

(e) Modifications for the core program portions of the Combined State Plan must be approved by the Secretaries of Labor and Education, based on the approval standards applicable to the original Combined State Plan under §676.143. This approval must come after the approval of the Commissioner of the Rehabilitation Services Administration for modification of any portion of the Combined State Plan described in sec. 102(b)(2)(D)(iii) of WIOA.

## **PART 677—PERFORMANCE ACCOUNTABILITY UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT**

Sec.

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### **§ 677.150 What definitions apply to Workforce Innovation and Opportunity Act performance accountability provisions?**

(a) *Participant*. A reportable individual who has received services other

than the services described in paragraph (a)(3) of this section, after satisfying all applicable programmatic requirements for the provision of services, such as eligibility determination.

(1) For the Vocational Rehabilitation (VR) program, a participant is a reportable individual who has an approved and signed Individualized Plan for Employment (IPE) and has begun to receive services.

(2) For the Workforce Innovation and Opportunity Act (WIOA) title I youth program, a participant is a reportable individual who has satisfied all applicable program requirements for the provision of services, including eligibility determination, an objective assessment, and development of an individual service strategy, and received 1 of the 14 WIOA youth program elements identified in sec. 129(c)(2) of WIOA.

(3) The following individuals are not participants:

(i) Individuals in an Adult Education and Family Literacy Act (AEFLA) program who have not completed at least 12 contact hours;

(ii) Individuals who only use the self-service system.

(A) Subject to paragraph (a)(3)(ii)(B) of this section, self-service occurs when individuals independently access any workforce development system program's information and activities in either a physical location, such as a one-stop center resource room or partner agency, or remotely via the use of electronic technologies.

(B) Self-service does not uniformly apply to all virtually accessed services. For example, virtually accessed services that provide a level of support beyond independent job or information seeking on the part of an individual would not qualify as self-service.

(iii) Individuals who receive information-only services or activities, which provide readily available information that does not require an assessment by a staff member of the individual's skills, education, or career objectives.

(4) Programs must include participants in their performance calculations.

(b) *Reportable individual.* An individual who has taken action that demonstrates an intent to use program

services and who meets specific reporting criteria of the program, including:

(1) Individuals who provide identifying information;

(2) Individuals who only use the self-service system; or

(3) Individuals who only receive information-only services or activities.

(c) *Exit.* As defined for the purpose of performance calculations, exit is the point after which a participant who has received services through any program meets the following criteria:

(1) For the adult, dislocated worker, and youth programs authorized under WIOA title I, the AEFLA program authorized under WIOA title II, and the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III, exit date is the last date of service.

(i) The last day of service cannot be determined until at least 90 days have elapsed since the participant last received services; services do not include self-service, information-only services or activities, or follow-up services. This also requires that there are no plans to provide the participant with future services.

(ii) [Reserved].

(2)(i) For the VR program authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV (VR program):

(A) The participant's record of service is closed in accordance with 34 CFR 361.56 because the participant has achieved an employment outcome; or

(B) The participant's service record is closed because the individual has not achieved an employment outcome or the individual has been determined ineligible after receiving services in accordance with 34 CFR 361.43.

(ii) Notwithstanding any other provision of this section, a participant will not be considered as meeting the definition of exit from the VR program if the participant's service record is closed because the participant has achieved a supported employment outcome in an integrated setting but not in competitive integrated employment.

(3)(i) A State may implement a common exit policy for all or some of the core programs in WIOA title I and the Employment Service program authorized under the Wagner-Peyser Act, as

amended by WIOA title III, and any additional required partner program(s) listed in sec. 121(b)(1)(B) of WIOA that is under the authority of the U.S. Department of Labor (DOL).

(ii) If a State chooses to implement a common exit policy, the policy must require that a participant is exited only when all of the criteria in paragraph (c)(1) of this section are met for the WIOA title I core programs and the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III, as well as any additional required partner programs listed in sec. 121(b)(1)(B) of WIOA under the authority of DOL to which the common exit policy applies in which the participant is enrolled.

(d) *State.* For purposes of this part, other than in regard to sanctions or the statistical adjustment model, all references to “State” include the outlying areas of American Samoa, Guam, Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, and, as applicable, the Republic of Palau.

