

State Policy

Workforce Innovation and Opportunity Act (WIOA)

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	Performance Accountability
	Effective date
	May 28, 2020
	Supersedes
	Performance Accountability, Change 1 effective date January 13, 2020

Performance Accountability, Change 2

REFERENCE

Federal and state laws, regulations, rules, and other guidance and documentation relied upon for the development of this policy are cited in footnotes.

BACKGROUND

The US Departments of Education and Labor have established performance accountability requirements to assess the effectiveness of the workforce development system's six core programs and 10 non-core programs (listed in Table 1) in achieving positive outcomes for individuals served by the programs.

Table 1. Programs participating in the WIOA Performance Accountability System¹

Program type	Program name	Authorizing legislation
Core	Adult	WIOA Title I
Core	Dislocated worker	WIOA Title I
Core	Youth	WIOA Title I
Core	Adult Education and Family Literacy Act	WIOA Title II
Core	Wagner-Peyser Employment Service, including the Monitor Advocate System ²	WIOA Title III
Core	Vocational Rehabilitation	WIOA Title IV

¹ TEGL 10-16 Change 1; TEGL 14-18

² The Monitor Advocate System is not a stand-alone program. Instead, the Monitor Advocate System protects the standards of services provided to migrant and seasonal farmworkers under the Title III Wagner-Peyser [TEGL 14-18].

Program type	Program name	Authorizing legislation
Non-core	Job Corps	WIOA Secs. 141 – 162
Non-core	Jobs for Veterans State Grants	38 USC Chapter 41
Non-core	H-1B Job Training (grants awarded July 1, 2016 and later)	29 USC § 3224a
Non-core	Indian and Native American	WIOA Sec. 166
Non-core	National Dislocated Worker Grants	WIOA Sec. 170
Non-core	National Farmworker Jobs Program	WIOA Sec. 167
Non-core	Reentry Employment Opportunities	WIOA Sec. 169
Non-core	Senior Community Service Employment Program	42 USC 3056 et seq.
Non-core	Trade Adjustment Assistance	19 USC 2271 et seq.
Non-core	YouthBuild	WIOA Sec. 171

ACTION

This policy supersedes and cancels the State's³ policy titled Performance Accountability, Change 1 (effective date January 13, 2020). Questions and comments on this policy may be submitted in writing to the WIOA policy mailbox at ndol.wioa_policy@nebraska.gov.

CHANGES

The policy establishes the following changes to the superseded policy.

1. [Section II\(e\)](#) on exit has been reorganized for clarity.
2. [Section II\(f\)](#) on exclusion from participation has been revised to clarify the limited circumstances under which a participant may be excluded from performance calculations.
3. To address recent guidance provided under TEGL 11-19, negotiation of levels of performance for Title I and Title III programs and sanctions and corrective actions are now addressed in separate sections, Sections V and VI.
 - a. Requirements regarding negotiation of levels of performance for Title I and Title III programs ([Section V](#)) have been revised to align with TEGL 11-19. The revised requirements cover state-level and local-level performance negotiations.
 - b. Requirements regarding state-level sanctions for failure to report and failure meet adjusted levels of performance ([Section VI\(b\)](#)) have been revised to align with TEGL 11-19. The revised requirements now include provisions regarding timeliness and completeness of statewide performance reports, exceptional circumstances preventing on-time submission of statewide performance reports, and requests to extend submission of statewide performance reports.

³ State refers to the Nebraska Workforce Development Board and the Nebraska Department of Labor (acting on the Governor's behalf pursuant to the Governor's Executive Order No. 15-03).

- c. Requirements regarding local-level corrective actions for failure to meet adjusted levels of performance ([Section VI\(c\)](#)) have revised to align with TEGL 11-19. In addition, Section VI(c) now includes thresholds for determining a local area's failure to meet adjusted levels of performance for Title I adult, dislocated worker, and youth programs.

POLICY

This policy establishes performance accountability requirements applicable to:

- Title I adult, dislocated worker, and youth programs;
- NDOL-administered programs:
 - Title III Wagner-Peyser Employment Service (Wagner-Peyser), including the Monitor Advocate System;
 - Jobs for Veterans State Grant program (JVSG);
 - Trade Adjustment Assistance program (TAA); and
- National Dislocated Worker Grant programs (DWG).

This policy has six sections and two appendices.

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Section I. Primary indicators of performance

The US Department of Labor (USDOL) measures performance of USDOL-funded programs using six primary indicators of performance.⁴ This policy discusses how the performance indicators apply to:

- local adult, dislocated worker, and youth programs;
- Wagner-Peyser, including the Monitor Advocate System;

⁴ WIOA Sec. 116(b)(2)(A)(i) – (ii); 20 CFR § 677.155(a)(1); TEGL 10-16 Change 1; TEGL 14-18

- JVSG;
- TAA; and
- DWG.

The six primary indicators of performance are described below in subsections (a) through (f).

(a) Employment rate, second quarter after exit

For the programs listed below, this indicator measures program performance based on the percentage of participants who are in unsubsidized employment during the second quarter after exit.⁵

- local adult and dislocated worker programs;
- Wagner-Peyser;
- JVSG;
- TAA; and
- DWG.

For local youth programs, this indicator measures program performance based on the percentage of participants in unsubsidized employment *or* education or training activities during the second quarter after exit.⁶

(1) Monitor Advocate System⁷

For the Monitor Advocate System, USDOL monitors the equitable provision of employment services for migrant and seasonal farmworkers (MSFWs) by comparing outcomes on this indicator for MSFWs in Wagner-Peyser to outcomes for non-MSFWs in Wagner-Peyser. This is achieved by using outcomes on this indicator for non-MSFWs as a:

- proxy to calculate the minimum service level indicator for MSFWs placed in unsubsidized employment; and
- data point necessary for calculating the proxy for the minimum service level indicator for MSFWs placed long-term in unsubsidized non-agriculture employment for the fourth-quarter employment rate indicator.

⁵ TEGL 10-16 Change 1; TEGL 14-18 Appendix I and Attachments 4 and 10

⁶ TEGL 10-16 Change 1; TEGL 14-18 Appendix I

⁷ TEGL 14-18 Attachment 5

(b) Employment rate, fourth quarter after exit

For the programs listed below, this indicator measures program performance based on the percentage of participants who are in unsubsidized employment during the fourth quarter after exit:⁸

- local adult and dislocated worker programs;
- Wagner-Peyser;
- JVSG;
- TAA; and
- DWG.

For local youth programs, this indicator measures program performance based on the percentage of participants in unsubsidized employment or education or training activities during the fourth quarter after exit.⁹

(1) Monitor Advocate System¹⁰

For the Monitor Advocate System, USDOL monitors the equitable provision of employment services for MSFWs by comparing outcomes on this indicator for MSFWs in Wagner-Peyser to outcomes for non-MSFWs in Wagner-Peyser. This is achieved by using outcomes on this indicator for non-MSFWs as a proxy to calculate the minimum service level indicator for MSFWs placed long-term in unsubsidized non-agriculture employment.

(c) Median earnings rate, second quarter after exit

For the programs listed below, this indicator measures program performance based on the median earnings of participants who are in unsubsidized employment during the second quarter after exit:¹¹

- local adult, dislocated worker, and youth programs;
- Wagner-Peyser;
- JVSG;
- TAA; and
- DWG.

⁸ TEGL 10-16 Change 1; TEGL 14-18 Appendix I and Attachments 4 and 10

⁹ TEGL 10-16 Change 1; TEGL 14-18 Appendix I

¹⁰ TEGL 14-18 Attachment 5

¹¹ TEGL 10-16 Change 1; TEGL 14-18 Appendix I and Attachments 4 and 10. Measurement of the performance of local youth programs on this indicator will begin once USDOL has collected baseline data sufficient to establish expected levels of performance.

(1) Monitor Advocate System¹²

For the Monitor Advocate System, USDOL monitors the equitable provision of employment services for MSFWs by comparing outcomes on this indicator for MSFWs in Wagner-Peyser to outcomes for non-MSFWs in Wagner-Peyser. This is achieved by using outcomes on this indicator for non-MSFWs as a proxy to calculate the minimum service level indicator of median earnings for MSFWs placed in unsubsidized employment.

(d) Credential attainment rate

For the programs listed below, this indicator measures program performance based on the percentage of participants enrolled in an education or training program who attain a recognized postsecondary credential or a secondary school diploma (or recognized equivalent) *during* program participation or within one year after exit:¹³

- local adult, dislocated worker, and youth programs;
- TAA; and
- DWG.

Participants who attain secondary school diplomas (or recognized equivalents) are included in performance calculations for this indicator only if they are also employed or enrolled in an education or training program leading to a recognized postsecondary credential within one year after exit.

This performance indicator *does not* apply to JVSG or Wagner-Peyser, including the Monitor Advocate System.¹⁴

(1) Types of credentials

The credential attainment indicator measures attainment of two types of credentials: (1) recognized postsecondary credentials and (2) secondary school diplomas or recognized equivalents.

(i) Recognized postsecondary credentials

A recognized postsecondary credential is a credential that is awarded in recognition of an individual's attainment of measurable technical or industry/occupational skills necessary to obtain employment or advance within an industry/occupation.¹⁵ These technical or industry/occupational skills generally are based on standards developed or endorsed by employers or industry associations. A variety of public and private entities issue recognized postsecondary credentials, examples of which include:

- state educational agencies or state agencies responsible for administering vocational and technical education within a state;

¹² TEGL 14-18 Attachment 5

¹³ TEGL 10-16 Change 1; TEGL 14-18 Appendix I and Attachment 10

¹⁴ TEGL 10-16 Change 1; TEGL 14-18 Appendix I and Attachment 4

¹⁵ TEGL 10-16 Change 1; TEGL 14-18 Appendix I

- institutions of higher education that are qualified to participate in Federal student financial aid programs authorized under the Higher Education Act, including community colleges, proprietary schools, and all other institutions of higher education that are eligible to participate in Federal student financial aid programs;
- institutions of higher education that are formally controlled, or have been formally sanctioned or chartered, by the governing body of Indian tribes;
- professional, industry, or employer organizations;
- product manufacturers or developers using valid and reliable assessments of individuals' knowledge, skills and abilities;
- USDOL Office of Apprenticeship or recognized state apprenticeship agencies;
- public regulatory agencies that award credentials based on an individual's fulfillment of educational, work experience, or skill requirements that are legally necessary for individuals to use occupational or professional titles or to practice occupations or professions;
- programs approved by the Department of Veterans Affairs to offer education benefits to Veterans and other eligible persons; and
- Job Corps, which issues certificates for completing career-training programs based on industry skills standards and certification requirements.

