include certain core measures regarding performance and customer satisfaction. Adjusted levels of performance must be negotiated between the Governor and the Secretary of Labor for each core and

customer satisfaction measure, and applicable incentives or sanctions applied.

The U.S. Department of Labor in establishing this performance accountability system and is interested in comments and suggestions concerning the process for awarding Incentive Grants and applying Sanctions. Some of the questions on which the Department of Labor is seeking input are the following:

- Whether a "range" vs. a single value should be used to differentiate between being eligible for an incentive award and application of sanctions;
- How the bottom of such a "range" should be determined (ie. a nationally determined percentage from the negotiated State Adjusted Level of Performance, different percentages based on specific factors, etc.);
- The proposed methodology for determining when a State should be considered eligible for an incentive grant;
- The factors to be used in determining the level of monetary sanctions; and
- The proposed methodology for calculating failure to meet the adjusted levels.

Please consider these issues as you review this consultation paper, and provide comments.

Signed at Washington, D.C., this 21st day of April 1999.

Raymond L. Bramucci,

Assistant Secretary of Labor, Employment and Training Administration.

Attachment*I. Incentives and Sanctions Under WIA*

WIA contains performance accountability provisions intended to hold States accountable for the results obtained by their workforce programs and system. Performance accountability revolves around the planning, assisting, rewarding and sanctioning performance measured by agreed-upon levels for a set of core and customer satisfaction indicators.

WIA requires that the Secretary reach agreement with each State on the expected levels of performance for core indicators of performance. Section 136(b)(3)(A)(iv)(III) of WIA requires that the agreement between the Secretary and the State take into account the extent to which the levels for years 1, 2 and 3 of the 5 year strategic State plans (and subsequently years 4 and 5) promote continuous improvement and ensure optimal return on investment.

WIA section 503 provides that the Secretary shall award an incentive grant to each State that exceeds the State adjusted levels of performance for WIA Titles I and II and the Vocational and Applied Technology Education Act (Perkins Act). States that exceed the performance levels for WIA Titles I and II and the Perkins Act may apply for

an incentive award for the purpose of carrying out an innovative program consistent with the requirements of any one or more of the programs within WIA Title I, WIA Title II, or the Perkins Act. The application must assure that the State legislature was consulted and that the Governor and the cognizant adult education and post-secondary vocational education agencies approved the application.

WIA section 136(g)(1)(B) provides that the Secretary may reduce the Title I grant by not more than 5 percent for a State's failure to meet adjusted performance levels under Title I for a second consecutive year or for failure to submit the annual performance progress report required under section 136(d).

State responsibilities for providing incentive grants to local areas are described under WIA section 134(a)(2)(B). Sanctions for local areas failing to meet local performance measures are discussed under section 136(h).

Some of the key issues for developing incentives and sanctions policy include:

- (a) The nature of the WIA Title I state adjusted levels of performance;
- (b) The definition or standard for exceeding the WIA Title I adjusted levels;
- (c) The measures to be included for determining incentive awards;
- (d) The criteria for qualifying for incentive grants;
- (e) the amount of the incentive award;
- (f) The definition or standard for failing to meet the adjusted levels;
- (g) the criteria for receiving monetary sanctions;
- (h) The amount of the monetary sanction; and
- (i) sanctions for failing to submit annual performance progress reports.

A. The Nature of the WIA Title I State Adjusted Levels of Performance

WIA provides for establishment of state adjusted levels of performance which become the baseline performance levels for subsequent decisions related to incentives and sanctions. States that exceed the agreed-upon performance levels may receive incentive awards; and States that fail to meet the agreed upon levels may be sanctioned. A strict reading of the law might lead to the conclusion that the planned performance level is a single number or point, which is either exceeded or failed. If planned levels are driven high through negotiation, then fewer States will exceed the level and more states will fail it. If the planned levels are allowed to be low through negotiation, then just the opposite will occur and many States will be rewarded, some for quite low performance.

Stakeholders have suggested that incentives be awarded for high performance and that sanctions be reserved for truly low performance. These ideas suggest that a range of performance should be established so that only performance that exceeds the top of the range will receive incentive grants and only performance that falls below the bottom of the range will be subject to sanctions. States with performance within the range will neither qualify for incentives nor be subject to sanctions.

The state adjusted levels of performance constitute the top of the range and will be

arrived at through negotiation between the State and Department of Labor. As part of negotiation process, and in consideration of the factors described in WIA section 136(b)(3)(A)(iv), it is expected that the levels will assist the State to attain high levels of customer satisfaction, promote continuous improvement, and ensure optimal return on investment. The bottom of the range will be set initially by multiplying the State adjusted levels of performance by some appropriate percentage (e.g. 80 percent). This will be necessary in the initial years of WIA operation due to the lack of comparable performance data under WIA. However, establishment of the bottom of the range will be periodically reviewed as more comparable performance data under WIA becomes available and in the future the bottom of the range will be based on experience.

