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WIOA BULLETIN NO. 02-22

TO: Local Workforce Development Boards

FROM: Maricar Pilotin-Freitas, Administrator
Workforce Development Division

A handwritten signature in blue ink, reading "Maricar Pilotin-Freitas".

SUBJECT: Local Area Performance Failure and Sanctions Policy

PURPOSE

This bulletin establishes the policies and sanctions for failing to meet local area primary indicators of performance.

BACKGROUND

Section 116 of the Workforce Innovation and Opportunity Act of 2014 (WIOA) establishes a performance accountability system to assess the effectiveness of the State and local areas in achieving outcomes for individuals served by WIOA core programs. WIOA Section 116(g) requires the State to take actions and impose sanctions when a Local Workforce Development Board (LWDB) fails to meet its local area primary indicators of performance. Guidance on determining performance failure and calculating performance scores is provided in Training and Employment Guidance Letter No. 11-19. The State issued WIOA Bulletin Nos. 19-18 and 35-20 on local area performance negotiations for past program years and will issue subsequent WIOA Bulletins for future program years.

DEFINITIONS

Negotiated Level of Performance is a target goal that is mutually agreed upon before the start of a program year, first by the State and the U.S. Department of Labor, Employment and Training Administration for a Statewide performance indicator and then by the State and a LWDB for a local area performance indicator. The negotiated levels are written in the unified State plan.

Adjusted Level of Performance is an adjustment to a negotiated level of performance that is calculated after the end of a program year. The adjusted level factors in actual participant characteristics and current economic conditions for the program year that is being assessed.

Actual Level of Performance is the actual outcome for a performance indicator reported after the end of a program year in an ETA-9169 annual report.

Individual Indicator Score represents how well a performance indicator has performed based on the adjusted level of performance. It is calculated by dividing the actual level of performance by the adjusted level of performance.

Overall Local Area Program Score is the average of individual indicator scores for a single WIOA program for a particular local area. This score indicates how well an entire program has performed in view of all the performance indicators associated with that program for a local area.

Overall Local Area Indicator Score is the average of the indicator scores for the same performance indicator across the WIOA Adult, Dislocated Worker, and Youth programs (three WIOA Title I programs) for a particular local area. This score indicates how well a particular performance indicator has performed across the three WIOA Title I programs for a local area.

THRESHOLD FOR FAILURE

In accordance with 20 CFR §677.190(d) and 34 CFR §§361.190(d) and 463.190(d), a performance failure occurs if:

- Any single *Individual Indicator Score* for any single program falls below 50 percent of the adjusted level of performance;
- The *Overall Local Area Program Score* falls below 90 percent for that single program; or
- The *Overall Local Area Indicator Score* falls below 90 percent for that single measure.

The methods of calculating the Individual Indicator Score, the Overall Local Area Program Score, and the Overall Local Area Indicator Score are described below.

POLICY

After the end of a program year, the State will reassess local area performance, using a statistical adjustment model, and make adjustments to the negotiated levels of performance based on the actual levels of performance and current economic conditions. The resulting performance scores made from the adjustments will be issued in a WIOA Bulletin, which must be issued no later than **October 1st** following the end of the program year. Based on those published scores, the State will determine which performance scores have fallen below the failure threshold. Any LWDB that has one or more performance scores falling below the failure threshold will be notified in writing to inform the LWDB about the failure(s) and what action(s) must be taken in order to make improvements to ensure success in the next following program year. A formal notification by the State must be made by **December 1st** following the end of the program year. Technical assistance will commence in January following a formal notification and could end after 12 months or earlier, depending on whether further assistance is needed.

The State must keep an accurate record of tracking all performance indicators that have exceeded failure thresholds for all WIOA core programs for at least three consecutive program years.

A sanction on a performance failure will be imposed when the same performance indicator of a WIOA core program fails in three consecutive program years. No sanctions will be imposed on the first and second consecutive program years. Instead, the State will provide technical assistance after the first performance failure and additional more intense technical assistance after the second performance failure. If after all efforts to provide assistance fail to turn around performance in the third consecutive program year, then the State will impose a sanction on the LWDB. Thus, the LWDB will be given sufficient time to make necessary improvements.

The beginning program year in which the State will determine performance failures is Program Year 2022. Published performance scores for Program Years 2020 and 2021 are for information only and are used to establish a baseline of performance. Any performance failures in Program Years 2020 and 2021 will not be counted toward determining whether a sanction will be imposed. The first possible program year for which a sanction may be imposed will be Program Year 2024.

The LWDBs should use all published performance scores for any program year as a part of program planning and implementation.