### Subpart A—State Indicators of Performance for Core Programs

#### § 677.155 What are the primary indicators of performance under the Workforce Innovation and Opportunity Act?

(a) All States submitting either a Unified or Combined State Plan under §§ 676.130 and 676.143 of this chapter, must propose expected levels of performance for each of the primary indicators of performance for the adult, dislocated worker, and youth programs authorized under WIOA title I; the AEFLA program authorized under WIOA title II; the Employment Service 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 of 1973, as amended by WIOA title IV.

(1) *Primary indicators of performance.* The six primary indicators of performance for the adult and dislocated worker programs, the AEFLA program, and the VR program are:

(i) The percentage of participants who are in unsubsidized employment

during the second quarter after exit from the program;

(ii) The percentage of participants who are in unsubsidized employment during the fourth quarter after exit from the program;

(iii) Median earnings of participants who are in unsubsidized employment during the second quarter after exit from the program;

(iv)(A) The percentage of those participants enrolled in an education or training program (excluding those in on-the-job training [OJT] and customized training) who attained a recognized postsecondary credential or a secondary school diploma, or its recognized equivalent, during participation in or within 1 year after exit from the program.

(B) A participant who has attained a secondary school diploma or its recognized equivalent is included in the percentage of participants who have attained a secondary school diploma or recognized equivalent only if the participant also is employed or is enrolled in an education or training program leading to a recognized postsecondary credential within 1 year after exit from the program;

(v) The percentage of participants who, during a program year, are in an education or training program that leads to a recognized postsecondary credential or employment and who are achieving measurable skill gains, defined as documented academic, technical, occupational, or other forms of progress, towards such a credential or employment. Depending upon the type of education or training program, documented progress is defined as one of the following:

(A) Documented achievement of at least one educational functioning level of a participant who is receiving instruction below the postsecondary education level;

(B) Documented attainment of a secondary school diploma or its recognized equivalent;

(C) Secondary or postsecondary transcript or report card for a sufficient number of credit hours that shows a participant is meeting the State unit’s academic standards;

(D) Satisfactory or better progress report, towards established milestones,

such as completion of OJT or completion of 1 year of an apprenticeship program or similar milestones, from an employer or training provider who is providing training; or

(E) Successful passage of an exam that is required for a particular occupation or progress in attaining technical or occupational skills as evidenced by trade-related benchmarks such as knowledge-based exams.

(vi) Effectiveness in serving employers.

(2) *Participants.* For purposes of the primary indicators of performance in paragraph (a)(1) of this section, “participant” will have the meaning given to it in § 677.150(a), except that—

(i) For purposes of determining program performance levels under indicators set forth in paragraphs (a)(1)(i) through (iv) and (vi) of this section, a “participant” does not include a participant who received services under sec. 225 of WIOA and exits such program while still in a correctional institution as defined in sec. 225(e)(1) of WIOA; and

(ii) The Secretaries of Labor and Education may, as needed and consistent with the Paperwork Reduction Act (PRA), make further determinations as to the participants to be included in calculating program performance levels for purposes of any of the performance indicators set forth in paragraph (a)(1) of this section.

(b) The primary indicators in paragraphs (a)(1)(i) through (iii) and (vi) of this section apply to the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III.

(c) For the youth program authorized under WIOA title I, the primary indicators are:

(1) Percentage of participants who are in education or training activities, or in unsubsidized employment, during the second quarter after exit from the program;

(2) Percentage of participants in education or training activities, or in unsubsidized employment, during the fourth quarter after exit from the program;

(3) Median earnings of participants who are in unsubsidized employment

during the second quarter after exit from the program;

(4) The percentage of those participants enrolled in an education or training program (excluding those in OJT and customized training) who obtained a recognized postsecondary credential or a secondary school diploma, or its recognized equivalent, during participation in or within 1 year after exit from the program, except that a participant who has attained a secondary school diploma or its recognized equivalent is included as having attained a secondary school diploma or recognized equivalent only if the participant is also employed or is enrolled in an education or training program leading to a recognized postsecondary credential within 1 year from program exit;

(5) The percentage of participants who during a program year, are in an education or training program that leads to a recognized postsecondary credential or employment and who are achieving measurable skill gains, defined as documented academic, technical, occupational or other forms of progress towards such a credential or employment. Depending upon the type of education or training program, documented progress is defined as one of the following:

(i) Documented achievement of at least one educational functioning level of a participant who is receiving instruction below the postsecondary education level;

(ii) Documented attainment of a secondary school diploma or its recognized equivalent;

(iii) Secondary or postsecondary transcript or report card for a sufficient number of credit hours that shows a participant is achieving the State unit’s academic standards;

(iv) Satisfactory or better progress report, towards established milestones, such as completion of OJT or completion of 1 year of an apprenticeship program or similar milestones, from an employer or training provider who is providing training; or

(v) Successful passage of an exam that is required for a particular occupation or progress in attaining technical or occupational skills as evidenced by trade-related benchmarks such as knowledge-based exams.

(6) Effectiveness in serving employers.

**§ 677.160 What information is required for State performance reports?**

(a) The State performance report required by sec. 116(d)(2) of WIOA must be submitted annually using a template the Departments of Labor and Education will disseminate, and must provide, at a minimum, information on the actual performance levels achieved consistent with § 677.175 with respect to:

(1) The total number of participants served, and the total number of participants who exited each of the core programs identified in sec. 116(b)(3)(A)(ii) of WIOA, including disaggregated counts of those who participated in and exited a core program, by:

(i) Individuals with barriers to employment as defined in WIOA sec. 3(24); and

(ii) Co-enrollment in any of the programs in WIOA sec. 116(b)(3)(A)(ii).

(2) Information on the performance levels achieved for the primary indicators of performance for all of the core programs identified in § 677.155 including disaggregated levels for:

(i) Individuals with barriers to employment as defined in WIOA sec. 3(24);

(ii) Age;

(iii) Sex; and

(iv) Race and ethnicity.

(3) The total number of participants who received career services and the total number of participants who exited from career services for the most recent program year and the 3 preceding program years, and the total number of participants who received training services and the total number of participants who exited from training services for the most recent program year and the 3 preceding program years, as applicable to the program;

(4) Information on the performance levels achieved for the primary indicators of performance consistent with § 677.155 for career services and training services for the most recent program year and the 3 preceding program years, as applicable to the program;

(5) The percentage of participants in a program who attained unsubsidized employment related to the training received (often referred to as training-re-

lated employment) through WIOA title I, subtitle B programs;

(6) The amount of funds spent on career services and the amount of funds spent on training services for the most recent program year and the 3 preceding program years, as applicable to the program;

(7) The average cost per participant for those participants who received career services and training services, respectively, during the most recent program year and the 3 preceding program years, as applicable to the program;

(8) The percentage of a State's annual allotment under WIOA sec. 132(b) that the State spent on administrative costs; and

(9) Information that facilitates comparisons of programs with programs in other States.

(10) For WIOA title I programs, a State performance narrative, which, for States in which a local area is implementing a pay-for-performance contracting strategy, at a minimum provides:

(i) A description of pay-for-performance contract strategies being used for programs;

(ii) The performance of service providers entering into contracts for such strategies, measured against the levels of performance specified in the contracts for such strategies; and

(iii) An evaluation of the design of the programs and performance strategies and, when available, the satisfaction of employers and participants who received services under such strategies.

(b) The disaggregation of data for the State performance report must be done in compliance with WIOA sec. 116(d)(6)(C).

(c) The State performance reports must include a mechanism of electronic access to the State's local area and eligible training provider (ETP) performance reports.

(d) States must comply with these requirements from sec. 116 of WIOA as explained in joint guidance issued by the Departments of Labor and Education, which may include information on reportable individuals as determined by the Secretaries of Labor and Education.

**§ 677.165 May a State establish additional indicators of performance?**

States may identify additional indicators of performance for the six core programs. If a State does so, these indicators must be included in the Unified or Combined State Plan.

**§ 677.170 How are State levels of performance for primary indicators established?**

(a) A State must submit in the State Plan expected levels of performance on the primary indicators of performance for each core program as required by sec. 116(b)(3)(A)(iii) of WIOA as explained in joint guidance issued by the Secretaries of Labor and Education.

(1) The initial State Plan submitted under WIOA must contain expected levels of performance for the first 2 years of the State Plan.

(2) States must submit expected levels of performance for the third and fourth year of the State Plan before the third program year consistent with §§ 676.135 and 676.145 of this chapter.