The use of a range acknowledges that performance can vary over time due to random events that cannot always be anticipated or necessarily prevented. The range could be expressed as a percentage or value; and it generally would not be the same for each measure, depending on the degree of variation of performance under each measure nationally. There are many possibilities for creating an appropriate "range." Once national WIA performance data becomes available, the breadth of the range can be refined and calibrated to assure that the lower limit is set at a level that reasonably represents unacceptable performance.

B. The Definition or Standard for Exceeding the Title I Adjusted Levels of Performance

WIA section 503 provides that the Secretary must award a grant to each State that exceeds the State adjusted levels of performance for WIA Titles I and II and the Perkins Act. WIA Title I will operate with 15 core and 2 customer satisfaction performance indicators. The determination for whether the adjusted levels of performance were exceeded will be based on the State's cumulative achievement across all measures. This will be done by calculating the percent of the State adjusted level achieved for each measure; and then averaging the percentages achieved across all measures. When the cumulative average across all measures exceeds 100 percent, the State will be determined to have exceeded the adjusted indicators overall. There is no minimum number of measures that must be exceeded; however, both customer satisfaction measures must be exceeded and a State may not fall below the bottom of the "range" for any measure. See Table A for an example as to how the cumulative averaging would work.

C. The Measures to be Included for Considering Incentive Awards

In addition to the core indicators of performance, WIA Titles I and II and the Perkins Act each allows States to identify additional indicators of performance which are subsequently defined to be part of the State adjusted levels of performance. Section 503 directs the Secretary to award incentives to states exceeding the state adjusted levels of performance. In order to promote equity and uniformity for award of incentive funds, only the Federally required core and

customer satisfaction indicators will be considered in the methodology for determining eligibility for incentive awards.

D. The criteria for qualifying for incentive grants

WIA section 503 provides that the Secretary must award a grant to each State that exceeds the State adjusted levels of performance for WIA Title I, the expected levels of performance for WIA Title II, and the levels of performance under the Perkins Act. Qualifying for award of an incentive grant is dependent upon exceeding levels of performance for all three programs. To arrive at the decision to award incentive funds, DOL and DoED will determine if performance was exceeded for its respective programs; however, DOL and DoED will cooperate towards the development and use of a similar methodology to define what it means to exceed planned performance levels. In order to receive an incentive grant, performance must exceed planned performance in each of the three program areas.

E. The Amount of the Incentive Award

WIA section 503 indicates that incentive grants will be awarded in an amount that is not less than \$750,000 and not more than \$3,000,000. The primary issues related to determining the amount of award concern the equity of the size of the award among the states and the incentive power of the award. WIA section 503(c)(2) requires a proportionate reduction in the minimum and maximum amounts when total available funds are insufficient. Based upon achieved performance levels for Titles I and II of WIA and the Perkins Act, the DOL and DoED will publish a list of States qualifying for incentive grants along with the maximum amount of the grant based upon available funds. The methodology for determining award amounts will be developed at a later time. Section 666.230 of the interim final regulations for WIA Title I provides factors that may be considered in the determination.

F. The Definition or Standard for Failing to Meet the Adjusted Levels

Section 136(g) addresses sanctions for State failure to meet State performance measures for the core indicators or the customer satisfaction indicators under Title I of WIA. The Act indicates that failure should be defined as failing to meet levels established for each separate program or for the customer satisfaction indicators.

Failure will be defined using a calculation methodology similar to that used for defining exceeding; that is, calculating across relevant indicators the cumulative average achieved of the lower limit of the range. This will be done by calculating the percentage achieved of the lower limit of the range established for each measure; and then calculating the average achieved across all measures. When the cumulative average across relevant program measures falls below 100 percent of the lower limit, the State will be determined to have failed to meet the adjusted levels of performance. See Table B for an example of how the calculation of failure would work.

Determinations of failure will be established separately for each program

(adult, dislocated workers, and youth) and for the program overall considering customer satisfaction measures. States that fail for any program year to achieve an average of at least 100 percent of the lower limit of the range for the relevant indicators for any single program, or the overall program measured by customer satisfaction, may request and receive technical assistance for the Secretary.

G. The Criteria for Receiving Monetary Sanctions

Section 136(g)(1)(B) provides that the Secretary may reduce the grant by not more than 5 percent of the amount payable under a program should the State fail to meet adjusted performance levels for a program for a second consecutive year. The failure must occur for the same program area for two consecutive years; in other words, the State must achieve an average below 100 percent of the lower limit of the range for two consecutive years for either the adult measures, the dislocated worker measures, the youth measures, or the customer satisfaction measures. The sanction system will be totally objective and will automatically invoke monetary sanctions when a State fails to achieve the minimum average performance for the same program for a second consecutive year. The grant may also be reduced by up to 5 percent for failure to submit the annual performance progress report required under section 136(d).

