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Workforce Investment Act Policy Letter No. 09-XX

To: WIA Local Workforce Investment Boards (WIBs), Fiscal Agents,
Administrative Entities, and One-Stop Operators

From: Douglas E. Lumpkin, Director

Subject: Workforce Investment Act (WIA) Incentives, Sanctions, and
Performance/Common Measures

I. Purpose

To provide policy related to performance/common measures, incentives, and sanctions and to share future WIA program expectations as set by the Governor's Workforce Policy Advisory Board (GWPAB) - WIA Compliance Committee Members and the Ohio Department of Job and Family Services (ODJFS). WIA administrative entities should share this information with entities providing WIA activities and services.

II. Effective Dates

July 1, 2009

III. Background

The Workforce Investment Act, Public Law 105-220, dated August 7, 1998, Section 136, establishes a comprehensive performance accountability system. The WIA performance measures are in Section 136. Ohio submitted a waiver request to United States Department of Labor (USDOL) and was approved to allow the State to replace the statutory performance measures with the nine Common Measures that are identified in TEGL 17-05. (See WIATL 37, Common Measures Reporting.) WIA is further defined by the Regulations, and Training Employment Guidance Letters (TEGLs) and state policy. All WIBs must follow the WIA, Federal Regulations, and TEGLs.

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WIA Section 134 (2)(B)(iii) requires the distribution of funds in the form of incentive grants for exceptional performance as well as sanctions and corrective action to secure prompt compliance when violations of law or regulations occur, and other measures determined by the Governor.

In the future, the GWPAB, in conjunction with ODJFS, will be developing additional performance measures that will target services to businesses and increased program participation.

IV. Requirements

The Ohio Department of Job and Family Services (ODJFS), Office of Workforce Development (OWD), will award WIA incentive dollars for exceptional performance in the WIA Adult, Dislocated Worker, and Youth programs.

WIA Final Rules and Regulations - 29 CFR, Part 95 and Part 97 require the Governor, as the recipient of WIA funds for the State, to request corrective action to secure prompt compliance from any local area or program provider found to be out of compliance with WIA Law and/or WIA final Rules and Regulations. The Governor is required to impose sanctions if any local area fails to take timely corrective action.

The Ohio Department of Job and Family Services (ODJFS) calculates the annual performance/common measures for each local WIB using data from the state reporting system.

Incentives for Exceptional Performance

The state may provide incentive awards to local WIBs determined to have had exceptional program performance. The incentive award funds derive from the fifteen percent (15%) statewide WIA funds, and/or the redistribution of local area formula funds. The amount and availability of state incentive funds will be determined at the end of each program year.

A second source of incentive funds may be available to the state from DOL. The state is eligible for DOL incentive funds when the state exceeds the states' adjusted levels of performance/common measures.

When the state is eligible for DOL incentive funds, DOL funds may be added to the state incentive fund account and will be granted to local WIBs meeting the exemplary performance criteria.

A local WIB meets exceptional performance when annual performance/common measures calculations indicate that the local WIB:

- Does not fail any performance/common measures for adult, youth, and dislocated worker formula program; and

- Exceeds at least seven performance/common measures ,for the adult, youth, and dislocated worker formula program; and
- Does not have any outstanding or unresolved audit findings for recovery.

The state retains the option to revoke all or any part of the incentive funds obtained by a local WIB through improper or inappropriate manipulation of data. The state also retains the authority to review previous year(s) data and to report suspected fraud.

ODJFS will work with local WIBs to validate information used in the computation of performance/common measures during and after the end of the program year. Failure by a local WIB to maintain support documentation and report accurate, required and timely data in the state reporting system, and which results in discovery of a flaw in data, or a determination of improper or inappropriate manipulation of data may result in the imposition of sanctions. Problems with false or inaccurate data will be documented by ODJFS, and all inappropriately awarded incentive funds must be returned by the local WIB. Actions that are deemed improper or inappropriate manipulation of data include but are not limited to:

- Improperly deleting terminations from the system.
- Improperly modifying participant records.
- Listing a person who is not employed as employed.
- Not reporting participant information and/or records.
- Improper documentation. (See TEGl 17-05 & WIATL 27.)

Local WIBs eligible for incentive funds will receive written notification of the process to receive the funds.

All WIA dollars awarded as incentive funds must be spent on Title I-(B) activities.

Sanctions and Corrective Action Plan

Performance/Common Measure Failure – First Occurrence

When a local area does not meet negotiated annual performance/common measures, ODJFS will issue written notice to Chief elected official (CEO), local WIB chairperson, administrative entity director, and the fiscal agent of the local area. The local WIB must submit a corrective action plan within 45 days describing how it will meet and improve performance. The corrective action plan must include, but is not limited to:

1. Identification of the local WIB number, name of the CEO, local WIB chairperson, and a contact person for the corrective action plan.
2. Identification of each performance measure failed.
3. A description of the reason or reasons for failure, including an analysis of the reason for failure and how the cause was determined. If help is

needed to analyze the performance problem, you may email the WIAQNA@jfs.ohio.gov. OWD staff will provide the data needed for performance measure analysis, as well as make staff available to meet with the administrative entity to help analyze the data and identify the reasons for failure.