(b) States must reach agreement on levels of performance with the Secretaries of Labor and Education for each indicator for each core program. These are the negotiated levels of performance. The negotiated levels must be based on the following factors:

(1) How the negotiated levels of performance compare with State levels of performance established for other States;

(2) The application of an objective statistical model established by the Secretaries of Labor and Education, subject to paragraph (d) of this section;

(3) How the negotiated levels promote continuous improvement in performance based on the primary indicators and ensure optimal return on investment of Federal funds; and

(4) The extent to which the negotiated levels assist the State in meeting the performance goals established by the Secretaries of Labor and Education for the core programs in accordance with the Government Performance and Results Act of 1993, as amended.

(c) An objective statistical adjustment model will be developed and disseminated by the Secretaries of Labor

and Education. The model will be based on:

(1) Differences among States in actual economic conditions, including but not limited to unemployment rates and job losses or gains in particular industries; and

(2) The characteristics of participants, including but not limited to:

(i) Indicators of poor work history;

(ii) Lack of work experience;

(iii) Lack of educational or occupational skills attainment;

(iv) Dislocation from high-wage and high-benefit employment;

(v) Low levels of literacy;

(vi) Low levels of English proficiency;

(vii) Disability status;

(viii) Homelessness;

(ix) Ex-offender status; and

(x) Welfare dependency.

(d) The objective statistical adjustment model developed under paragraph (c) of this section will be:

(1) Applied to the core programs' primary indicators upon availability of data which are necessary to populate the model and apply the model to the local core programs;

(2) Subject to paragraph (d)(1) of this section, used before the beginning of a program year in order to reach agreement on State negotiated levels for the upcoming program year; and

(3) Subject to paragraph (d)(1) of this section, used to revise negotiated levels at the end of a program year based on actual economic conditions and characteristics of participants served, consistent with sec. 116(b)(3)(A)(vii) of WIOA.

(e) The negotiated levels revised at the end of the program year, based on the statistical adjustment model, are the adjusted levels of performance.

(f) States must comply with these requirements from sec. 116 of WIOA as explained in joint guidance issued by the Departments of Labor and Education.

**§ 677.175 What responsibility do States have to use quarterly wage record information for performance accountability?**

(a)(1) States must, consistent with State laws, use quarterly wage record information in measuring a State's performance on the primary indicators

of performance outlined in § 677.155 and a local area's performance on the primary indicators of performance identified in § 677.205.

(2) The use of social security numbers from participants and such other information as is necessary to measure the progress of those participants through quarterly wage record information is authorized.

(3) To the extent that quarterly wage records are not available for a participant, States may use other information as is necessary to measure the progress of those participants through methods other than quarterly wage record information.

(b) "Quarterly wage record information" means intrastate and interstate wages paid to an individual, the social security number (or numbers, if more than one) of the individual, and the name, address, State, and the Federal employer identification number of the employer paying the wages to the individual.

(c) The Governor may designate a State agency (or appropriate State entity) to assist in carrying out the performance reporting requirements for WIOA core programs and ETPs. The Governor or such agency (or appropriate State entity) is responsible for:

- (1) Facilitating data matches;
- (2) Data quality reliability; and
- (3) Protection against disaggregation that would violate applicable privacy standards.

### **Subpart B—Sanctions for State Performance and the Provision of Technical Assistance**

#### **§ 677.180 When is a State subject to a financial sanction under the Workforce Innovation and Opportunity Act?**

A State will be subject to financial sanction under WIOA sec. 116(f) if it fails to:

- (a) Submit the State annual performance report required under WIOA sec. 116(d)(2); or
- (b) Meet adjusted levels of performance for the primary indicators of performance in accordance with sec. 116(f) of WIOA.

#### **§ 677.185 When are sanctions applied for a State's failure to submit an annual performance report?**

(a) Sanctions will be applied when a State fails to submit the State annual performance report required under sec. 116(d)(2) of WIOA. A State fails to report if the State either:

- (1) Does not submit a State annual performance report by the date for timely submission set in performance reporting guidance; or
- (2) Submits a State annual performance report by the date for timely submission, but the report is incomplete.

(b) Sanctions will not be applied if the reporting failure is due to exceptional circumstances outside of the State's control. Exceptional circumstances may include, but are not limited to:

- (1) Natural disasters;
- (2) Unexpected personnel transitions; and
- (3) Unexpected technology related issues.