It is important to note that not all credentials offered by these entities meet the definition of recognized postsecondary credential.¹⁶

(ii) Secondary school diploma or recognized equivalent¹⁷

A secondary school diploma is one that is recognized by a state. A recognized equivalent is one that signifies the student completed the requirements for a high school education as recognized by a state. Examples of secondary school diplomas and equivalents recognized by a state include:

- secondary school diplomas obtained through credit-bearing secondary education programs sanctioned by state law, code, or regulation;
- certification of passing state-recognized competency-based assessments, such as GED tests; and
- certification of attainment of passing scores on state-recognized high school equivalency tests.

¹⁶ TEGL 10-16 Change 1; TEGL 14-18 Attachment 1

¹⁷ TEGL 10-16 Change 1; TEGL 14-18 Appendix I

(2) Credentials that count toward the credential attainment rate¹⁸

The following are acceptable types of credentials that count toward the credential attainment rate *for local adult, dislocated worker, and youth programs, TAA, and DWG*:

- secondary school diplomas or recognized equivalents;
- associate degrees;
- bachelor degrees;
- occupational licenses (examples: Federal Aviation Administration aviation mechanic licenses, asbestos inspector licenses);
- occupational certificates (examples: Registered Apprenticeship certificates of completion, Career and Technical Education educational certificates);
- occupational certifications (examples: National Institute for Automotive Service Excellence certifications, National Institute for Metalworking Skills, Inc. Machining Level I credentials); and
- other recognized certificates of industry/occupational skills completion sufficient to qualify for entry-level or advancement in employment (example: Microsoft Information Technology certificates).

(i) TAA only

In addition to the credentials listed above, the following are acceptable credentials types that count toward the credential attainment rate *for TAA only*:

- post-baccalaureate certificate: an award that requires completion of an organized program of study equivalent to 18 semester credit hours beyond the bachelor's degree but does not meet the requirements of a master's degree;
- post-master's certificate: an award that requires completion of an organized program of study equivalent to 24 semester credit hours beyond a master's degree but does not meet the requirements of academic degrees at the doctor's level;
- first-professional certificate (post-degree): an award that requires completion of an organized program of study designed for persons who have completed the first-professional degree (examples: refresher courses or additional units of study in a specialty or subspecialty);
- graduate degrees:
 - master's: an award that requires the successful completion of a program of study that is at least the full-time equivalent of one or more academic years of work beyond the bachelor's degree; and

¹⁸ 20 CFR § 680.420(a); TEGL 10-16 Change 1; TEGL 14-18 Appendix I

- doctor's: highest award a student can earn for graduate study (examples: Doctor of Education, Doctor of Juridical Science, Doctor of Public Health, Doctor of Philosophy);
- first-professional degree: an award that requires completion of a program that meets all of the following criteria:
 - completion of the academic requirements to begin practice in a profession;
 - at least two years of college work prior to entering the program;
 - a total of at least six academic years of college work to complete the degree program, including prior required college work plus the length of the professional program itself; and
 - awarded in one of the following fields: Chiropractic (DC or DCM), Dentistry (DDS or DMD), Law (LLB or JD), Medicine (MD), Optometry (OD), Osteopathic Medicine (DO), Pharmacy (PharmD), Podiatry (DPM, DP, or PodD), Theology (MDiv, MHL, BD, or Ordination), or Veterinary Medicine (DVM).

(3) Credentials that do not count toward the credential attainment rate¹⁹

For local adult, dislocated worker, and youth programs, TAA, and DWG, the following types of credentials do not count toward the credential attainment rate:

- certificates awarded by local boards and work readiness certificates, because they do not document measurable technical or industry/occupational skills necessary to gain employment or advance within an occupation; and
- certificates awarded for general skills, such as safety and hygiene, even if broadly required to qualify for entry-level employment or advancement in employment (examples: OSHA and food handler certificates).

*In addition to the credentials listed above, the following types of credentials do not count toward the credential attainment rate for local adult, dislocated worker, and youth programs and DWG:*²⁰

- post-baccalaureate certificates;
- graduate degrees (master's and doctor's);
- post-master's certificates;
- first-professional certificates (post-degree); and
- first-professional degrees.

¹⁹ TEGL 10-16 Change 1; TEGL 14-18 Appendix I.

²⁰ Definitions for these 5 credential types are provided above in [Section I\(d\)\(2\)\(i\)](#).

(e) Measurable skill gains

This indicator measures program performance based on the percentage of program participants who, *during a program year*, are (1) in an education or training program that leads to a recognized postsecondary credential or employment and (2) achieving measurable skill gains, which are defined as documented academic, technical, occupational, or other forms of progress towards such a credential or employment. This applies to the programs listed below:²¹

- local adult, dislocated worker, and youth programs;
- TAA; and
- DWG.

It is important to note that the measurable skill gains indicator *is not* an exit-based measure. In addition to using this indicator to measure program performance *during the program year*, this indicator has a secondary and equally important function: *Documenting measurable skill gains is a useful case-management tool for tracking interim progress of participants who are enrolled in education or training services during the program year.*

The measurable skill gains performance indicator *does not* apply to JVSG or Wagner-Peyser, including the Monitor Advocate System.²²

(1) Types of measurable skill gains²³

Depending on the type of education or training program in which a participant is enrolled, documented progress is defined as one or more of the following:

1. documented achievement of at least one educational functioning level by a participant who is receiving instruction below the postsecondary education level;
2. documented attainment of a secondary school diploma or recognized equivalent;
3. secondary or postsecondary transcript or report card for a sufficient number of credit hours that shows a participant is meeting academic standards;
4. satisfactory (or better) progress report, from an employer or training provider who is providing training, towards established milestones, such as completion of OJT or completion of one year of an apprenticeship program or other similar milestones; or
5. 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.

²¹ TEGL 10-16 Change 1; TEGL 14-18 Appendix I and Attachment 10. Measurement of performance on this indicator for local Title I programs and TAA will begin after USDOL has collected baseline data sufficient to establish expected levels of performance [TEGL 10-16 Change 1; TEGL 14-18 Appendix I].

²² TEGL 10-16 Change 1 and TEGL 14-18 Appendix I and Attachment 4

²³ Ibid.

(2) Measurable skill gains that count²⁴

Skill gains that count for this indicator are those that meet the documentation requirements described below in subsections (i) through (v).

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

Achievement of educational-functioning gains can be documented in one of three ways:

1. comparing a participant's initial educational-functioning levels measured by pre-tests with the participant's educational functioning levels measured by post-tests;
2. adult basic education programs that lead to a recognized equivalent for a secondary school diploma or recognized equivalent and measure and report educational gains through the awarding of credits or Carnegie units; or
3. reporting an educational-functioning level gain for participants who exit a program below the postsecondary level²⁵ and then enroll in postsecondary education and training during the same program year.

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

Attainment of secondary school diplomas or recognized equivalents can be documented as a measurable skill gain if a participant obtains a:

- secondary school diploma; or
- certification of passing state-recognized competency-based assessments, such as GED tests.

(iii) 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

For secondary and postsecondary education, this gain may be documented based on transcripts or report cards showing that a participant is meeting academic standards for one semester.

Full-time postsecondary education

For participants enrolled in postsecondary education as full-time students, this gain must demonstrate participants are meeting academic standards by attaining 12 credit hours per one completed semester, or the equivalent for the applicable academic system in use by the postsecondary institution in which the participants are enrolled.

Part-time postsecondary education

For participants enrolled in postsecondary education as part-time students, this gain must demonstrate participants are meeting academic standards by attaining 12 credit hours over the

²⁴ TEGL 10-16 Change 1 and TEGL 14-18 Appendix I

²⁵ *Program below the postsecondary level* refers to an adult basic education program [TEGL 10-16 Change 1; TEGL 14-18 Appendix I].

course of two completed semesters during a 12-month period, or the equivalent for the applicable academic system in use by the postsecondary institution in which the participant is enrolled.

For example, if a participant completed six credit hours in one semester and six credit hours in another semester and both semesters occurred during the same program year, they would count as a skill gain during that program year. However, if a participant completed six credit hours in one semester and six credit hours in the next semester and those semesters crossed two program years, credit hours earned during the first semester would not count as a skill gain in the first program year but credit hours earned during the second semester would count as a skill gain in the second program year.

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

Documentation for this gain may vary based upon the nature of training services being provided but must be based on satisfactory or better progress reports from an employer or training provider. The report must verify substantive skill development achieved by the participant, such as a training report on milestones completed as the participant masters required job skills or completion of one year of an apprenticeship program. Increases in pay resulting from newly acquired skills or increased performance also may be used to document progress for this type of gain, based on pay stubs or similar wage records provided by the participant.

NOTE. In the description of this type of measurable skill gains, “completion of one year of an apprenticeship” is just one example of a timeframe that may be established for achieving a satisfactory or better progress report toward a specific milestone. In addition, the one-year timeframe should not be taken as a required timeframe or the only way participants in an apprenticeship may achieve a measurable skill gain.

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

Documentation for this gain may include:

- passage of component exams in Registered Apprenticeship programs;
- employer-required knowledge-based exams;
- satisfactory attainment of an element of industry or occupational competency-based assessments; or
- other completion tests necessary to obtain credentials.

(f) Effectiveness in serving employers²⁶

The US Departments of Education and Labor (the Departments) are piloting three approaches to measuring the effectiveness of the core programs²⁷ in serving employers.

1. Retention with the same employer. This approach addresses the programs' efforts to provide employers with skilled workers. Performance is measured based on the percentage of participants who exit the programs and are employed with the same employer during the second and fourth quarters after exit.
2. Repeat business customers. This approach addresses efforts to provide quality engagement and services to employers and sectors and establish productive relationships with employers and sectors over extended periods. Performance is measured based on the percentage of employers that use program services more than once during the last three reporting periods.
3. Employer penetration rate. This approach addresses efforts to provide quality engagement and services to all employers and sectors within a state and local economy. Performance is measured based on the percentage of employers using core program services out of all employers in the state.

Under this pilot program, the core programs in each state collectively choose two of the three approaches to measuring effectiveness. Nebraska's core programs selected approaches 1 and 2, retention with the same employer and repeat business customers. Performance on this indicator is measured only at the state level and expected levels of performance will be determined once the Departments have collected sufficient baseline data.

Starting in Program Year 2018 (or the point at which wage-matching data becomes available for this indicator) and throughout the duration of the pilot program, JVSG and DWG will begin tracking effectiveness in serving employers using approach 1.

Section II. Categories of enrollment and exit

There are two points to understand while reading the definitions for *reportable individual* and *participant*.²⁸

1. All participants are reportable individuals but not all reportable individuals are participants.
2. An individual can be a:
 - a. participant in multiple programs;

²⁶ TEGL 10-16 Change 1

²⁷ *Core programs* refers to the Title I youth, adult, and dislocated worker programs, Title I Adult and Family Literacy Act Program, Title III Wagner-Peyser Employment Service, and Title IV vocational rehabilitation programs.

²⁸ TEGL 14-18

- b. reportable individual in multiple programs; or
- c. participant in one program and only a reportable individual in another program.