4. A description of actions you will take to meet the performance measures.
5. A timeline for completing each action identified above.
6. A description of how the local WIB will monitor and measure the effectiveness of the corrective action activities to ensure performance improvement and correction of the failures.
7. The local WIB will submit progress reports to the Office of Workforce Development according to a mutually agreed upon submission schedule following the approval of the corrective action plan. This submission schedule will continue until the end of the specified program year.
8. Signature of the CEO, local WIB chairperson, and administrative entity director.

ODJFS, OWD staff will review corrective action plans and notify the administrative entity in writing of the plan approval. If after reviewing the plan and additional information is required, the local area will be notified.

If the corrective action plan includes a request for technical assistance funds, a request will be made by the WIB, and made available on a case-by-case basis.

Corrective action plans shall be submitted to the:

Ohio Department of Job and Family Services
Office of Workforce Development
4020 East Fifth Avenue
Columbus, Ohio 43219
Attn.: Technical Assistance Section

Performance Measure Failure – Two or More Occurrences

If a local WIB fails the same annual negotiated performance/common measures for two consecutive program years, ODJFS will issue written notice to the Chief elected official (CEO), local WIB chairperson, administrative entity director, and the fiscal agent of the local area of the failure.

The state may require an independent third party analysis to determine the reason for the failure or failures. ODJFS will release the RFP, select the consultant, and pay for the independent analysis.

Based on the independent third party recommendations, discussions with the local WIB, and other evaluations, the state will decide the course of

corrective action. Corrective action will begin with a corrective action plan. The corrective action plan must include, but is not limited to:

1. Identification of the local WIB number, name of the CEO, local WIB chairperson, and a contact person for the corrective action plan.
2. Identification of each performance/common measure failed.
3. A description of the reason or reasons for failure, including an analysis of the reason for failure and how the cause was determined. If help is needed to analyze the performance problem, you may email the WIAQNA@jfs.ohio.gov. OWD staff will provide the data needed for performance/common measure analysis, as well as make staff available to meet with the administrative entity to help analyze the data and identify the reasons for failure.
4. A description of actions you will take to meet the performance/common measures.
5. A timeline for completing each action identified above.
6. A description of how the local WIB will monitor and measure the effectiveness of the corrective action activities to ensure performance improvement and correction of the failures.
7. The local WIB will submit progress reports to the Office of Workforce Development according to a mutually agreed upon submission schedule following the approval of the corrective action plan. This submission schedule will continue until the end of the specified program year.
8. Signature of the CEO, local WIB chairperson, and administrative entity director.

Note: If the local WIB has failed the same measure two consecutive years, and also fails a different measure, the corrective action plans can be combined.

ODJFS, OWD staff will review corrective action plans and notify the administrative entity in writing of the plan approval. If after reviewing the plan and additional information is required, the local area will be notified.

Corrective action plans shall be submitted to the:

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The state may take additional actions or make recommendations to the Governor that may include, but are not limited to:

- The appointment and certification of a new local board {consistent with the criteria established under section 117(b)};

- Prohibit the use of eligible providers and One-Stop partners identified as achieving a poor level of performance; or
- Take such other actions as the Governor determines as appropriate. See 136 (h)(2)(A).

The local WIB that is subject to a reorganization plan may, no later than 30 days after receiving notice of the reorganization plan, appeal to the Governor to rescind or revise such plan. The local WIB may, no later than 30 days after receiving a decision from the Governor, appeal to the Secretary of Labor.

V. Technical Assistance

For additional information, you may send your questions to the Office of Workforce Development: WIAQNA@jfs.ohio.gov.

VI. References

Workforce Investment Act of 1998, Public Law 105-220: 29 USC 2871, Section 136 (b)(2)(A)(i), and Section 136 (h)(2)(A) and (B)

Workforce Investment Act of 1998, Public Law 105-220: 20 USC 9273, Section 503 (a), (b)(1), (b)(2)(A), (B), and (C)

Final Regulations, Subpart (B), Section 666.200, Section 666.210, Section 666.300, Section 666.310, and Section 667.650

Final Regulations, Subpart (D), Section 666.400, and Section 666.410

TEGL No. 17-05, Common Measures Policy for the Employment and Training Administration's (ETA) Performance Accountability System and Related Performance Issues

WIATL 27 - Source Documentation for WIA Eligibility
WIATL 37 - Common Measures Reporting