(c) In the event that a State may not be able to submit a complete and accurate performance report by the deadline for timely reporting:

- (1) The State must notify the Secretary of Labor or Secretary of Education as soon as possible, but no later than 30 days prior to the established deadline for submission, of a potential impact on the State's ability to submit its State annual performance report in order to not be considered failing to report.
- (2) In circumstances where unexpected events occur less than 30 days before the established deadline for submission of the State annual performance reports, the Secretaries of Labor and Education will review requests for extending the reporting deadline in accordance with the Departments of Labor and Education's procedures that will be established in guidance.

(c) In the event that a State may not be able to submit a complete and accurate performance report by the deadline for timely reporting:

#### **§ 677.190 When are sanctions applied for failure to achieve adjusted levels of performance?**

- (a) States' negotiated levels of performance will be adjusted through the application of the statistical adjustment model established under § 677.170 to account for actual economic conditions experienced during a program

year and characteristics of participants, annually at the close of each program year.

(b) Any State that fails to meet adjusted levels of performance for the primary indicators of performance outlined in § 677.155 for any year will receive technical assistance, including assistance in the development of a performance improvement plan provided by the Secretary of Labor or Secretary of Education.

(c) Whether a State has failed to meet adjusted levels of performance will be determined using the following three criteria:

(1) The overall State program score, which is expressed as the percent achieved, compares the actual results achieved by a core program on the primary indicators of performance to the adjusted levels of performance for that core program. The average of the percentages achieved of the adjusted level of performance for each of the primary indicators by a core program will constitute the overall State program score.

(2) However, until all indicators for the core program have at least 2 years of complete data, the overall State program score will be based on a comparison of the actual results achieved to the adjusted level of performance for each of the primary indicators that have at least 2 years of complete data for that program;

(3) The overall State indicator score, which is expressed as the percent achieved, compares the actual results achieved on a primary indicator of performance by all core programs in a State to the adjusted levels of performance for that primary indicator. The average of the percentages achieved of the adjusted level of performance by all of the core programs on that indicator will constitute the overall State indicator score.

(4) However, until all indicators for the State have at least 2 years of complete data, the overall State indicator score will be based on a comparison of the actual results achieved to the adjusted level of performance for each of the primary indicators that have at least 2 years of complete data in a State.

(5) The individual indicator score, which is expressed as the percent achieved, compares the actual results achieved by each core program on each of the individual primary indicators to the adjusted levels of performance for each of the program's primary indicators of performance.

(d) A performance failure occurs when:

(1) Any overall State program score or overall State indicator score falls below 90 percent for the program year; or

(2) Any of the States' individual indicator scores fall below 50 percent for the program year.

(e) Sanctions based on performance failure will be applied to States if, for 2 consecutive years, the State fails to meet:

(1) 90 percent of the overall State program score for the same core program;

(2) 90 percent of the overall State indicator score for the same primary indicator; or

(3) 50 percent of the same indicator score for the same program.

**§ 677.195 What should States expect when a sanction is applied to the Governor's Reserve Allotment?**

(a) The Secretaries of Labor and Education will reduce the Governor's Reserve Allotment by five percent of the maximum available amount for the immediately succeeding program year if:

(1) The State fails to submit the State annual performance reports as required under WIOA sec. 116(d)(2), as defined in § 677.185;

(2) The State fails to meet State adjusted levels of performance for the same primary performance indicator(s) under either § 677.190(d)(1) for the second consecutive year as defined in § 677.190; or

(3) The State's score on the same indicator for the same program falls below 50 percent under § 677.190(d)(2) for the second consecutive year as defined in § 677.190.

(b) If the State fails under paragraphs (a)(1) and either (a)(2) or (3) of this section in the same program year, the Secretaries of Labor and Education will reduce the Governor's Reserve Allotment by 10 percent of the maximum



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available amount for the immediately succeeding program year.

(c) If a State's Governor's Reserve Allotment is reduced:

(1) The reduced amount will not be returned to the State in the event that the State later improves performance or submits its annual performance report; and

(2) The Governor's Reserve will continue to be set at the reduced level in each subsequent year until the Secretary of Labor or the Secretary of Education, depending on which program is impacted, determines that the State met the State adjusted levels of performance for the applicable primary performance indicators and has submitted all of the required performance reports.

