

WIOA Title I Policy

Local Area Performance Negotiations and Determination of Performance Failure Policy

RELEVANT LAWS, RULES, OR POLICIES

[Training and Employment Guidance Letter \(TEGL\) 11-19, Change 2 | U.S. Department of Labor](#)
[Training and Employment Notice \(TEN\) 04-24 | U.S. Department of Labor \(dol.gov\)](#)

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Policy Background

The policy objective for the Workforce Innovation and Opportunity Act (WIOA) is to provide an agreed upon plan for performance standard negotiations and instances when local Workforce Development Areas (WDA's) do not meet Title I (Adult, Dislocated Worker, and Youth) annual performance measures as negotiated with the Minnesota Department of Employment and Economic Development (DEED).

The Minnesota Workforce Council Association (MWCA) now known as Minnesota Association of Workforce Boards (MAWB), had such a policy in place for Workforce Investment Act (WIA) measures. WIOA, which passed in 2014, has somewhat different measures and new negotiation requirements at all levels.

Under WIOA law, there are repercussions at the state level and local areas for not meeting performance standards. From TEGL-11-19 Change 2, there are two different types of failure that can lead to sanctions: failure to report and failure to meet adjusted levels of performance (section 116(f) of WIOA).

Local Performance Negotiations under WIOA Title I

States must collaborate with local workforce development areas to establish local performance goals for WIOA Title I programs (section 116(c) of WIOA).

1. The local board and DEED must negotiate and reach agreement on local levels of performance based on the state negotiated levels of performance.
2. In negotiating the local levels of performance, the local board and DEED must use the following factors of negotiation.
 - a. How levels involved compare with other local area levels of performance.
 - b. The local area statistical adjustment model (SAM) the state developed by modifying the Federal SAM must be used to assist DEED and local areas in reaching agreements on the levels of performance.
 - i. The SAM must be aligned with the framework of the state-level model; and
 - ii. must be used to inform on projected performance levels based on the actual economic

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conditions experienced in the local area and the characteristics of the actual individuals served by the local area.

1. DEED follows the federal-state process in using a local area objective statistical adjustment model for both the performance negotiations and year end adjustment of local levels of performance.
- c. The extent to which the proposed local levels involved promote continuous improvement in performance accountability on the performance accountability measures by such local and ensure optimal return on the investment of federal funds.
 - i. The extent to which the levels involved will assist the local area in meeting the state's goals.
 - ii. Please note that increases in services to special populations or serving increased numbers of special populations are already accounted for in the model and cannot be used to justify a continuous improvement rationale.
- d. DEED must make these negotiated and adjusted levels, as well as the established policies for local performance assessment, available to the local boards and the state's DOL-ETA Regional Office prior to the start of the program year in which the policies will be applied.
3. The local board and DEED must negotiate and reach agreement on local levels of performance for two program years at a time, based on the state's negotiated levels of performance, no later than September 30 in each year in which state negotiations occur.
4. DEED must notify its DOL-ETA Regional Office that negotiations are complete and include in the notification the agreed-upon levels of performance for each local area.
5. For PY 2026-2027 and all subsequent program years, negotiated levels of performance in each program will be unique to each local area and result in unique levels of performance based on past performance, characteristics of participants served, economic conditions of each local area and other factors.

Determining Local Performance Success and Failure

DEED must use local performance goals for WIOA Title I programs for two required purposes:

1. To determine if a local area "performed successfully" for subsequent local area designation, and
2. To determine when a state must take corrective action when a local area fails to meet the adjusted levels of performance.

For the purpose of determining subsequent local area designation, the term "performed successfully" means that the local area met or exceeded the adjusted levels of performance DEED assessed at the end of each program for the local board on the WIOA primary indicators of performance and that the local area has not failed any individual measure for the last two consecutive program years provided in the Unified or Combined State Plan, of "met or exceeded performance."

1. For subsequent designation determinations made at the conclusion of PY 2018, or at any point thereafter, DEED must base their findings of whether a local area performed successfully for the two most recently completed program years on all five of the WIOA primary indicators of performance where at least two years of data are available.
2. DEED's establish threshold for failure to meet adjusted levels of performance for a local area is;
 - a. Success is defined as achieving at least 50% of each performance indicator's negotiated standard.
 - b. Failure is defined as achieving less than 50% of a performance indicator's negotiated standard.
3. DEED must establish the adjusted level of performance for a local area, using the state's local area statistical adjustment model described at the bottom of this policy in the Definitions section.
 - a. LSAMs are provided to local areas during each negotiation round to assist with negotiated performance goal setting.
 - i. Negotiations take place every two program years and two years of goals are established each

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negotiation round.

- b. LSAMs are provided at the end of each program year for each LWDA with current year participant data included. These end of year LSAMs are called "Adjusted level LSAMS".
 - i. At least two 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.

Required Technical Assistance, Sanctions, and Governor action for Local Area Failure.

1. DEED must provide technical assistance if a local area fails to meet the adjusted levels of performance agreed to for the primary indicators of performance in WIOA Title I programs in any program year.
 - a. Upon DEED's request to the Secretary of Labor, DOL may provide this technical assistance. 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.
2. If a local area fails to meet the adjusted levels of performance agreed to for the same primary indicators of performance for the same core program authorized under WIOA Title I for a second consecutive program year, the following will apply:
 - a. Upon DEED's request to the Secretary of Labor, DOL may provide this technical assistance. 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.
3. If a local area fails to meet the adjusted levels of performance agreed to for the same primary indicators of performance for the same core program authorized under WIOA Title I for a third consecutive program year, the Governor must take corrective actions.
 - a. If the Governor takes corrective action against a local area for failing to meet the negotiated goals, DEED must advise its Federal Project Officer of this action.
 - b. The corrective actions must include the development of a reorganization plan under which the Governor:
 - i. May require the appointment and certification of a new local board, consistent with the criteria in 20 CFR § 679.350;
 - ii. Prohibits the use of eligible providers and one-stop partners that have been identified as achieving poor levels of performance; or
 - iii. Takes such other significant actions as the Governor determines are appropriate.

