

U.S. DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES
REHABILITATION SERVICES ADMINISTRATION

October 27, 2021
FAQ 22-01

Frequently Asked Questions

Workforce Innovation and Opportunity Act (WIOA) Core Program Performance Accountability
Assessment for Program Years (PYs) 2020 and PY 2021¹

The U.S. Departments of Labor and Education (the Departments) have determined it is appropriate and reasonable for the Department of Labor (DOL) to begin assessing performance for two performance indicators under WIOA title I and III core programs for PYs 2020 and 2021 in accordance with the phased-in approach to performance assessments described in [Technical Assistance Circular \(TAC\) 20-02: Negotiations and Sanctions Guidance for the WIOA Core Programs](#).

The Departments, as permitted under section 503(a) of WIOA, have determined it reasonable to delay assessing performance for the purpose of imposing sanctions for the remaining performance indicators to ensure an orderly transition from the requirements of the Workforce Investment Act of 1998 (WIA) to those of WIOA.

Summary

For the Employment Rate 2nd Quarter after Exit and Median Earnings 2nd Quarter after Exit performance indicators, the Departments have determined it is appropriate and reasonable to assess performance for the WIOA title I and III core programs. The Departments have determined it is appropriate to use their transition authority to delay assessment of (1) performance for WIOA title II and IV core programs, (2) the remaining primary performance indicators for WIOA title I and III core programs, and (3) the Overall State Program and Indicator Scores for all core programs. The Departments will not impose associated sanctions on a State for PYs 2020 and 2021 when the available baseline data are not sufficient to produce reliable estimates using the statistical adjustment model. However, States still must submit timely and complete performance reports and will be sanctioned for failure to do so. If a State is unable to submit complete and timely performance reports by the deadlines due to exceptional circumstances outside of the State's control, it must notify the Departments pursuant to 20 C.F.R. § 677.185(c) and 34 C.F.R. §§ 361.185(c) and 463.185(c) and consistent with guidance set forth in [TAC 20-02](#). The practical implications of the Departments' decision on sanctions implementation are explained in a series of questions and answers below.

¹ These six core programs are the Adult, Dislocated Worker, and Youth programs, authorized under WIOA title I and administered by DOL; the Adult Education and Family Literacy Act (AEFLA) program, authorized under WIOA title II and administered by the U.S. Department of Education (ED); the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III and administered by DOL; and the Vocational Rehabilitation (VR) program authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV and administered by ED.

Background

Section 116 of WIOA establishes primary performance indicators that apply to the six core programs and reporting requirements that assess States' effectiveness in achieving positive outcomes for individuals and employers served by WIOA's six core programs.² WIOA also requires that the Departments use a statistical adjustment model to assess State performance by adjusting negotiated performance levels for the characteristics of participants actually served throughout the program year and for the actual economic conditions within the State. WIOA requires the Departments to use the model to assess State performance and determine whether a State has failed to meet its adjusted levels of performance. The Departments developed a model and process³ for this purpose. To date, the implementation of a model and the performance accountability provisions have informed the Departments' performance negotiations with States and technical assistance efforts and have advanced the workforce system toward a more objective and data-driven accountability structure.

WIOA instituted a new approach to performance accountability in the workforce system, and the Departments find it is taking longer to collect sufficient baseline data to produce reliable estimates for certain performance indicators and for certain core programs than had been anticipated. The Departments are doing everything they can to collect performance data and promote robust practices related to data collection, data integrity, and complete reporting. As additional data are collected, the Departments will continue to review and refine the statistical adjustment model. Section 503(a) of WIOA authorizes the Secretaries of Education and Labor to take such action as appropriate to provide for the orderly transition from any requirement under WIA to those under WIOA, including those related to the performance accountability system established in section 116 of WIOA. The Departments have determined that it would be inappropriate to assess for performance pursuant to section 116(b)(3)(A) of WIOA and 20 C.F.R. § 677.190, and 34 C.F.R. §§ 361.190 and 463.190, and to impose sanctions pursuant to section 116(f) of WIOA, on a State on the basis of a statistical adjustment model for which the available baseline data are not sufficient to produce reliable estimates.

Use of WIOA's transition authority to delay assessing performance and imposing sanctions is an appropriate action for an orderly transition to the WIOA performance accountability system, because of the performance accountability system's reliance on the statistical adjustment model. Therefore, the Departments determined that it is reasonable to use the WIOA transition authority of section 503(a) of WIOA to delay assessing performance and imposing sanctions against States that fail to meet adjusted levels of performance for those Individual Indicator Scores, as well as for the Overall State Program Score and the Overall State Indicator Score, for which the baseline data are not sufficient. For more information on the Departments' determination, please review Attachment II.

² As stated in 20 CFR § 677.150(d), 34 CFR § 361.150(d), and 34 CFR § 463.150(d), the negotiations and sanctions process only applies to States as defined in sec. 3(56) of WIOA – each of the several States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. It does not apply to the outlying areas as defined in sec. 3(45)—American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, and the Republic of Palau.

³ TAC 20-02: *Negotiations and Sanctions Guidance for the WIOA Core Programs*, available at <https://rsa.ed.gov/sites/default/files/subregulatory/tac-20-02.pdf>

The Departments have determined it is appropriate for DOL to begin assessing performance for two performance indicators under WIOA title I and III core programs for PYs 2020 and 2021 in accordance with the phased-in approach to performance assessments as described in [TAC 20-02](#). The Departments, as permitted under section 503(a) of WIOA, will delay assessing performance for the purpose of imposing sanctions for the remaining performance indicators. The following questions and answers explain what this means in practical terms.

Q1: For which primary indicators of performance and for which core programs will the Departments assess performance for PY 2020 and PY 2021?