(a) Reportable individual²⁹

A reportable individual is an individual who has taken action that demonstrates an intent to use local adult, dislocated worker, or youth, Wagner-Peyser, or DWG program services and who meets specific reporting criteria of the applicable program, including when the individual:

- provides identifying information;
- only uses the self-service system; or
- only receives information-only services or activities.

USDOL does not negotiate levels of performance or impose sanctions based on the outcomes of reportable individuals, because only participants are included in the performance indicators.³⁰ However, USDOL requires inclusion of certain information in states' quarterly performance reports and related WIOA performance reporting tools or program-specific performance reporting tools to track the number of reportable individuals served by the system.

The reportable individual category does not apply to JVSG or TAA.

(b) Participant³¹

While the definition of participant is consistent across the core programs, there are slight differences to account for programmatic requirements. In general, for local adult, dislocated worker, and youth programs and Wagner-Peyser, a participant is a reportable individual who has received services other than self-service only or information-only services or activities after satisfying all applicable programmatic requirements for the provision of services. The following individuals are not participants of local adult, dislocated worker, and youth programs or Wagner-Peyser:

- those who only use the self-service system; and
- those who receive information-only services or activities, which provide readily available information that does not require an assessment of the individual's skills, education, or career objectives by a staff member.

For JVSG, TAA, and DWG in general, a participant is an individual who has received grant-funded services after satisfying all applicable programmatic requirements for the provision of program services, such as eligibility determination.

²⁹ 20 CFR § 677.150(b); TEGL 10-16, Change 1; TEGL 14-18 Attachment 6

³⁰ TEGL 10-16 Change 1; TEGL 14-18 Appendix I; ETA 9172 (OMB Control Number 1205-0521, expiration date: 06-30-2021)

³¹ 20 CFR § 677.150(a)(3); TEGL 10-16 Change 1; TEGL 14-18

(1) Local youth programs

For local youth programs, reportable individuals become participants when they have satisfied all of the following program requirements for the provision of services:³²

- eligibility determination;
- an objective assessment;
- development of an individual service strategy; and
- received one or more of the 14 youth program elements.³³

Refer to [Table A](#) in APPENDIX I for a list of the participant-level services that trigger a reportable individual's inclusion as a participant in local youth programs. It is important to note that ongoing provision of the services described in Table A results in ongoing inclusion of the individual as a youth program participant.

(2) Local adult and dislocated worker programs

For local adult and dislocated worker programs, reportable individuals become participants when they receive any:³⁴

- training service or individualized career service; or
- basic career service that is neither self-service only nor information-only.

Refer to [Table B](#) in APPENDIX I for a list of the participant-level services that trigger a reportable individual's inclusion as a participant in local adult and dislocated worker programs. It is important to note that ongoing provision of the services described in Table B results in ongoing inclusion of the individual as an adult or dislocated worker program participant.

(3) Wagner-Peyser

For Wagner-Peyser, reportable individuals become participants when they receive any:³⁵

- individualized career service; or
- basic career service that is neither self-service only nor or an information-only service or activity.

Refer to [Table B](#) in APPENDIX I for a list of the participant-level services that trigger a reportable individual's inclusion as a participant in Wagner-Peyser. It is important to note that ongoing provision of the services described in Table B results in ongoing inclusion of the individual as a Wagner-Peyser participant.

³² TEGL 10-16 Change 1; TEGL 14-18

³³ Refer also to the state's current youth program policy for a list of the 14 youth program elements. The policy is accessible at <https://dol.nebraska.gov/EmploymentAndTraining/LCRWP/WIOA/Policies>.

³⁴ TEGL 10-16 Change 1; TEGL 14-18

³⁵ Ibid.

(4) JVSG

JVSG defines a participant as an individual who has received a JVSG-funded service from a Disabled Veteran Outreach Program (DVOP) specialist, after satisfying all applicable programmatic requirements for the provision of services, such as an eligibility determination.³⁶

(5) TAA

TAA defines a participant as an individual who has received benefits or services funded by the TAA program, after satisfying all applicable programmatic requirements for the provision of services, such as an eligibility determination.³⁷

(6) DWG

DWG defines participant as a reportable individual who has:³⁸

- received an employment or training service or disaster relief employment, funded in whole or in part with DWG funds authorized under WIOA Sec. 170(b) and described in 20 CFR § 687.180(a) for Employment Recovery DWGs or 20 CFR § 687.180(b) for Disaster Recovery DWGs; and
- satisfied all applicable programmatic requirements for the provision of services, including an eligibility determination.

Refer to [Table C](#) in APPENDIX I for a list of the participant-level services that trigger a reportable individual's inclusion as a participant in DWG. It is important to note that ongoing provision of the services described in Table C results in ongoing inclusion of the individual as a DWG participant.

(c) Period of participation³⁹

For all performance indicators except measurable skill gains, a period of participation begins when an individual becomes a participant and ends on the participant's date of exit from the program.

For all performance indicators except measurable skill gains, states must count each participant's exit during the same program year as a separate period of participation for purposes of calculating levels of performance. In other words, a new period of participation is counted each time a participant enters and exits the program, even if more than one exit occurs during the same program year.

For the measurable skill gains indicator, a new period of participation is counted each time a participant enrolls, even if more than one enrollment occurs within the same program year. It is not necessary to wait until the participant exits the program to count a measurable skill gain because the measurable skill gains indicator is not an exit-based indicator. A measurable skill gain may be counted as soon as it is earned at any point during the program year in which it was earned.

³⁶ TEGL 14-18 Attachment 4

³⁷ TEGL 14-18 Attachment 10

³⁸ TEGL 14-18 Attachment 6

³⁹ TEGL 10-16 Change 1; TEGL 14-18

(d) Co-enrollment

Co-enrolling participants in partner programs maximizes use of program funding, as well as the number of individuals served by Nebraska's one-stop delivery system. Co-enrolling participants also ensures participants have access to and receive the full spectrum of services available through the one-stop delivery system, including follow-up services. Subsections (1) and (2) below outline state- and Federal-level co-enrollment requirements.

(1) State-level co-enrollment requirements

NDOL requires that co-enrollment of participants occur whenever eligibility permits. This co-enrollment requirement applies to:

- local adult, dislocated worker, and youth programs;
- Wagner-Peyser;
- JVSG;
- TAA; and
- DWG, whether administered at state or local levels.

All DWG and TAA participants must be, at a minimum, co-enrolled in a local dislocated worker program.

(2) Federal-level co-enrollment requirements

In addition to NDOL's co-enrollment requirements, there are Federal co-enrollment requirements.

- Local youth programs must co-enroll any in-school youth (ISY) in an adult or dislocated worker program in order for the ISY to use an Individual Training Account for occupational skills training provided by an Eligible Training Provider.⁴⁰
- Individuals participating in Nebraska's RESEA program (e.g., NERes) must be co-enrolled in Wagner-Peyser.⁴¹
- Homeless Veterans Reintegration Programs (HVRP) must co-enroll all HVRP participants in Wagner-Peyser, JVSG, or a local adult, dislocated worker, or youth program.⁴²

It should be noted that the Monitor Advocate System does not have a co-enrollment requirement, because the Monitor Advocate System is a system that uses performance data within Wagner-Peyser and does not operate as a separate program.⁴³

⁴⁰ TEGL 21-16

⁴¹ UIPLs 8-18 and 7-19

⁴² TEGLs 4-16 and 14-18

⁴³ TEGL 14-18

(3) Partner programs

For the programs listed above in subsection (1), partner programs in which participants may be co-enrolled include, but are not limited to:

- local adult, dislocated worker, and youth programs;
- Adult Education and Family Literacy Act program;
- Wagner-Peyser;
- vocational rehabilitation programs provided by the:
 - Nebraska Commission for the Blind and Visually Impaired; and
 - Nebraska Vocational Rehabilitation Program;
- DWG;
- Indian and Native American (INA) employment and training programs;
- Job Corps;
- JVSG;
- National Farmworker Jobs Program provided by Proteus;
- Senior Community Service Employment Program;
- TAA;
- Unemployment Insurance; and
- employment and training programs provided by:
 - Supplemental Nutrition Assistance Program (SNAP); and
 - Temporary Assistance for Needy Families program (TANF);
- YouthBuild.

(e) Exit

As described below, exit from a program generally occurs when an individual has not received services for a specified period and has no additional services scheduled.⁴⁴ Exit requirements for *reportable individuals* and *participants* differ.

⁴⁴ 20 CFR § 677.150(c); TEGL 10-16 Change 1

(1) Reportable individuals and exit⁴⁵

Reportable individuals do not *exit*, as defined in 20 CFR § 677.150(c), because reportable individuals are never considered participants. However, a new period of self-service activity occurs when more than 90 consecutive calendar days have elapsed since the last self-service or information-only service or activity. This is necessary to prevent reportable individuals who have stopped receiving services from remaining in the system indefinitely. Therefore, for tracking purposes, the date of exit for a reportable individual is determined when all of the following criteria are met.

1. The individual does not become a participant.
2. The individual is served under a local adult, dislocated worker, or youth program or Wagner-Peyser through receipt of services that do not result in the individual becoming a participant.
3. 90 days have elapsed since the date the individual was identified as a reportable individual and the individual has not received additional self-service or information-only services or activities during the 90-day period.

The date of exit for reportable individuals is applied retroactively based on the last date of service.

(2) Participants and program exit⁴⁶

For participants in adult, dislocated worker, and youth programs, Wagner-Peyser, JVSG, TAA, and DWG, the date of *program* exit is the last date of service. The date of *program* exit cannot be determined until 90 days have elapsed since the participant last received *program* services *and* there are no plans to provide the participant with future services. At this point, the date of *program* exit is applied retroactively based on the last date of service.

There are three additional factors to consider in relation to exit:

- supportive services;
- follow-up services; and
- common exit.

These factors are described below in subsections (3) through (8).

(3) Supportive services and youth participant exit

Supportive services do not delay exit from local youth programs. Under youth programs, supportive services may be provided as a follow-up service⁴⁷ and may take place after exit without delaying the exit date.

⁴⁵ TEGL 10-16 Change 1

⁴⁶ TEGL 10-16 Change 1; TEGL 14-18 Attachments 4 and 10

⁴⁷ Refer to the State's youth program policy for information on youth follow-up services. The policy is accessible at <https://dol.nebraska.gov/EmploymentAndTraining/LCRWP/WIOA/Policies>.

(4) Supportive services and adult, dislocated worker, and DWG participant exit

Under adult, dislocated worker, and DWG programs, supportive services may be provide only when participants are participating in career or training services and unable to obtain supportive services through other programs that provide supportive services. In other words, individuals who have exited adult, dislocated worker, and DWG programs are not eligible for supportive services; so the provision of supportive services does not delay exit from these programs.