Additional Local Provider Performance Measures

Local Workforce Development Boards (WDBs) may apply performance measures to service providers that differ from the performance indicators that apply to the local areas. These performance measures must be established after considering:

- The established local negotiated levels;
- The services provided by each provider;
- The populations the service providers are intended to serve.
- The local areas economic conditions.

Appeals Process

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A local area who fails any measure may file a written appeal. The state recommends that local areas contact Employment Training Program (ETP) Leadership who will reach out to the DOL Regional Office with a request for technical assistance on this concern.

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APPENDIX - Terms/Definitions:

In this guidance, the following terms are used in the process of establishing levels of performance under WIOA section 116(b):

- **Actual level of performance** is the outcome reported by a state on the Statewide Performance Report (ETA-9169 OMB No. 1205-0526) for each primary indicator of performance for each core program (section 116(d)(2) of WIOA). The DOL will compare actual levels of performance to the adjusted levels of performance at the close of the program year to determine the state's performance success or failure pursuant to section 116(b)(3)(A)(vii) of WIOA.
- **Adjusted levels of performance** are levels of performance determined by adjusting the negotiated levels of performance at the end of the program year to reflect actual characteristics of participants served and the actual economic conditions experienced using the statistical adjustment model (see below) (WIOA section 116(b)(3)(A)(vii)).
- **Adjustment factor** is a positive or negative difference that will be added to the negotiated level of performance to determine the adjusted level of performance. The adjustment factor is the difference between the estimated levels of performance predicted by the statistical adjustment model based on pre-program year estimates of participant characteristics and economic conditions and the levels of performance re-estimated by the statistical adjustment model after the close of the program year based on the actual participant characteristics and economic conditions. This calculation will yield a positive or negative difference, which will be used as the adjustment factor for the program year.
- **Expected levels of performance** are the levels of performance proposed by the state in the initial submission of the Unified or Combined State Plan and in the required two-year modification of the Unified or Combined State Plan prior to negotiations (WIOA section 116(b)(3)(A)(iii)) for each primary indicator of performance for each core program.
- **Individual indicator score** is the proportion the actual level of performance represents of the adjusted level of performance for a single performance indicator for a single program. It is calculated by dividing the actual level of performance achieved by the adjusted level of performance (20 C.F.R. § 677.190(c)(5) and 34 C.F.R. §§ 361.190(c)(5) and 463.190(c)(5)).
- **Negotiated levels of performance** are the levels of performance mutually agreed to by the state and the DOL for each respective program. The negotiations process must be based on four factors described in section 4 of this guidance. These negotiated levels of performance must be incorporated into the approved Unified or Combined State Plan and the approved two-year modification of that Plan (WIOA section 116(b)(3)(A)(iv)) for each primary indicator of performance for each core program.
- **Overall state program score** is the average of the individual indicator scores for a single WIOA core program across performance indicators (20 C.F.R. § 677.190(c)(1) and 34 C.F.R. §§ 361.190(c)(1) and 463.190(c)(1)).
- **Overall state indicator score** is the average of the individual indicator scores for a single performance indicator across WIOA core programs (20 C.F.R. § 677.190(c)(3) and 34 C.F.R. §§ 361.190(c)(3) and 463.190(c)(3)).
- **Statistical adjustment model** is an objective regression model, developed pursuant to section 116(b)(3)(A)(3)(viii) of WIOA, used to estimate levels of performance and derive the adjusted levels of performance based on participant characteristics and economic conditions. Economic conditions include differences in unemployment rates and job losses or gains in particular industries. Characteristics of participants include but are not limited to: indicators of poor work history, lack of work experience, lack of educational or occupational skills attainment, dislocation from high-wage and high-benefit employment, low levels of literacy

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or English proficiency, disability status, homelessness, ex-offender status, and welfare dependency (20 C.F.R. § 677.170(c) and 34 C.F.R. §§ 361.170(c) and 463.170(c)). The statistical adjustment model also considers other factors that, through empirical support, are determined to have an effect on state outcomes. The DOL is committed to a transparent process for assessing state performance. Accordingly, ETA, the Office of Career, Technical, and Adult Education (OCTAE), and the

Rehabilitation Services Administration (RSA) will publish the statistical adjustment model for all primary indicators of performance on their websites State Negotiations and Sanctions Guidance.

- a. DEED's Local Area Statistical Adjustment Models vary a little depending on the specific outcome but generally, the models consist of three parts:
 - i. Demographics and characteristics of participants (i.e., age, race, gender, homelessness status, educational attainment at enrollment, etc.)
 - ii. Economic condition variables (unemployment)
 - iii. A local area fixed effect¹.
- b. DEED's models were built on WIOA Adult, Dislocated Worker, and Youth data from PYs 2018, 2019, 2020, 2021, and 2022. Each dataset included only those participants who were part of the outcome metric cohort during these program years.
 - i. To assist local areas further, the assigned performance staff for each core program will update the LSAMs to include the most recent performance data (PY2023 Q4) for each indicator.

¹ This variable serves as a stand-in for differences between local workforce development areas that aren't adequately captured by other variables.