(d) A State may request review of a sanction the Secretary of Labor imposes in accordance with the provisions of § 683.800 of this chapter.

### **§ 677.200 What other administrative actions will be applied to States' performance requirements?**

(a) In addition to sanctions for failure to report or failure to meet adjusted levels of performance, States will be subject to administrative actions in the case of poor performance.

(b) States' performance achievement on the individual primary indicators will be assessed in addition to the overall State program score and overall State indicator score. Based on this assessment, as clarified and explained in guidance, for performance on any individual primary indicator, the Secretary of Labor or the Secretary of Education will require the State to establish a performance risk plan to address continuous improvement on the individual primary indicator.

## **Subpart C—Local Performance Accountability for Workforce Innovation and Opportunity Act Title I Programs**

### **§ 677.205 What performance indicators apply to local areas and what information must be included in local area performance reports?**

(a) Each local area in a State under WIOA title I is subject to the same primary indicators of performance for the

core programs for WIOA title I under § 677.155(a)(1) and (c) that apply to the State.

(b) In addition to the indicators described in paragraph (a) of this section, under § 677.165, the Governor may apply additional indicators of performance to local areas in the State.

(c) States must annually make local area performance reports available to the public using a template that the Departments of Labor and Education will disseminate in guidance, including by electronic means. The State must provide electronic access to the public local area performance report in its annual State performance report.

(d) The local area performance report must include:

(1) The actual results achieved under § 677.155 and the information required under § 677.160(a);

(2) The percentage of a local area's allotment under WIOA secs. 128(b) and 133(b) that the local area spent on administrative costs; and

(3) Other information that facilitates comparisons of programs with programs in other local areas (or planning regions if the local area is part of a planning region).

(e) The disaggregation of data for the local area performance report must be done in compliance with WIOA sec. 116(d)(6)(C).

(f) States must comply with any requirements from sec. 116(d)(3) of WIOA as explained in guidance, including the use of the performance reporting template, issued by DOL.

### **§ 677.210 How are local performance levels established?**

(a) The objective statistical adjustment model required under sec. 116(b)(3)(A)(viii) of WIOA and described in § 677.170(c) must be:

(1) Applied to the core programs' primary indicators upon availability of data which are necessary to populate the model and apply the model to the local core programs;

(2) Used in order to reach agreement on local negotiated levels of performance for the upcoming program year; and

(3) Used to establish adjusted levels of performance at the end of a program

year based on actual conditions, consistent with WIOA sec. 116(c)(3).

(b) Until all indicators for the core program in a local area have at least 2 years of complete data, the comparison of the actual results achieved to the adjusted levels of performance for each of the primary indicators only will be applied where there are at least 2 years of complete data for that program.

(c) The Governor, Local Workforce Development Board (WDB), and chief elected official must reach agreement on local negotiated levels of performance based on a negotiations process before the start of a program year with the use of the objective statistical model described in paragraph (a) of this section. The negotiations will include a discussion of circumstances not accounted for in the model and will take into account the extent to which the levels promote continuous improvement. The objective statistical model will be applied at the end of the program year based on actual economic conditions and characteristics of the participants served.

(d) The negotiations process described in paragraph (c) of this section must be developed by the Governor and disseminated to all Local WDBs and chief elected officials.

(e) The Local WDBs may apply performance measures to service providers that differ from the performance indicators that apply to the local area. These performance measures must be established after considering:

- (1) The established local negotiated levels;
- (2) The services provided by each provider; and
- (3) The populations the service providers are intended to serve.

#### **Subpart D—Incentives and Sanctions for Local Performance for Workforce Innovation and Opportunity Act Title I Programs**

##### **§ 677.215 Under what circumstances are local areas eligible for State Incentive Grants?**

(a) The Governor is not required to award local incentive funds, but is authorized to provide incentive grants to local areas for performance on the pri-

mary indicators of performance consistent with WIOA sec. 134(a)(3)(A)(xi).

(b) The Governor may use non-Federal funds to create incentives for the Local WDBs to implement pay-for-performance contract strategies for the delivery of training services described in WIOA sec. 134(c)(3) or activities described in WIOA sec. 129(c)(2) in the local areas served by the Local WDBs. Pay-for-performance contract strategies must be implemented in accordance with part 683, subpart E of this chapter and § 677.160.