(5) Supportive services and Wagner-Peyser, JVSG, and TAA participant exit

Supportive services, as defined under 20 CFR Part 680 Subpart G and 20 CFR § 681.570, are not provided under Wagner-Peyser, JVSG, and TAA programs and do not trigger a change in the exit date or delay exit when supportive services are provided through adult, dislocated worker, youth, and DWG programs.

(6) Follow-up services and adult, dislocated worker, youth, and DWG participant exit

Follow-up services provided through adult, dislocated worker, youth, and DWG programs do not trigger a change in the exit date or delay exit.

(7) Follow-up services and Wagner-Peyser, JVSB, and TAA program participant exit

Follow-up services are not provided by Wagner-Peyser, JVSG, and TAA programs and do not trigger a change in the exit date or delay exit when provided through adult, dislocated worker, youth, and DWG programs.

(8) Common exit⁴⁸

Common exit occurs when a participant enrolled in one or more partner programs has not received services from any program in which the individual is enrolled for at least 90 days and no future services are planned. A participant is exited from all co-enrolled programs only when all exit criteria are met for all co-enrolled programs. NDOL implemented a common-exit requirement that applies to all participants who are co-enrolled in:

- local adult, dislocated worker, and youth programs;
- Wagner-Peyser;
- JVSG;
- TAA; and
- DWG.

This common exit requirement does not apply to participants who are co-enrolled in other partner programs.

⁴⁸ 20 CFR § 677.150(c)(3)(i); TEGL 10-16 Change 1; TEGL 14-18

(f) Exclusion from participation

A participant may be excluded from performance calculations under limited circumstances.⁴⁹ Table 2 describes those circumstances in detail. Program staff is responsible for determining when one or more of those circumstances have occurred and must provide source documentation that supports a request to exclude a participant from performance. A participant cannot be excluded from participation after program exit. (Refer to [Section II\(e\)\(2\)](#) for information on program exit.)

Table 2. Circumstances permitting exclusion from participation

Circumstance	Explanation	Applicable programs
Institutionalization	While receiving services as a participant, the individual must exit the program because the individual is incarcerated in a correctional institution or a resident of an institution or facility providing 24-hour support, such as a hospital or treatment center.	<ul style="list-style-type: none"> ▪ local adult, dislocated worker, and youth programs ▪ Wagner-Peyser ▪ JVSG ▪ TAA ▪ DWG
Health/medical	The participant must exit the program because of medical treatment and that treatment is expected to last longer than 90 days and precludes entry into unsubsidized employment or continued participation in the program.	<ul style="list-style-type: none"> ▪ local adult, dislocated worker, and youth programs ▪ Wagner-Peyser ▪ JVSG ▪ TAA ▪ DWG
Death	The participant is deceased.	<ul style="list-style-type: none"> ▪ local adult, dislocated worker, and youth programs ▪ Wagner-Peyser ▪ JVSG ▪ TAA ▪ DWG
Reserve forces called to active duty	The participant must exit the program because the participant is a member of the National Guard or other reserve military unit of the Armed Forces <u>and</u> is called to <i>active duty</i> * for at least 90 days.	<ul style="list-style-type: none"> ▪ local adult, dislocated worker, and youth programs ▪ Wagner-Peyser ▪ JVSG ▪ TAA ▪ DWG
Foster care	The participant is in the foster care system, as defined in 45 CFR 1355.20(a), and must exit the program because the participant has moved out of the local workforce development area.	<ul style="list-style-type: none"> ▪ local youth programs

* *Active duty*⁵⁰ means full-time duty in the active military service of the United States. The term includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. The term *does not* include full-time National Guard duty.

⁴⁹ TEGL 10-16 Change 1; TEGL 14-18

⁵⁰ 10 USC § 101(d)(1)

Section III. Incumbent worker training and performance accountability⁵¹

Individuals receiving incumbent worker training are not considered *participants* for the purpose of inclusion in performance indicator calculations because of the unique eligibility requirements for incumbent worker training. Unlike other types of training, incumbent worker eligibility is determined at the employer level by the local board (i.e., whether the employer is eligible to have its employees receive incumbent worker training).⁵² There is no separate determination of the eligibility of any particular employee to receive incumbent worker training. Therefore, an incumbent worker does not have to meet eligibility requirements for services for local adult, dislocated worker, or youth programs. However, if the incumbent worker meets eligibility requirements, the individual may be (a) enrolled as a participant and receive services from a local adult, dislocated worker, or youth program or (b) a participant in a separate WIOA program. In both cases, those individuals' participation would be reported under the appropriate indicators of performance for the local adult, dislocated worker, or youth program in which they are enrolled.

Even though individuals receiving incumbent worker training are not participants for the purpose of performance indicator calculations, states and local areas are still required to report certain participant and performance data on all individuals who receive only incumbent worker training. The required elements for reporting on these individuals are limited to basic information and the elements needed to calculate incumbent worker training performance indicators for:

- employment in the second and fourth quarters after exit;
- median earnings in the second quarter after exit;
- credential attainment; and
- measurable skill gains.

For purposes of calculating these metrics, the exit date for an individual who has received only incumbent worker training will be the last date of training, as defined in the training contract with the employer.

NDOL and local boards may require reporting on other elements in order to collect additional information on incumbent workers, which should also be reported by NDOL if collected. All recipients of incumbent worker training, including incumbent worker training funded with statewide Rapid Response funds, must be reported in the USDOL-only PIRL (ETA Form 9172), regardless of whether the individuals become a participant in one or more WIOA programs. USDOL encourages the collection of incumbent worker Social Security Numbers (SSNs), as part of the training contract with the employer, so that wage records will be available for these individuals. If SSNs are not available, the local board may utilize supplemental wage information to verify the wages reported.

⁵¹ TEGL 10-16 Change 1

⁵² WIOA Sec. 134(d)(4)

Section IV. Administrative requirements of performance accountability

(a) Reporting

(1) Adult, dislocated worker, and youth programs and Wagner-Peyser

(i) Quarterly statewide and local performance reports

NDOL must submit quarterly statewide and local performance reports (ETA Form 9173) for local adult, dislocated worker, and youth programs and Wagner-Peyser within 45 days of the end of each quarter.⁵³ The report covers program performance for the previous full quarter.

(ii) Annual statewide and local performance report

In addition to quarterly reports, NDOL must submit an annual statewide and local performance report (ETA Form 9169) for local adult, dislocated worker, and youth programs and Wagner-Peyser by October 1, or the first business day thereafter should that date fall on a weekend.⁵⁴ The report covers performance data from the four full previous quarters.⁵⁵ Failure to submit the report by the due date will result in a five percent reduction of the Governor's reserve authorized under WIOA Sec. 128.⁵⁶

(iii) Annual statewide and local performance report narrative

NDOL must submit an annual statewide performance report narrative for local adult, dislocated worker, and youth programs and Wagner-Peyser by December 1, or the first business day thereafter should that date fall on a weekend.⁵⁷ The narrative complements the annual statewide performance report described above. The narrative must be no more than 25 pages, excluding appendices. States have flexibility regarding the contents of the narrative, as long as they address the requested items and stay within the 25-page limit.

The requested items for the annual statewide performance report narrative include information on:⁵⁸

- waivers that the state has had in place for at least one program year;
- approaches the state has chosen for the effectiveness in serving employers performance indicator pilot;

⁵³ US Department of Labor, Employment and Training Administration, "Reporting Timeline," <https://www.dol.gov/agencies/eta/performance/reporting/timelines> [accessed May 21, 2020]

⁵⁴ TEGL 3-17

⁵⁵ WIOA Sec. 116(d)(2); TEGL 3-17

⁵⁶ TEGL 3-17

⁵⁷ TEGL 5-18

⁵⁸ Refer to TEGL 5-18 for a detailed description of requested and suggested content for narratives.

- completed, current, or planned evaluations and related research projects; state efforts to provide data, survey responses, and timely site visits for Federal evaluations; and any continuous improvement strategies utilizing results from studies and evidence-based practices; and
- the state's approach to customer satisfaction.

In the report, states should also consider providing information on:

- progress made in achieving the state's strategic vision and goals, as described in the state's Combined State Plan;
- progress made in implementing sector strategies and career pathways;
- the state's performance accountability system;
- activities provided by state funds;
- DWG awarded to or within the state;
- technical assistance needs of the state workforce system;
- promising practices, lessons learned, and success stories that focus on serving employers, communities, and individuals with barriers to employment;
- challenges the state workforce system faces; and
- strategies and policies relating to pay-for-performance contracting.

NDOL must also submit the annual statewide performance report narrative to the Governor, Nebraska Legislature, and Nebraska Workforce Development Board by November 30.⁵⁹

(iv) Annual ETP performance report

NDOL must submit an annual Eligible Training Provider (ETP) performance report (ETA Form 9171) by October 1, or the first business day thereafter should that date fall on a weekend.⁶⁰ The report must include the following information regarding each program on the Eligible Training Provider List:⁶¹

- total number of local adult, dislocated worker, and youth program participants who *received* training from an ETP, disaggregated by the type of entity that provided the training, during the most recent full program year and the three preceding program years;

⁵⁹ Neb. Rev. Stat. § 48-3304

⁶⁰ WIOA Sec. 116(d)(4) and (d)(6)(B); 20 CFR 677.260(a)(5); TEGL 3-18.

⁶¹ 20 CFR §§ 677.160(c) and 677.230(a); TEGL 3-18. The PY 2018 report, due October 1, 2019, will require only data collected in PY 2018 and each subsequent program year will add another year of data to the report until the requirement for data for the most recent program year and the previous three program years is met [TEGL 3-18]. Registered Apprenticeship programs are not required to submit ETP performance information. If a Registered Apprenticeship program voluntarily submits performance information to NDOL, the information must be included in the ETP performance report. [20 CFR § 677.230(b)]

- total number of local adult, dislocated worker, and youth program participants who *exited* from training from an ETP, disaggregated by the type of entity that provided the training, during the most recent full program year and the three preceding program years;
- average cost per participant for the local adult, dislocated worker, and youth program participants who *received* training from an ETP, disaggregated by the type of entity that provided the training, during the most recent full program year and the three preceding program years;
- total number of local adult, dislocated worker, and youth program participants who *received* training from an ETP, disaggregated by barriers to employment, race, ethnicity, sex, and age;
- total number of individuals *exiting* from the program of study (i.e., all students, not just local adult, dislocated worker, and youth program participants);⁶² and
- levels of performance achieved for all individuals *engaging* in the program of study (i.e., all students, not just local adult, dislocated worker, and youth program participants), specifically:⁶³
 - percentage who are in unsubsidized employment during the second and fourth quarters after exit from the program of study;
 - median earnings of individuals who are in unsubsidized employment during the second quarter after exit from the program of study; and
 - percentage who obtain a recognized postsecondary credential, or a secondary school diploma (or recognized equivalent), during participation in or within one year after exit from the program of study.