I. Failure for the First Program Year

- A. In accordance with WIOA Section 116(g)(1), the State shall provide technical assistance, which may include assistance in modifying the current local plan, if an LWDB fails to meet an overall program score, an overall indicator score, or any one of the following local area primary indicators of performance according to the failure thresholds stated above for any program year:

1. For the WIOA Title I Adult or Dislocated Worker Program:
 - i. The percentage of program participants who are in unsubsidized employment during the second quarter after exit from the program;
 - ii. The percentage of program participants who are in unsubsidized employment during the fourth quarter after exit from the program;
 - iii. The median earnings of program participants who are in unsubsidized employment during the second quarter after exit from the program;
 - iv. The percentage of program participants who obtain a recognized postsecondary credential, or a secondary school diploma or its recognized equivalent (subject to WIOA Section 116(b)(2)(iii)), during participation in or within 1 year after exit from the program; or
 - v. The percentage of program participants who, during a program year, are in an education or training program that leads to a recognized postsecondary credential or employment and who are achieving measurable skill gains toward such a credential or employment.

2. For the WIOA Title I Youth Program:
 - i. The percentage of program participants who are in education or training activities, or in unsubsidized employment, during the second quarter after exit from the program;
 - ii. The percentage of program participants who are in education or training activities, or in unsubsidized employment, during the fourth quarter after exit from the program;
 - iii. The median earnings of program participants who are in unsubsidized employment during the second quarter after exit from the program;
 - iv. The percentage of program participants who obtain a recognized postsecondary credential, or a secondary school diploma or its recognized equivalent (subject to WIOA Section 116(b)(2)(iii)), during participation in or within 1 year after exit from the program; or
 - v. The percentage of program participants who, during a program year, are in an education or training program that leads to a recognized postsecondary credential or employment and who are achieving measurable skill gains toward such a credential or employment.

II. Failure for Two Consecutive Program Years

If an LWDB continues to fail to meet the same overall program score, the same overall indicator score, or the same aforementioned local area primary indicators of performance according to the failure thresholds stated above for a second consecutive program year, the State shall continue to provide technical assistance, which must include assistance in the development of a performance improvement plan.

III. Failure for Three Consecutive Program Years

In accordance with WIOA Section 116(g)(2)(A), if an LWDB continues to fail to meet the same overall program score, the same overall indicator score, or the same aforementioned local area primary indicators of performance according to the failure thresholds stated above for a third consecutive program year, the State shall impose development of a reorganization plan and shall impose one of the following sanctions:

- A. Require the appointment and certification of a new LWDB, consistent with the criteria established under WIOA Section 107(b) (WIOA Section 116(g)(2)(A)(i));
- B. Prohibit the use of the same service provider(s) and one-stop partner(s) identified as achieving a poor level of performance (WIOA Section 116(g)(2)(A)(ii)); or
- C. Take such other significant actions as the State determines are appropriate (WIOA Section 116(g)(2)(A)(iii)). One such action may be a reduction of 5 percent in the next following program year's local area allocation.

TECHNICAL ASSISTANCE

Technical assistance will be described in detail, which includes specific activities that will be carried out and a schedule of activities, upon notification of providing technical assistance. Technical assistance may take as long as one year following the program year for which a performance failure has been determined. The State may assist the LWDB in modifying its local plan, which may include revising strategies and tactics to implement the program and/or to improve outreach and engagement with program participants. If upon the second program year, the same performance indicator continues to fail, the State will reassess technical assistance activities and develop assistance that will be more intense that involves engagement with LWDB staff and other personnel on a more frequent basis, which may take as long as one year. This deeper level of effort may include working directly with the service provider. This deeper level of effort will include development of a performance improvement plan.

APPEAL PROCESS

An LWDB may appeal a sanction by submitting an appeal letter via postal mail to the Director of the Department of Labor and Industrial Relations within 30 calendar days after the date of a notification of a sanction from the State. If no appeal letter is received within the 30-day deadline, then the sanction cannot be appealed. The letter must state that the LWDB objects to the specified sanction and provide reasons why the sanction must be revoked. The letter must include attachments of the sanction notification, records of performance scores, documentation of technical assistance and the outcome of assistance, and any other relevant information that may be pertinent in the LWDB's case. The Director will review the appeal letter and sanction notification and may convene a meeting to hear the facts of the matter. A ruling on the appeal will be made in writing by the Director within 60 calendar days after receiving the appeal letter. The Director's ruling on the appeal is final.

CALCULATION OF PERFORMANCE LEVELS AND SCORES

The State estimates levels of performance based on participant characteristics and economic conditions, using a statistical adjustment model. The *First Estimated Level of Performance* is provided to the LWDB prior to the start of the program year during the negotiations process and is a factor in reaching agreement on the *Negotiated Level of Performance*.

After the end of the program year, the State will re-estimate the LWDB's performance using the same statistical adjustment model coefficients updated with the characteristics of the actual participants served and current economic conditions of the local area.