##### **§ 677.220 Under what circumstances may a corrective action or sanction be applied to local areas for poor performance?**

(a) If a local area fails to meet the adjusted levels of performance agreed to under § 677.210 for the primary indicators of performance in the adult, dislocated worker, and youth programs authorized under WIOA title I in any program year, technical assistance must be provided by the Governor or, upon the Governor's request, by the Secretary of Labor.

(1) A State must establish the threshold for failure to meet adjusted levels of performance for a local area before coming to agreement on the negotiated levels of performance for the local area.

(i) A State must establish the adjusted level of performance for a local area, using the statistical adjustment model described in § 677.170(c).

(ii) At least 2 years of complete data on any indicator for any local core program are required in order to establish adjusted levels of performance for a local area.

(2) The technical assistance may include:

- (i) Assistance in the development of a performance improvement plan;
- (ii) The development of a modified local or regional plan; or
- (iii) Other actions designed to assist the local area in improving performance.

(b) If a local area fails to meet the adjusted levels of performance agreed to under § 677.210 for the same primary indicators of performance for the same core program authorized under WIOA title I for a third consecutive program

## **§ 677.225**

year, the Governor must take corrective actions. The corrective actions must include the development of a reorganization plan under which the Governor:

(1) Requires the appointment and certification of a new Local WDB, consistent with the criteria established under § 679.350 of this chapter;

(2) Prohibits the use of eligible providers and one-stop partners that have been identified as achieving poor levels of performance; or

(3) Takes such other significant actions as the Governor determines are appropriate.

### **§ 677.225 Under what circumstances may local areas appeal a reorganization plan?**

(a) The Local WDB and chief elected official for a local area that is subject to a reorganization plan under WIOA sec. 116(g)(2)(A) may appeal to the Governor to rescind or revise the reorganization plan not later than 30 days after receiving notice of the reorganization plan. The Governor must make a final decision within 30 days after receipt of the appeal.

(b) The Local WDB and chief elected official may appeal the final decision of the Governor to the Secretary of Labor not later than 30 days after receiving the decision from the Governor. Any appeal of the Governor's final decision must be:

(1) Appealed jointly by the Local WDB and chief elected official to the Secretary of Labor under § 683.650 of this chapter; and

(2) Must be submitted by certified mail, return receipt requested, to the Secretary of Labor, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210, Attention: ASET. A copy of the appeal must be simultaneously provided to the Governor.

(c) Upon receipt of the joint appeal from the Local WDB and chief elected official, the Secretary of Labor must make a final decision within 30 days. In making this determination the Secretary of Labor may consider any comments submitted by the Governor in response to the appeals.

(d) The decision by the Governor on the appeal becomes effective at the

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time it is issued and remains effective unless the Secretary of Labor rescinds or revises the reorganization plan under WIOA sec. 116(g)(2)(C).

### **Subpart E—Eligible Training Provider Performance for Workforce Innovation and Opportunity Act Title I Programs**

#### **§ 677.230 What information is required for the eligible training provider performance reports?**

(a) States are required to make available and publish annually using a template the Departments of Labor and Education will disseminate including through electronic means, the ETP performance reports for ETPs who provide services under sec. 122 of WIOA that are described in §§ 680.400 through 680.530 of this chapter. These reports at a minimum must include, consistent with § 677.175 and with respect to each program of study that is eligible to receive funds under WIOA:

(1) The total number of participants as defined by § 677.150(a) who received training services under the adult and dislocated worker programs authorized under WIOA title I for the most recent year and the 3 preceding program years, including:

(i) The number of participants under the adult and dislocated worker programs disaggregated by barriers to employment;

(ii) The number of participants under the adult and dislocated worker programs disaggregated by race, ethnicity, sex, and age;

(iii) The number of participants under the adult and dislocated worker programs disaggregated by the type of training entity for the most recent program year and the 3 preceding program years;

(2) The total number of participants who exit a program of study or its equivalent, including disaggregate counts by the type of training entity during the most recent program year and the 3 preceding program years;

(3) The average cost-per-participant for participants who received training services for the most recent program year and the 3 preceding program years disaggregated by type of training entity;

(4) The total number of individuals exiting from the program of study (or the equivalent) with respect to all individuals engaging in the program of study (or the equivalent); and

(5) The levels of performance achieved for the primary indicators of performance identified in § 677.155(a)(1)(i) through (iv) with respect to all individuals engaging in a program of study (or the equivalent).