In addition, NDOL is required to make available and publish the annual ETP performance reports for Nebraska's ETPs who provide training services pursuant to WIOA Sec. 122 of WIOA.⁶⁴

(2) JVSG

JVSG is not required to submit an annual state report narrative. However, there are quarterly reporting requirements for JVSG. JVSG must submit a narrative report on a quarterly basis, the Manager's Report on Services to Veterans and Technical Performance Narrative (TPN).⁶⁵

(3) MSFW

NDOL must submit an annual narrative report for its Monitor Advocate System through the Labor Exchange Agricultural Reporting System (LEARS) on services provided to MSFWs.⁶⁶

⁶² A state may be excluded from reporting on all-student data if the state has a waiver approved by USDOL.

⁶³ Ibid.

⁶⁴ 20 CFR § 677.230(a) and (c)

⁶⁵ TEGL 14-18 Attachment 4; VPL 1-15

⁶⁶ 20 CFR § 653.108(s)

(4) TAA

NDOL must submit quarterly performance reports (ETA Form 9173) for TAA programs within 45 days of the end of each quarter.⁶⁷ Each report covers program performance for the previous full quarter. Requirements relating to NDOL's the annual statewide performance report narrative, as described in [Section IV\(a\)\(1\)\(iii\)](#), do not apply to TAA.⁶⁸

(5) DWG

NDOL's annual statewide performance report narrative for local adult, dislocated worker, and youth programs and Wagner-Peyser must include information on DWGs awarded to Nebraska at state or local levels.⁶⁹

(b) Use of SSNs⁷⁰

In general, SSNs are collected in order to report on primary indicators of performance:

- employment status in the second and fourth quarters after exit;
- median earnings in the second quarter after exit; and
- post-exit employment status for participants who attain secondary school diplomas or recognized equivalents.

SSNs are also collected for reporting on the effectiveness in serving employers indicator regarding Approach 1, retention with the same employer, which is described in [Section I\(f\)](#). Where a wage match is available, matching a participant's SSN against quarterly wage record information is the most efficient method for determining employment status and earnings for a program participant.

NOTE. Program services must not be withheld if an individual is unwilling or unable to disclose an SSN.⁷¹ More specifically, program eligibility is not contingent on the provision of an SSN for any of the core programs.⁷²

(c) Supplemental wage data⁷³

While the most efficient method for determining employment status and earnings for program participants is to obtain quarterly wage records for participants, wage records may not be available in all circumstances. Supplemental wage information may be used for the employment-related performance indicators only when wage records are not available or may not apply (e.g., for participants who are self-employed or are unwilling or unable to provide a social security

⁶⁷ US Department of Labor, Employment and Training Administration, "Reporting Timeline," <https://www.dol.gov/agencies/eta/performance/reporting/timelines> [accessed May 21, 2020]

⁶⁸ TEGL 14-18 Attachment 10

⁶⁹ TEGL 5-18; TEGL 14-18 Attachment 6

⁷⁰ TEGL 14-18

⁷¹ Sec. 7(a)(1) of the Privacy Act of 1974 [5 USC 552a note]

⁷² *Core programs* refers to Title I programs (youth, adult, and dislocated worker), Title I programs (Adult Education and Family Literacy Act), Title III (Wagner-Peyser Employment Service), and Title IV programs (vocational rehabilitation).

⁷³ TEGL 10-16 Change 1; TEGL 14-18

number). In such circumstances, the applicable program must gather supplemental wage information to determine employment and earnings status for performance reporting purposes. In addition, supplemental wage information must be well documented for monitoring and data validation purposes and is subject to records retention policies.⁷⁴ When it is determined that supplemental wage information is needed, acceptable forms of supplemental wage information, include, but are not limited to:⁷⁵

- employment records from Federal and state sources, such as:
 - state departments of revenue or taxation; or
 - Railroad Retirement System;
- tax documents, payroll records, and employer records such as:
 - copies of quarterly tax payment forms to the internal revenue service, such as a form 941 (employer's quarterly tax return);
 - copies of pay stubs (minimum of two pay stubs required); or
 - signed letter or other information from employer on company letterhead attesting to an individual's employment status and earnings;
- other supplemental wage records:
 - income earned from commission in sales or other similar positions;
 - automated database systems or data matching with other partners with which data sharing agreements exist;
 - detailed case notes, verified by the employer and signed by the case manager, if appropriate to the program;
 - administrative records of one-stop operating systems, such as current records of eligibility for programs with income-based eligibility, such as TANF and SNAP;
 - self-employment worksheets signed and attested to by program participants; or
 - follow-up survey from program participants (i.e., self-reported).

Program staff conducting supplemental wage information follow-up should be trained in the implementation of follow-up procedures, including:

- what to say to former participants or their employers to encourage their cooperation;
- ways to encourage voluntary and truthful disclosure;

⁷⁴ Refer to the State's policy on records management. The State's policies are accessible at <https://dol.nebraska.gov/EmploymentAndTraining/LCRWP/WIOA/Policies>.

⁷⁵ TEGL 26-16

- how to document the information received; and
- how to respond to questions related to the supplemental wage information follow-up process.⁷⁶

Program staff should be thoroughly familiar with all follow-up procedures established for their respective program *before* beginning the follow-up process.

NDOL will provide technical assistance to programs regarding the collection of supplemental wage information.

Section V. Negotiating levels of performance for Title I and Title III programs

(a) Governing law, regulations, and guidance

TEGL 11-19 defines the process for negotiating levels of performance at the *state level*, as required under WIOA Sec. 116(b)(3)(A)(iv). TEGL 11-19 also defines the process for negotiating levels of performance at the *local level*, as required under WIOA Sec. 116(c).

(b) Definitions relating to performance negotiations

The following definitions apply to state-level and local-level performance negotiations for adult, dislocated worker, and youth programs and Wagner-Peyser.⁷⁷

1. *Expected levels of performance* are the levels of performance for each primary indicator of performance described in [Section I](#). Prior to negotiations, the state proposes its *expected levels of performance* in the initial submission of Nebraska's Combined State Plan and in the required two-year modification of the plan.⁷⁸
2. *Negotiated levels of performance* are the levels of performance mutually agreed to by NDOL and USDOL for each program, based on the four factors described below in [Section V\(d\)\(2\)](#). The *negotiated levels of performance* must be incorporated into the Combined State Plan and two-year modification of the plan prior to approval of the plans.⁷⁹
3. *Adjusted levels of performance* are levels of performance determined by adjusting the *negotiated levels of performance* at the end of a program year to reflect actual characteristics of participants served and actual economic conditions experienced using the *statistical adjustment model*.⁸⁰
4. The *statistical adjustment model* is run before a program year and after the close of a program year to account for actual economic conditions and characteristics of participants served. The difference between projected levels of performance (estimated by USDOL) before and after a program year yield an adjustment factor. The adjustment factor is

⁷⁶ TEGL 14-18, Appendix VI

⁷⁷ TEGL 11-19. Administrators of JVSG, TAA, and DWG programs must refer to program-specific laws, regulations, and guidance regarding performance levels for their respective programs.

⁷⁸ WIOA Sec. 116(b)(3)(A)(iii)

⁷⁹ WIOA Sec. 116(b)(3)(A)(iv); TEGL 11-19

⁸⁰ WIOA Sec. 116(b)(3)(A)(vii)

added to the *negotiated level of performance* to determine the *adjusted level of performance*.

5. *Actual levels of performance* are the outcomes reported by NDOL in the statewide performance report (ETA-9169) for each primary indicator of performance.⁸¹ *Actual levels of performance* are compared to the *adjusted levels of performance* at the close of each program year to determine the state's performance success or failure.
6. *Adjustment factor* is the 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* prior to the start of the program year and the levels of performance re-estimated by the *statistical adjustment model* after the close of the program year. This calculation yields a positive or negative difference, which will be used as the *adjustment factor* for the program year.
7. *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*.
8. *Overall state program score* is the average of the *individual indicator scores* for a single program across all performance indicators.
9. *Overall state indicator score* is the average of the *individual indicator scores* for a single performance indicator across all WIOA core programs.⁸²
10. *Statistical adjustment model* refers to an objective regression model developed by the US Departments of Education and Labor and used to *expected levels of performance* and *adjusted levels of performance*. Before the program year begins, the *statistical adjustment model* determines estimates that are used as a factor in the negotiations process. After the program year, the estimates derived from the *statistical adjustment model* are applied to the actual economic conditions and characteristics of participants served to determine the adjustment factor.⁸³ The statistical adjustment model also takes into account other factors that are determined to have an effect on predicting the state's outcomes.
 - a. 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 or English proficiency, disability status, homelessness, ex-offender status, and dependency on public assistance.
 - b. Economic conditions include differences in unemployment rates and job losses or gains in particular industries.

⁸¹ WIOA Sec. 116(d)(2)

⁸² WIOA core programs refers to Title I adult, youth, and dislocated worker programs; Title II adult education program; Title III Wagner-Peyser; and Title IV vocational rehabilitation programs.

⁸³ WIOA section 116(b)(3)(A)(viii)

(c) Negotiations process overview

NDOL must reach agreement with USDOL on levels of performance for each primary indicator of performance for adult, dislocated worker, and youth programs and Wagner-Peyser.⁸⁴ The agreed-upon levels are the *negotiated levels of performance*. The *negotiated levels of performance* cover the first two program years of the Combined State Plan. NDOL must also reach agreement with USDOL on *negotiated levels of performance* for each of the primary indicators of performance for adult, dislocated worker, and youth programs and Wagner-Peyser for the third and fourth years of the plan. As mentioned above in [Section V\(b\)](#), *negotiated levels of performance* must be incorporated into the Combined State Plan and two-year modification of the plan prior to their approval.⁸⁵ It is important to note that the primary indicator for *effectiveness in serving employers* has not yet been defined. For this reason, the negotiations process described below does not include this indicator. NDOL will continue to report performance on this indicator, which is described above in [Section I\(f\)](#), until performance negotiation requirements for this indicator are defined by USDOL.

(d) State-level negotiations process for adult, dislocated worker, and youth programs and Wagner-Peyser

The state-level negotiations process for adult, dislocated worker, and youth programs and Wagner-Peyser occurs as described below in items 1 through 4.⁸⁶

1. As stated above, NDOL must submit *expected levels of performance* in its Combined State Plan and in the two-year modification of that plan. *Expected levels of performance* for the first two years of a state plan must be submitted in the initial submission of the Combined State Plan and in the initial submission of the two-year modification of the plan for years three and four, as described in 20 CFR § 677.170(a). *Expected levels of performance* must be stated to the nearest tenth of a percent (XX.X %), or to the nearest whole dollar for median earnings. In addition, the expected levels of performance proposed by NDOL must be published for public comment prior to plan submission in accordance with state laws and regulations.
2. After submission of the Combined State Plan and the two-year modification of the plan, NDOL must negotiate and reach agreement with USDOL on *negotiated levels of performance* for each primary indicator of performance for adult, dislocated worker, and youth programs and Wagner-Peyser.⁸⁷ The factors that will be taken into account during the negotiations process are described in detail below in [Section V\(d\)\(2\)](#).
3. USDOL will use the *statistical adjustment model* as a tool in the negotiations process to estimate the NDOL's levels of performance prior to the program year to help reach agreement on the *negotiated levels of performance*. The negotiation factors outlined in WIOA Sec. 116(b)(3)(A)(v) and the factors described below in [Section V\(d\)\(2\)](#) will be taken into account during this process.