Since data will not be available in sufficient time to actually determine that there was a failure for a second consecutive year, the monetary sanction will be invoked with respect to the funding allocation for the next full program year following the year in which data about "the second consecutive year" became available. This approach assures that funding is not affected after-the-fact.

H. The Amount of the Monetary Sanction

Section 136(g)(1)(B) provides that the Secretary may reduce the grant by not more than 5 percent of the amount that would be payable under the program; and the penalty shall be based on the degree of failure to meet State adjusted levels of performance. Using the average percent achieved across relevant indicators for each program, and for the overall program based on customer satisfaction, there will be a one percent monetary sanction for every three percent below 100 percent cumulative attainment of the lower limit of the ranges established. As an example, achievement between 97.0 and 99.99 percent of the lower limit would result in a one percent reduction; achievement between 94.0 and 96.99 percent would result in a two percent deduction, etc.

I. Sanctions for Failure To Submit Annual Performance Progress Reports

Section 136(g)(1)(B) provides that the Secretary may reduce the grant amount by up to five percent for failure by a State to submit the annual performance progress report to the Secretary. States that are more than 45 days late in submitting complete and sufficiently accurate reports will be sanctioned by one percent, plus an additional one percent for each addition 45-day period of lateness. Any state sanctioned for not submitting its

performance progress report within the specified time will not be eligible to apply for incentive funds.

INCENTIVES EXAMPLE STATE A

Measures	Adjusted level	Actual	Percent achieved	Lower limit*
Adult				
Entered Employment	74%	82%	110.8	59.2%
6-Month Retention	86%	89%	103.5	68.8%
6-Month Earnings Change	\$4,000	\$3,579	89.5	\$3,200
Credential Attainment Rate	20%	19%	95.0	16.0%
Dislocated Workers				
Entered Employment	82%	89%	108.5	65.6%
6-Month Retention	88%	92%	104.5	70.4%
6-Month Earnings Change	\$1,000	\$910	91.0	\$800
Credential Attainment Rate	20%	25%	125.0	16.0%
Youth 19-21				
Entered Employment	55%	67%	121.8	44.0%
6-Month Retention	60%	70%	116.7	48.0%
6-Month Earnings Change	\$3,000	\$3,557	118.6	\$2,400
Credential Attainment Rate	35%	47%	134.3	28.0%
Youth 14-18				
Skill Attainment	67%	72%	107.5	53.6%
Diplomas or Equivalent Attainment	25%	27%	108.0	20.0%
Placement and Retention	65%	62%	95.4	52.0%
Customer Satisfaction				
Employer	87%	94%	108.0	69.6%
Participant	87%	92%	105.7	69.6%
Average Achieved Over All			108.5	

State A has exceeded the adjusted levels for WIA Title I: the overall average percent achieved is over 100%; actual performance didn't fall below the lower limit for any measure; and both customer satisfaction adjusted levels were met.

*In this example, the lower limit was calculated at 80% of Adjusted Level for all measures.

SANCTIONS EXAMPLE STATE B

Measures	Lower limit	Actual	Percent achieved
Adult			
Entered Employment	56%	75%	133.9
6-Month Retention	65%	80%	123.1
6-Month Earnings Change	\$3,000	\$2,579	86.0
Credential Attainment Rate	15%	14%	93.3
Adult Program Average			109.1
Dislocated Workers			
Entered Employment	62%	80%	129.0
6-Month Retention	66%	76%	115.2
6-Month Earnings Change	\$750	\$605	80.7
Credential Attainment Rate	15%	20%	133.3
DW Program Average			114.5
Youth 19-21			
Entered Employment	41%	39%	95.1
6-Month Retention	45%	46%	102.2
6-Month Earnings Change	\$2,250	\$1,998	88.8
Credential Attainment Rate	26%	24%	92.3
Youth 14-18			
Skill Attainment	50%	54%	108.0
Diplomas or Equivalent Attainment	19%	20%	105.3
Placement & Retention	49%	47%	95.9
Youth Program Average			98.2
Customer Satisfaction			
Employer	65%	77%	118.5
Participant	65%	81%	124.6

SANCTIONS EXAMPLE STATE B—Continued

Measures	Lower limit	Actual	Percent achieved
Customer Satisfaction Average	121.5

State B failed the Youth Program measures: 98.2% of lower limit achieved on average. If these youth measures depict failure in the second consecutive year, a monetary sanction equal to one percent would be applied to the youth allocation.

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