(b) Apprenticeship programs registered under the National Apprenticeship Act are not required to submit ETP performance information. If a registered apprenticeship program voluntarily submits performance information to a State, the State must include this information in the report.

(c) The State must provide a mechanism of electronic access to the public ETP performance report in its annual State performance report.

(d) States must comply with any requirements from sec. 116(d)(4) of WIOA as explained in guidance issued by DOL.

(e) The Governor may designate one or more State agencies such as a State Education Agency or other State Educational Authority to assist in overseeing ETP performance and facilitating the production and dissemination of ETP performance reports. These agencies may be the same agencies that are designated as responsible for administering the ETP list as provided under § 680.500 of this chapter. The Governor or such agencies, or authorities, is responsible for:

(1) Facilitating data matches between ETP records and unemployment insurance (UI) wage data in order to produce the report;

(2) The creation and dissemination of the reports as described in paragraphs (a) through (d) of this section;

(3) Coordinating the dissemination of the performance reports with the ETP list and the information required to accompany the list, as provided in § 680.500 of this chapter.

## Subpart F—Performance Reporting Administrative Requirements

**§ 677.235 What are the reporting requirements for individual records for core Workforce Innovation and Opportunity Act (WIOA) title I programs; the Wagner-Peyser Act Employment Service program, as amended by WIOA title III; and the Vocational Rehabilitation program authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV?**

(a) On a quarterly basis, each State must submit to the Secretary of Labor or the Secretary of Education, as appropriate, individual records that include demographic information, information on services received, and information on resulting outcomes, as appropriate, for each reportable individual in either of the following programs administered by the Secretary of Labor or Secretary of Education: A WIOA title I core program; the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III; or the VR program authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV.

(b) For individual records submitted to the Secretary of Labor, those records may be required to be integrated across all programs administered by the Secretary of Labor in one single file.

(c) States must comply with the requirements of sec. 116(d)(2) of WIOA as explained in guidance issued by the Departments of Labor and Education.

**§ 677.240 What are the requirements for data validation of State annual performance reports?**

(a) States must establish procedures, consistent with guidelines issued by the Secretary of Labor or the Secretary of Education, to ensure that they submit complete annual performance reports that contain information that is valid and reliable, as required by WIOA sec. 116(d)(5).

(b) If a State fails to meet standards in paragraph (a) of this section as determined by the Secretary of Labor or the Secretary of Education, the appropriate Secretary will provide technical assistance and may require the State

to develop and implement corrective actions, which may require the State to provide training for its subrecipients.

(c) The Secretaries of Labor and Education will provide training and technical assistance to States in order to implement this section. States must comply with the requirements of sec. 116(d)(5) of WIOA as explained in guidance.

## **PART 678—DESCRIPTION OF THE ONE-STOP DELIVERY SYSTEM UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT**

### **Subpart A—General Description of the One-Stop Delivery System**

Sec.

- 678.300 What is the one-stop delivery system?
- 678.305 What is a comprehensive one-stop center and what must be provided there?
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- 678.315 Can a stand-alone Wagner-Peyser Act Employment Service office be designated as an affiliated one-stop site?
- 678.320 Are there any requirements for networks of eligible one-stop partners or specialized centers?

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- 678.400 Who are the required one-stop partners?
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- 678.410 What other entities may serve as one-stop partners?
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- 678.430 What are career services?
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- 678.440 When may a fee be charged for the business services in this subpart?

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- 678.500 What is the Memorandum of Understanding for the one-stop delivery system and what must be included in the Memorandum of Understanding?
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- 678.600 Who may operate one-stop centers?
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- 678.610 When is the sole-source selection of one-stop operators appropriate, and how is it conducted?
- 678.615 May an entity currently serving as one-stop operator compete to be a one-stop operator under the procurement requirements of this subpart?
- 678.620 What is the one-stop operator's role?
- 678.625 Can a one-stop operator also be a service provider?
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- 678.705 What guidance must the Governor issue regarding one-stop infrastructure funding?
- 678.710 How are infrastructure costs funded?
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