⁸⁴ WIOA Sec. 116(b)(3)(A)(iv)

⁸⁵ WIOA Sec. 116(b)(3)(A)(iv); TEGL 11-19

⁸⁶ TEGL 11-19. A negotiations/performance process flow chart is provided in Attachment III of TEGL 11-19.

⁸⁷ WIOA Sec. 116(b)(3)(A)(iv); TEGL 11-19

4. Once *negotiated levels of performance* are agreed upon, NDOL must incorporate the negotiated levels of performance into the Combined State Plan and the two-year modification of that plan prior to approval of the plan and two-year modification.⁸⁸

(1) Use of the statistical adjustment model

As required under WIOA Sec. 116(b)(3)(A)(viii), USDOL will use the *statistical adjustment model* to insure the impact of participant characteristics and economic conditions in the state are accounted for when determining *negotiated levels of performance*. The *statistical adjustment model* serves two major functions in performance negotiations and assessment of state performance.

1. First, the *statistical adjustment model* is one of four factors used to come agreement on *negotiated levels of performance*. It is used to account for economic conditions and characteristics of participants served in the state and local areas.⁸⁹
2. Second, it is used at the close of a program year to:⁹⁰
 - a. adjust the *negotiated levels of performance* for the actual economic conditions experienced and actual characteristics of participants served; and
 - b. develop *adjusted levels of performance*.

(2) Negotiation factors

While reaching agreement on the *negotiated levels of performance*, NDOL and USDOL must apply the factors listed below.⁹¹

1. *Take into account how the levels involved compare with negotiated levels of performance established for other states.*⁹² USDOL will provide the most recent performance data for all states, including previous actual, negotiated, and adjusted levels of performance and will use this information throughout the negotiations process.
2. *Ensure that the levels involved are adjusted using an objective statistical adjustment model provided by USDOL.*⁹³ Before the negotiations process begins, USDOL will provide the estimated outcomes produced by the *statistical adjustment model*, including the coefficients and state-specific values for each variable. This information will include levels of performance, as estimated by USDOL, to be used to inform the negotiations process. NDOL and USDOL must negotiate using the levels of performance estimated by the model for each primary indicator of performance. The *estimated levels of performance* may not be altered for the purposes of negotiations, including any changes in participant characteristics or economic conditions anticipated by NDOL that would result in changes to the levels of performance predicted by the statistical model. Any changes in participant characteristics or economic conditions will be reflected in the model by using the actual

⁸⁸ WIOA Sec. 116(b)(3)(A)(iv); TEGL 11-19

⁸⁹ WIOA Sec. 116(b)(3)(A)(v)(II); TEGL 11-19

⁹⁰ WIOA Sec. 116(b)(3)(A)(vii); TEGL 11-19

⁹¹ WIOA Sec. 116(b)(3)(A)(v); TEGL 11-19. According to TEGL 11-19, WIOA Sec. 116(b)(3)(A)(v) does not specify more or less weight on any specific factor.

⁹² WIOA Sec. 116(b)(3)(A)(v)(I)

⁹³ WIOA Sec. 116(b)(3)(A)(v)(II); TEGL 11-19

participant characteristics and economic conditions after the close of the program year, and they will not be factored into the negotiations process.

3. *Take into account the extent to which the levels involved promote continuous improvement in performance accountability measures by the state and ensure optimal return on the investment of Federal funds.*⁹⁴ USDOL considers continuous improvement to be a critical factor in the negotiations process and will consider continuous improvement factors that ensure optimal return on investment of Federal funds. USDOL acknowledges that there are many ways to define continuous improvement in relation to state or national program circumstances. For example, continuous improvement may reflect:

- increase from the levels of performance previously attained;
- increases in percentile rankings of levels of performance either nationally or among similar states;
- change in service strategy and delivery, including more progressive or innovative approaches;
- change in the intensity or comprehensiveness with which customers are served; or
- maintenance of previous performance for the top performing states.

USDOL acknowledges that changes to service strategy or customers served do not always lead to increases in performance levels.

NOTE. States and local areas must adhere to the priority of service requirements of WIOA Title I programs, as established under WIOA.⁹⁵ Additionally, USDOL encourages all other WIOA title programs to serve more individuals with barriers to employment who may need more intensive services to achieve a positive outcome. The effect of serving more of these customers will be accounted for in the *adjusted levels of performance* calculated after the program year.

4. *Take into account the extent to which the levels involved will assist the state in meeting the performance goals established by the Secretary of Labor in accordance with the Government Performance and Results Act of 1993 (GPRA).*⁹⁶ WIOA Sec. 116(b)(3)(A)(vi) requires that USDOL establish long-term goals for *adjusted levels of performance* for adult, dislocated worker, and youth programs and Wagner-Peyser through GPRA expectations. GPRA is a mechanism through which Congress and the US Office of Management and Budget evaluate the success of Federal programs, including those operated by states and local areas. During negotiations, USDOL will consider levels of performance that will assist USDOL in meeting its established GPRA goals.

⁹⁴ WIOA Sec. 116(b)(3)(A)(v)(III)

⁹⁵ WIOA Sec. 134(c)(3)(E) and TEGL 19-16 provide additional information regarding priority of service populations and service requirements.

⁹⁶ WIOA Sec. 116(b)(3)(A)(v)(IV)

(e) Local-level performance negotiations for adult, dislocated worker, and youth programs⁹⁷

In addition to negotiating state levels of performance with USDOL, NDOL must work with local workforce development areas to establish performance goals for local adult, dislocated worker, and youth programs. Specifically, the local board, the local area Chief Elected Official (CEO), and NDOL must:

- negotiate and reach agreement on local levels of performance based on the NDOL's negotiated levels of performance;
- use the four factors described in [Section V\(d\)\(2\)](#) for local-level negotiations; and
- reach agreement on local levels of performance no later than September 30 of each year during which state negotiations occur (i.e., biennially), based on NDOL's negotiated levels of performance.

In addition, NDOL must:

- use the USDOL *statistical adjustment model* framework and develop a model that satisfies NDOL's needs for local-level for biennial performance negotiations;
- notify the USDOL Employment and Training Administration Regional Office that local area negotiations are complete, no later than September 30 of each year during which state negotiations occur (i.e., biennially); and
- use the USDOL *statistical adjustment model* framework and develop a model that satisfies NDOL's needs at the local level for the year-end adjustment of local levels of performance, in order to reflect actual economic conditions experienced in the local area and the characteristics of the actual individuals served.

TEGL 11-19 states that negotiated and adjusted levels of performance, as well as the established policies for local performance assessment, should be made available to local boards and the USDOL Employment and Training Administration Regional Office prior to the start of the program year in which the policies will be applied.

Local-level performance negotiation processes established this policy begin with biennial negotiations for Program Years 2020 and 2021.

Section VI. Sanctions and corrective actions⁹⁸

(a) Governing law, regulations, and guidance

TEGL 11-19 explains the two instances in which a state may be sanctioned for performance failure or failure to report, as required under WIOA Sec. 116(f). WIOA Sec. 116, its implementing regulations (20 CFR Part 677 Subpart B), and the TEGL govern how USDOL will determine when it is necessary to sanction the state. TEGL 11-19 also explains the corrective actions that must

⁹⁷ WIOA Sec. 116(b)(3)(A)(v)(IV); TEGL 11-19

⁹⁸ 20 CFR § 677.190

be taken when a local area fails to meet adjusted levels of performance, as required under WIOA Sec. 116(g). WIOA Sec. 116, its implementing regulations (20 CFR Part 677 Subpart D), the TEGL, and this policy govern how NDOL will determine when it is necessary to take corrective actions against a local area.

(b) Sanctions against the state

Two types of failure lead to sanctions:⁹⁹

- failure to report; and
- failure to meet adjusted levels of performance.

A discussion of both failure types is provided below in subsections (1) and (2).

(1) Sanctions for failure to report¹⁰⁰

USDOL implemented sanctions provisions for failure to report beginning with submission of the Program Year 2017 annual statewide performance report, which was due on October 1, 2018.¹⁰¹ Sanctions will be applied when NDOL fails to submit an annual statewide performance report to USDOL, as required under WIOA Sec. 116(d).¹⁰² Consistent with 20 CFR § 677.185(a), NDOL will be considered as failing to submit an annual statewide performance report if NDOL:

- does not submit the report by 11:59p local time¹⁰³ on October 1; or
- submits the report by the date required for timely submission (October 1) but the report is incomplete.

In the event of failure to report on time or completely, the Governor's discretionary funds provided under WIOA Sec. 128(a) will be reduced by five percent of the maximum available allotment for the succeeding program year.¹⁰⁴ To clarify, this sanction is equal to five percent of the maximum allotment percentage that could be reserved by the Governor for the succeeding program year, rather than a five-percentage point reduction from the percentage that the Governor elects to reserve.¹⁰⁵ This sanction will be enforced for each year during which the state fails to report on time or completely.

(i) Timeliness of reports¹⁰⁶

An annual statewide performance report is considered to be on time when NDOL submits the report by 11:59p local time on October 1.

⁹⁹ WIOA Sec. 116(f); TEGL 11-19

¹⁰⁰ TEGL 11-19

¹⁰¹ Requirements regarding submission of ETP performance reports began with the PY 2018 Annual Report, which was due on October 1, 2019.

¹⁰² WIOA Sec. 116(f)(1)(B); TEGL 11-19

¹⁰³ Local time means the State Capital's time zone (TEGL 11-19).

¹⁰⁴ WIOA Sec. 116(f)(1)(B)

¹⁰⁵ 20 CFR § 677.195

¹⁰⁶ TEGL 11-19

(ii) Completeness of reports¹⁰⁷

An annual statewide performance report is considered complete when NDOL:

- attests the report is complete and accurate to the best of its knowledge;
- submits the report (ETA-9169) for Title I adult, dislocated worker, and youth programs and Title III Wagner-Peyser;
- reports all elements of the report as data are available, according to the reporting period for each indicator;
- makes available a mechanism of electronic access to local area performance reports for Title I adult, dislocated worker, and youth programs;
- makes available a mechanism of electronic access to the annual Eligible Training Provider (ETP) performance report for Title I adult, dislocated worker, and youth programs; and
- submits at least one annual statewide performance report that includes *effectiveness in serving employers* performance results reflecting all six of the core programs.¹⁰⁸

If an annual statewide performance report submitted by NDOL does not meet all of the above requirements by the reporting deadline, the report will be considered incomplete.