Table 1 provides an example of calculating the adjusted level of performance. The State will subtract the *First Estimated Level of Performance* from the *Second Estimated Level of Performance* to get the *Adjustment Factor*. Note that the *Adjustment Factor* can be a positive or negative value. The positive or negative *Adjustment Factor* is added to the *Negotiated Level of Performance* to arrive at the *Adjusted Level of Performance*.

The State must calculate adjusted levels of performance and performance scores for all primary indicators of performance for all WIOA Title I programs after the end of the program year but no later than September 30 following the end of the program year.

Table 1. Calculation of Adjusted Level of Performance

Negotiated Level of Performance	70.2%
First Estimated Level of Performance	75.5%
Second Estimated Level of Performance	73.7%
Adjustment Factor	$73.7\% - 75.5\% = -1.8\%$
Adjusted Level of Performance	$-1.8\% + 70.2\% = 68.4\%$

The *Individual Indicator Score* is calculated by dividing the *Actual Level of Performance* achieved by the *Adjusted Level of Performance*. The *Individual Indicator Score* will not be rounded; it will be truncated to the first decimal place.

Table 2 illustrates the determination of performance success or failure across all indicators of performance for a single program. The performance scores are calculated for each primary indicator of performance and the average is computed. In this example, the *Individual Indicator Score* for Employment 4th Quarter after Exit is a performance failure because it is below the 50 percent threshold. The *Overall Local Area Program Score* is 85.3 percent, so the program as a whole is a performance failure because it is below the 90 percent threshold. Scores highlighted in red indicate performance failures.

Table 2. Calculation of Overall Local Area Program Score

Primary Indicator of Performance	Actual Level of Performance (Numerator/Denominator)	Adjusted Level of Performance	Individual Indicator Score Calculation
Employment 2 nd Quarter after Exit	$\frac{75}{100}$	80.1%	$\left(\frac{75}{100}\right) \div 80.1\% = 93.6\%$
Employment 4 th Quarter after Exit	$\frac{40}{110}$	75.4%	$\left(\frac{40}{110}\right) \div 75.4\% = 48.2\%$
Median Earnings 2 nd Quarter after Exit	\$5,500	\$6,000	$\$5,500 \div \$6,000 = 91.6\%$
Credential Attainment	$\frac{60}{90}$	72.8%	$\left(\frac{60}{90}\right) \div 72.8\% = 91.5\%$
Measurable Skill Gains	$\frac{80}{95}$	82.5%	$\left(\frac{80}{95}\right) \div 82.5\% = 102.0\%$
Overall Local Area Program Score (Average of Individual Indicator Scores for One Program)	—	—	85.3%

Table 3 illustrates the calculation for a single primary indicator of performance across all WIOA Title I programs. In this example, the performance scores are calculated for the Employment 2nd Quarter after Exit indicator for each program, and the average is computed. The *Overall Local Area Indicator Score* is 91.7 percent, so the Employment 2nd Quarter indicator achieved performance success across the Adult, Dislocated Worker, and Youth programs overall.

Table 3. Calculation of Overall Local Area Indicator Score

Program	Actual Level of Performance (Numerator/Denominator)	Adjusted Level of Performance	Individual Indicator Score Calculation
Adult	$\frac{80}{125}$	90.5%	$\left(\frac{80}{125}\right) \div 90.5\% = 70.7\%$
Dislocated Worker	$\frac{90}{100}$	80.2%	$\left(\frac{90}{100}\right) \div 80.2\% = 112.2\%$
Youth	$\frac{90}{150}$	65.0%	$\left(\frac{90}{150}\right) \div 65.0\% = 92.3\%$
Overall Local Area Indicator Score (Average of the Same Individual Indicator Scores Across Programs)	—	—	91.7%

REFERENCES

- Workforce Innovation and Opportunity Act of 2014 (WIOA), Public Law 113-128
- Code of Federal Regulations: 20 CFR §677.190(d) and 34 CFR §§361.190(d) and 463.190(d)
- Training and Employment Guidance Letter No. 11-19, *Negotiations and Sanctions Guidance for the Workforce Innovation and Opportunity Act (WIOA) Core Programs*, February 6, 2020
- WIOA Bulletin No. 19-18, *PY 2018 and PY 2019 Local Workforce Development Board Performance Negotiations for Workforce Innovation and Opportunity Act (WIOA) Title I Adult, Dislocated Worker, and Youth Programs*, May 25, 2018
- WIOA Bulletin No. 35-20, *PY 2020 and PY 2021 Local Workforce Development Board Performance Negotiations for Workforce Innovation and Opportunity Act (WIOA) Title I Adult, Dislocated Worker, and Youth Programs*, July 13, 2020

INQUIRIES

Inquiries regarding this bulletin may be directed to Mr. Jarret Yip at (808) 586-8825 or Jarret.F.Yip@hawaii.gov.

EFFECTIVE DATE

This bulletin is effective immediately.