The Departments will assess performance only for the Individual Indicator Scores for two indicators – Employment Rate 2nd Quarter after Exit and Median Earnings 2nd Quarter after Exit – for the WIOA title I and III core programs. See Attachments I and II for additional information.

Q2: Can States be sanctioned for a performance failure of WIOA title I and III core program Individual Indicator Scores for PY 2020 and PY 2021?

Yes. If a WIOA title I or III core program fails to achieve an Individual Indicator Score of at least 50%, as described on page 11 of [TAC 20-02](#), for either the Employment Rate 2nd Quarter after Exit or Median Earnings 2nd Quarter after Exit indicators in PY 2020 or PY 2021, the State must receive technical assistance and develop a program improvement plan in accordance with section 116(f)(1)(A) of WIOA. If the State fails the same indicator for a second consecutive program year (for example, in PY 2021), the Departments must impose a financial sanction in accordance with section 116(f)(1)(B) of WIOA.

Q3: Will the Departments suspend WIOA performance reporting for PY 2020 and PY 2021?

No, States are still required to submit complete and timely performance information as they have been since PY 2016.

Q4: Will States be subject to sanctions for failure to submit complete and timely reports for PY 2020 or PY 2021?

Yes, States are subject to sanctions for failure to submit complete and timely performance reports for all six core programs. Failing to certify complete annual performance reports by October 1 could lead to a financial sanction of the following program year's funds. For details regarding complete and timely reporting and requesting an annual reporting extension, refer to pages 8-10 of [TAC 20-02](#).

Q5: If not using it to assess performance, how will the Departments use performance data from PYs 2020 and 2021?

The Departments will continue to use the data for the purposes of effective program management, system oversight, monitoring and internal controls, and the provision of technical assistance, including implementing methods for ensuring data reliability, as appropriate. The

Departments will share performance results with States as appropriate. States should expect to review performance data for these program years and prepare to engage with Federal staff to discuss topics including but not limited to, data quality, continuous improvement, and performance results.

Attachment I: Individual Indicator Scores Subject to Performance Assessment for the Purpose of Determining Sanctions in PYs 2020 and 2021

Primary Indicator/ Core Program	Title I Adult	Title I Dislocated Worker	Title I Youth	Title II AEFLA	Title III Wagner-Peyser	Title IV Vocational Rehabilitation	Overall State Indicator Score
Employment Rate 2 nd Qtr after Exit	Yes	Yes	Yes	No	Yes	No	No
Employment Rate 4 th Qtr after Exit	No	No	No	No	No	No	No
Median Earnings 2 nd Qtr after Exit	Yes	Yes	Yes	No	Yes	No	No
Credential Attainment Rate	No	No	No	No		No	No
Measurable Skill Gains Rate	No	No	No	No		No	No
Effectiveness in Serving Employers	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Overall State Program Score	No	No	No	No	No	No	-

Attachment II: Use of Transition Authority

Use of WIOA Transition Authority for Individual Indicator Scores

For purposes of the WIOA title I and III core programs (the Adult, Dislocated Worker, and Youth formula programs, and the Wagner-Peyser Act Employment Services program) the Departments have determined that the statistical adjustment model is yielding reliable results for two of the employment-related indicators – Employment Rate 2nd Quarter after Exit and Median Earnings 2nd Quarter after Exit – for purposes of assessing the Individual Indicator Score, pursuant to 20 C.F.R. § 677.190(c)(5), for all four of these core programs. Therefore, the Departments have determined there is no need to use the transition authority of section 503(a) of WIOA for purposes of delaying assessing the individual indicator score for these two indicators for the Titles I and III core programs.

However, the Departments have determined that the baseline data for the other indicators and core programs are not sufficient for the statistical adjustment model to yield consistently reliable results. For these performance indicators and programs, more baseline data are necessary for the model to yield reliable results. Therefore, the Departments have determined it necessary to use the transition authority of section 503(a) of WIOA in PYs 2020 and 2021 to delay assessing performance and imposing sanctions for:

- the other four performance indicators for the Titles I and III programs, pursuant to 20 C.F.R. § 677.190(c)(5); and
- all six performance indicators for the Title II Adult Education and Family Literacy Act (AEFLA) and the Title IV Vocational Rehabilitation (VR) programs, pursuant to 34 C.F.R. §§ 361.190(c)(5) and 463.190(c)(5).

Use of WIOA Transition Authority for Overall State Indicator Score and Overall Program Score

While the model is yielding reliable results for the Employment Rate in 2nd Quarter after Exit and the Median Earnings in 2nd Quarter after Exit indicators for the Titles I and III programs, the Departments have concluded it would not be reasonable to assess an Overall State Indicator Score, as required by 20 C.F.R. § 677.190(c)(4) and 34 C.F.R. §§ 361.190(c)(4) and 463.190(c)(4), solely on the basis of the limited available data because such a score would not be an accurate representation of the State's overall performance on either of the indicators, particularly as the only available data comes from just one agency. Similarly, the Departments have determined it would not be reasonable to assess an Overall State Program Score by taking into account only the two indicators for which there are reliable data (20 C.F.R. § 677.190(c)(2) and 34 C.F.R. §§ 361.190(c)(2) and 463.190(c)(2)). Such results would not be representative of the Titles I and III programs' performance as a whole in the State when there are four other indicators not included in the calculation for each of those programs. Therefore, the Departments have determined it necessary to use the transition authority of section 503(a) of WIOA to delay assessing performance for Overall State Indicator Scores and Overall State Program Scores and for imposing sanctions for any State that fails in accordance with 20 C.F.R. § 677.190(d)(1) and 34 C.F.R. §§ 361.190(d)(1) and 463.190(d)(1), for PYs 2020 and 2021.