(iii) Exceptional circumstances¹⁰⁹

Consistent with WIOA Sec. 116(f)(1)(B), sanctions will not be applied in cases where failure to report is due to exceptional circumstances outside NDOL's control, as determined by USDOL. USDOL defines exceptional circumstances in 20 CFR § 677.185(b). Exceptional circumstances may include, but are not limited to:

- natural disasters;
- unexpected personnel transitions; and
- unexpected technology related issues.

When exceptional circumstances occur, NDOL may request an extension of the submission deadline, as described below in subsection (iv).

¹⁰⁷ TEGL 11-19

¹⁰⁸ *Core programs* includes Title I adult, dislocated worker, and youth; Title II adult education, Title III Wagner-Peyser, and Title IV vocational rehabilitation programs.

¹⁰⁹ TEGL 11-19

(iv) Extension requests¹¹⁰

In the event of exceptional circumstances, NDOL must notify the Secretary of Labor in writing of the potential impact on NDOL's ability to submit an annual statewide performance report. If the Secretary is not notified, NDOL will be considered as having failed to report.¹¹¹

When exceptional circumstances occur *more than 30 calendar days* before the established deadline, NDOL must submit an extension request to the Secretary no later than 30 calendar days prior to the established submission deadline.¹¹² The annual reporting deadline is October 1 of each year; therefore, extension requests must be submitted no later than September 1, or the next business day if September 1 falls on a holiday or weekend.

When exceptional circumstances occur *within 30 calendar days* of the established deadline, NDOL must submit an extension request to the Secretary of Labor as soon as possible but no later than the established annual reporting deadline (October 1).¹¹³

Extension requests should include a detailed account identifying the unexpected events preventing timely reporting that is sufficient for USDOL to make a determination on the request.

- All extension requests must include the names of and contact information for each responsible state designee or designated point of contact who will ensure that the extension deadline will be met.
- The request must include sufficient detail regarding the unexpected circumstances that will lead to late or incomplete reporting that may warrant an extension.
- The request must include NDOL's proposed extension period, which must be fitting of the circumstances causing the delay. Proposed reporting extensions should not exceed 30 calendar days after the established annual reporting deadline (October 1) and should be appropriate to and commensurate with the cause of the requested extension.
- When exceptional circumstances occur *within 30 calendar days* of the established deadline, the request must also include sufficient explanation as to why notification of the delay could not be provided 30 calendar days prior to the established annual reporting deadline (October 1).
- NDOL's request may include any other information it deems relevant to help explain the need for the extension.

The extension request will be reviewed by USDOL for completeness and thoroughness of the explanation of exceptional circumstances. USDOL may grant the extension request as submitted, grant the extension request with revisions, or reject the extension request.

¹¹⁰ TEGL 11-19

¹¹¹ 20 CFR § 677.185(c)

¹¹² 20 CFR § 677.185(c)(1)

¹¹³ 20 CFR § 677.185(c)(2)

(2) Sanctions for failure to meet adjusted levels of performance

NDOL's failure to meet adjusted levels of performance occurs when:¹¹⁴

- any single *Individual Indicator Score* for any single adult, dislocated worker, or youth program or Wagner-Peyser falls below 50 percent of the adjusted level of performance;
- the *Overall State Program Score* falls below 90 percent for a single program; or
- the *Overall State Indicator Score* falls below 90 percent for a single primary indicator of performance.

If NDOL fails to meet adjusted levels of performance for the primary indicators of performance for any year, technical assistance will be provided by the Secretary of Labor, including assistance in the development of a performance improvement plan.¹¹⁵ If the same performance failure occurs for two consecutive program years, USDOL will apply sanctions.

(i) Determining state performance success or failure

USDOL determines NDOL's performance success or failure at the end of each program year. In order to make a determination of success or failure, the *negotiated levels of performance* for the program year are adjusted using the *statistical adjustment model*, which will factor in data on the actual economic conditions in the state and the actual characteristics of the populations served by the program during that year. This adjustment will be calculated as described above in the definitions of *adjustment factor* and *adjusted levels of performance*. This will determine the *adjusted levels of performance* for the program year against which NDOL's *actual levels of performance* will be evaluated through the calculation of the performance score. (Refer to TEGL 11-19 for detailed descriptions and examples of calculations.)

(ii) Phasing in sanctions for performance failure

USDOL used its transition authority under WIOA Sec. 503(a) to implement a phased-in approach for determining performance success or failure for each indicator or program, due to data availability.¹¹⁶ Table 3 summarizes the first program years each performance indicator will be evaluated for performance success or failure, excluding the *effectiveness in serving employers* performance indicator, which is currently being piloted and will be established under subsequent guidance.

Table 3. Implementation of performance determination by program and indicator

Program	Indicators of performance	First program year (PY) for which performance success/failure can be determined
Title I adult, dislocated worker, and youth	<ul style="list-style-type: none">▪ Employment 2nd quarter after exit▪ Median earnings 2nd quarter after exit▪ Measurable skill gains	PY 2020

¹¹⁴ 20 CFR § 677.190(d); TEGL 11-19

¹¹⁵ 20 CFR § 677.190(b); TEGL 11-19

¹¹⁶ 20 CFR § 677.190(c)

Program	Indicators of performance	First program year (PY) for which performance success/failure can be determined
Title I adult, dislocated worker, and youth	<ul style="list-style-type: none"> ▪ Employment 4th quarter after exit ▪ Credential attainment 	PY 2022
Title III Wagner-Peyser	<ul style="list-style-type: none"> ▪ Employment 2nd quarter after exit ▪ Median earnings 2nd quarter after exit 	PY 2020
Title III Wagner-Peyser	<ul style="list-style-type: none"> ▪ Employment 4th quarter after exit 	PY 2022

(c) Corrective action against local areas for failure to meet adjusted levels of performance¹¹⁷

NDOL must use local performance goals for Title I adult, dislocated worker, and youth programs to determine when corrective action must be taken against a local area for failure to meet adjusted levels of performance. In addition, NDOL is required to establish thresholds for local area failure to meet adjusted levels of performance before coming to agreement on local-area negotiated levels of performance.¹¹⁸ NDOL's established thresholds are described below in subsection (1).

(1) Determining local area performance success or failure

NDOL has established the following thresholds for determining a local area's failure to meet adjusted levels of performance.¹¹⁹

- *Individual local-area single indicator score.* For any single adult, dislocated worker, or youth program, failure to meet an adjusted level of performance occurs when any *local-area single individual indicator score* falls below 50 percent of the local area's adjusted level of performance for that single indicator.
- *Overall local-area single program score.* For any single adult, dislocated worker, or youth program, failure to meet overall adjusted levels of performance for the program occurs when the *overall local-area single program score* falls below 90 percent of the overall adjusted levels of performance for that single program.
- *Overall local-area single indicator score.* For any single performance indicator across all local area adult, dislocated worker, and youth programs, failure to meet adjusted levels of performance for the indicator occurs when the *overall local-area single indicator score* falls below 90 percent of the adjusted levels of performance for that indicator.

¹¹⁷ 20 CFR § 677.220; TEGL 11-19

¹¹⁸ TEGL 11-19

¹¹⁹ 20 CFR § 677.190(d); TEGL 11-19

(2) Technical assistance following initial failure to meet local area adjusted levels of performance¹²⁰

NDOL must provide technical assistance when a local area fails to meet adjusted levels of performance, as described above in subsection (1). Technical assistance provided by NDOL may include:

- assistance in the development of a performance improvement plan;
- development of a modified local or regional plan; or
- other actions designed to assist the local area in improving performance.

Upon request to the Secretary of Labor, USDOL may also provide technical assistance.

(3) Corrective actions following consecutive failure to meet local area adjusted levels of performance¹²¹

If a local area fails to meet adjusted levels of performance for the same *individual local-area single indicator* for the same Title I program for a *third* consecutive program year, NDOL must take corrective actions. If NDOL takes corrective actions, NDOL should advise its Federal Project Officer of this action. Corrective actions must include the development of a reorganization plan under which the Governor:

- requires the appointment and certification of a new local board, consistent with the criteria established under 20 CFR § 679.350;
- prohibits the use of eligible [service] providers and one-stop partners that have been identified as achieving poor levels of performance; or
- takes such other significant actions as the Governor determines appropriate.

(4) Appeal¹²²

The local board and CEO for a local area subject to a reorganization plan under WIOA Sec. 116(g)(2)(A) may appeal to the Governor, not later than 30 days after receiving notice of the reorganization plan and request that the reorganization plan be rescinded or revised. The Governor must make a final decision within 30 days after receipt of the appeal. The local board and CEO may appeal the final decision of the Governor to the Secretary of Labor (Secretary) no later than 30 days after receiving the decision from the Governor.

NOTE: The Governor's final decision on the appeal becomes effective at the time it is issued and remains in effect, unless the Secretary rescinds or revises the reorganization plan pursuant to WIOA Sec. 116(g)(2)(C).

¹²⁰ TEGL 11-19

¹²¹ TEGL 11-19

¹²² 20 CFR § 677.225

Any appeal of the Governor's final decision must be:

- appealed jointly by the local board and CEO to the Secretary, as required under 20 CFR § 683.650;
- submitted by *certified mail, return receipt requested* to :
 - Secretary of Labor, US Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210, Attention: ASET; and
- simultaneously submitted to:
 - Governor of Nebraska, 1445 K Street, Lincoln, Nebraska, 68508; and
 - Commissioner of Labor, Nebraska Department of Labor, 550 South 16th Street, Lincoln, NE 68508.

Upon receipt of the appeal from the local board and CEO, the Secretary must make a final decision within 30 days. In making this determination, the Secretary may consider any comments submitted by the Governor in response to the appeal.

DISCLAIMER

This policy is based on NDOL's reading of the applicable statutes, regulations, rules, and guidance released by the US Government and the State of Nebraska. This policy is subject to change as revised or additional statutes, regulations, rules and guidance are issued.

APPENDIX I. Participation level services charts

Table A. Participation-level services chart for Title I youth programs¹²³

Service type (WIOA Sec.129(c)(2))	Service triggers inclusion as a participant ¹	Category of Service ²
Tutoring, study skills training, dropout prevention	Yes	Career Service
Alternative secondary school services	Yes	Career Service
Paid and unpaid work experience	Yes	Career Service
Occupational skills training	Yes	Training
Education offered concurrently with workforce preparation	Yes	Career Service
Leadership development	Yes	Career Service
Supportive Services	Yes	Career Service
Adult mentoring	Yes	Career Service
Follow-up services	No	Career Service
Comprehensive guidance and counseling	Yes	Career Service
Financial literacy education	Yes	Career Service
Entrepreneurial skills training	Yes	Career Service
Services that provide labor market information	Yes	Career Service
Postsecondary preparation and transition activities	Yes	Career Service

¹ All youth program services, except follow-up services, trigger participation following eligibility determination, objective assessment, and completion of the individual service strategy. Additionally, these services do not indicate whether an individual is a participant, but rather which services trigger an individual to become a participant. The ongoing provision of services results in ongoing inclusion as a participant.

² Please note that the categorization of career services and training services for the youth program differs from the adult and dislocated worker programs.

Table B. Participation-level services chart for Title I Adult and Dislocated Worker programs and Title III Wagner-Peyser Employment Service¹²⁴

Service type (WIOA Sec. 134(c))	Service triggers inclusion as a participant ¹	Category of service
Eligibility Determination	No	Basic Career Service
Outreach, Intake, Orientation	No	Basic Career Service
Initial assessment of skill levels & supportive service needs	Yes	Basic Career Service
Job search assistance (Self-directed)	No	Basic Career Service
Job search assistance (Staff-assisted)	Yes	Basic Career Service
Placement assistance (includes "Referred to Employment") (Staff-assisted)	Yes	Basic Career Service
Career Counseling (includes "Staff-assisted career guidance")	Yes	Basic Career Service

¹²³ TEGL 14-18 Appendix III

¹²⁴ Ibid.

Service type (WIOA Sec. 134(c))	Service triggers inclusion as a participant ¹	Category of service
Providing info on in-demand sectors, occupations, or nontraditional employment	No	Basic Career Service
Provision of referrals and associated coordination of activities with other programs and services	No	Basic Career Service
Provision of workforce and labor market employment statistics information	No	Basic Career Service
Provision of info on job vacancies	No	Basic Career Service
Provision of info on job skills necessary to fill vacancies	No	Basic Career Service
Provision of info on local demand occupations, with earnings, skill requirements, and opportunities for advancement for those jobs	No	Basic Career Service
Provision of performance and program cost info for providers of education and training	No	Basic Career Service
Provision of info on local performance	No	Basic Career Service
Provision of info on availability of supportive services or assistance	No	Basic Career Service
Referral to supportive services	No	Basic Career Service
Provision of information and meaningful assistance filing for UI	Yes	Basic Career Service
Assistance establishing eligibility for financial aid	Yes	Basic Career Service
Comprehensive and specialized assessments	Yes	Individualized Career Service
Development of IEP	Yes	Individualized Career Service
Group Counseling	Yes	Individualized Career Service
Individual Counseling	Yes	Individualized Career Service
Career Planning	Yes	Individualized Career Service
Short-term prevocational services	Yes	Individualized Career Service
Internships and work experiences (including transitional jobs)	Yes	Individualized Career Service
Workforce preparation activities	Yes	Individualized Career Service
Financial literacy services	Yes	Individualized Career Service
Out-of-area job search assistance and relocation assistance	Yes	Individualized Career Service
English-language acquisition and integrated education and training programs	Yes	Individualized Career Service
Follow up services	NA (must be a participant first to receive)	Follow up Service
Training services under Sec. 134(c)(3)(D) with exception of Sec. 134(c)(3)(D)(iii) (incumbent worker training)	Yes	Training
Incumbent Worker Training	No ²	Training

¹ This chart does not include all available services that may be provided, but rather those services specifically authorized under WIOA Sec. 134(c)(2). Additionally, these services do not indicate whether an individual is a participant, but rather which services trigger an individual to become a participant. The ongoing provision of services results in ongoing inclusion as a participant.

² Although Incumbent Worker Training is not a self-service or information-only service, individuals are not required to meet eligibility requirements for the Adult or Dislocated Worker programs to receive Incumbent Worker Training.

Table C. Participation-level services chart for DWG¹²⁵

Service Type (WIOA Secs. 134(c) and 170(d))	Does this service trigger inclusion as a participant?	Category of service
Eligibility Determination	No	Basic Career Service
Outreach, Intake, Orientation	No	Basic Career Service
Initial assessment of skill level & other service needs	Yes	Basic Career Service
Job search assistance (Self-directed)	No	Basic Career Service
Job search assistance (Staff-assisted)	Yes	Basic Career Service
Placement assistance (includes "Referred to Employment") (Staff-assisted)	Yes	Basic Career Service
Career Counseling (includes "Staff-assisted career guidance")	Yes	Basic Career Service
Providing info on in-demand sectors, occupations, or nontraditional employment	No	Basic Career Service
Provision of referrals and associated coordination of activities with other programs and services	Yes	Basic Career Service
Provision of workforce and labor market employment statistics information	No	Basic Career Service
Provision of info on job vacancies	No	Basic Career Service
Provision of info on job skills necessary to fill vacancies	No	Basic Career Service
Provision of info on local demand occupations, with earnings, skill requirements, and opportunities for advancement for those jobs	No	Basic Career Service
Provision of performance and program cost info for providers of education and training	No	Basic Career Service
Provision of info on local performance	No	Basic Career Service
Provision of info on availability of supportive services or assistance	No	Basic Career Service
Referral to supportive services	Yes	Basic Career Service
Provision of information and meaningful assistance filing for UI	Yes	Basic Career Service
Assistance establishing eligibility for financial aid	Yes	Basic Career Service
Comprehensive and specialized assessments	Yes	Individualized Career Service
Development of IEP	Yes	Individualized Career Service
Group Counseling	Yes	Individualized Career Service
Individual Counseling	Yes	Individualized Career Service
Career Planning	Yes	Individualized Career Service
Short-term prevocational services	Yes	Individualized Career Service

¹²⁵ Note that the DWG Participation Level Services Chart aligns with WIOA Title I Dislocated Worker program definitions.

Service Type (WIOA Secs. 134(c) and 170(d))	Does this service trigger inclusion as a participant?	Category of service
Internships and work experiences (including transitional jobs)	Yes	Individualized Career Service
Workforce preparation activities	Yes	Individualized Career Service
Financial literacy services	Yes	Individualized Career Service
Out-of-area job search assistance and relocation assistance	Yes	Individualized Career Service
English-language acquisition and integrated education and training programs	Yes	Individualized Career Service
Training services under WIOA Sec. 134(c)(3)(D) with exception of section 134(c)(3)(D)(iii) (incumbent worker training)	Yes	Training
Received Disaster Relief Employment on projects as defined in WIOA Sec. 170(d)(1)(A) (Disaster Recovery DWG only)	Yes	Disaster Relief Employment
Safety orientation, safety training, equipment training (for Disaster Relief Employment under Disaster Recovery DWG only)	Yes	Disaster Relief Employment
Supportive Services authorized in WIOA Sec. 134(d)(2) and defined in 20 CFR 680.900	No	Supportive Services

APPENDIX II. Statistical adjustment model explanatory variables¹²⁶

Table A. Explanatory variables on participant characteristics

Variable description	Adult	Dislocated worker	Youth	Wagner-Peyser
Female	X	X	X	X
14<=Age<=15	NA	NA	X	NA
16<=Age<=17	NA	NA	X	NA
Age=18	NA	NA	X	NA
19<=Age<=20	NA	NA	X	NA
26<=Age<=35	X	X	NA	X
36<=Age<=45	X	X	NA	X
46<=Age<=55	X	X	NA	X
56<=Age<=65	X	X	NA	X
66<=Age	X	X	NA	X
Hispanic ethnicity	X	X	X	X
Race: Asian (not Hispanic)	X	X	X	X
Race: Black (not Hispanic)	X	X	X	X
Race: Hawaiian/Pacific Islander (not Hispanic)	X	X	X	X
Race: American Indian or Native Alaskan (not Hispanic)	X	X	X	X
Race: More than one (not Hispanic)	X	X	X	X
Highest grade completed: Less than High School graduate	X	X	X	X
Highest grade completed: High school equivalency	X	X	X	X
Highest grade completed: Some college	X	X	X	X
Highest grade completed: Certificate or Other Post-Secondary Degree	X	X	X	X
Highest grade completed: Associate degree	X	X	NA	X
Highest grade completed: Bachelor degree	X	X	NA	X
Employed at participation	X	X	X	NA
Individual with a disability	X	X	X	NA
Veteran	X	X	NA	NA
Had earnings in 2nd and 3rd preprogram quarters	X	X	NA	X
Had earnings in 3rd preprogram quarter	X	X	NA	X
Had earnings in 2nd preprogram quarter	X	X	NA	X
Received services financially assisted under the Wagner-Peyser Act	X	X	X	NA
Limited English-language proficiency	X	X	X	NA
Single parent	X	X	NA	NA
Low income	X	X	X	NA
TANF recipient	X	X	X	NA
Other public assistance recipient	X	X	X	NA
Homeless	X	X	X	NA
Offender	X	X	X	NA
Unemployment insurance claimant, non-exhaustee	X	X	X	NA
Unemployment insurance claimant, exhaustee	X	X	X	NA
Received supportive services	X	X	NA	NA

¹²⁶ TEGL 26-15 Attachment II

Variable description	Adult	Dislocated worker	Youth	Wagner-Peyser
Received needs-related payments	X	X	NA	NA
Received intensive services	X	X	NA	NA
Received training services	X	X	NA	NA
Established Individual Training Account (ITA)	X	X	NA	NA
Pell grant recipient	X	X	X	NA
Received pre-vocational activity services	X	X	NA	NA
Pregnant or parenting youth	NA	NA	X	NA
Youth who needs additional assistance	NA	NA	X	NA
Youth enrolled in education at or during program participation	NA	NA	X	NA
Youth enrolled in education at exit	NA	NA	X	NA
Youth enrolled in education at participation	NA	NA	X	NA
Youth with basic literacy skills deficiency (at or below 8th grade)	NA	NA	X	NA
Youth that is or was in foster care	NA	NA	X	NA
Youth that received educational achievement services	NA	NA	X	NA
Youth that received employment opportunities	NA	NA	X	NA
Youth participated in an alternative school	NA	NA	X	NA
Average educational functioning level for Youth participants	NA	NA	X	NA
Average standardized pre-test score	NA	NA	X	NA
Average standardized post-test score	NA	NA	X	NA

Table B. Explanatory variables on economic conditions

Variable	Definition
UnempRate	Not seasonally adjusted quarterly unemployment rate
NatResEmp	Percentage of total employment in NAICS 1133-Logging, and Sector 21-Mining
ConstEmp	Percentage of total employment in Sector 23-Construction
ManfEmp	Percentage of total employment in Sectors 31, 32, 33-Manufacturing
TechEmp	Percentage of total employment in Sector 51-Information, Sector 52-Finance and Insurance, Sector 53-Real Estate and Rental and Leasing, Sector 54-Professional, Scientific, and Technical Services, Sector 55-Management of Companies and Enterprises, and Sector 56-Administrative and Waste Services
EdHealthEmp	Percentage of total employment in Sector 61-Educational Services, and Sector 62-Health Care and Social Assistance
LeisHospEmp	Percentage of total employment in Sector 71-Arts, Entertainment, and Recreation, and Sector 71-Accommodations and Food Services
OtherServEmp	Percentage of total employment in Sector 81-Other Services
PublicAdminEmp	Percentage of total employment in Federal, State, and Local Government