



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF CAREER, TECHNICAL, AND ADULT EDUCATION

PROGRAM MEMORANDUM OCTAE 22-2

DATE: December 14, 2021

TO: State Directors of Adult Education

FROM: Jennifer Mishory
Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary for Career, Technical, and Adult Education

RE: Modification Requirements for Workforce Innovation and Opportunity Act (WIOA) State Plans for Program Years (PYs) 2022 and 2023

Purpose

The Office of Career, Technical, and Adult Education, within the U.S. Department of Education (Department), issues this program memorandum to inform states of Administration's priorities, modification requirements, submission process, and deadline for the required modification of the WIOA Unified and Combined State Plans (State Plans) for PY 2022 and PY 2023, consistent with Sections 102 and 103 of WIOA.

Action Requested

In accordance with WIOA, its implementing regulations, and the information collection request (ICR) Workforce Innovation and Opportunity Act (WIOA) Unified and Combined State Plan Requirements, approved under Office of Management and Budget (OMB) control number 1205-0522, states must submit a two-year modification of their WIOA Unified or Combined State Plans to the U.S. Departments of Labor and Education (the Departments). States should submit plan modifications by March 15, 2022, using the online portal described in this guidance. Once submitted, the Departments will review and provide a decision within 90 days for the core programs, as required by section 102(c)(2)(B) and (3)(B) of WIOA.

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Summary

This joint guidance outlines the WIOA planning requirements for the required two-year modification of the four-year State Plan, and provides submission deadlines and procedures.

Background

WIOA requires the Governor of each state to submit a Unified or Combined State Plan that includes a four-year strategy and operational plan for the continuing implementation of the state's workforce development system, with an update after two years. States must have federally approved State Plans to receive funding under the six core programs (Adult, Dislocated Worker, Youth, Adult Education and Family Literacy Act (AEFLA), Wagner-Peyser, and the Vocational Rehabilitation (VR) programs). All states currently have approved WIOA State Plans for PYs 2020-2023. However, WIOA requires that states review their plan every two years and update State Plan strategies, based on changes in the labor market and economic conditions or other factors affecting the implementation of the State Plan. Such factors may include reorganization of state administering agencies of WIOA programs, redesignation of local areas or establishment of new planning regions, changes to sub-state funding allocations, and other significant strategic or operational changes within states.

Under WIOA, the Unified and Combined State Plans communicate the state's vision for the state workforce system. WIOA planning requirements aim to foster better alignment of federal investments across job training and education programs in order to align service delivery across programs among shared customers, to improve efficiency in service delivery, and to ensure that the workforce system matches skilled individuals with high-quality job opportunities and employers. Cross-program planning promotes a shared understanding of the workforce needs within each state. Such planning cultivates the development of more comprehensive and aligned approaches, such as career pathways and sector strategies, for addressing the needs of workers, especially those with barriers to employment, including individuals with disabilities, and of businesses. Additionally, it enables the workforce system to provide a wider range of coordinated and streamlined services to shared customers.

The Departments recognize that states have been engaged in responding to the convergence of economic and health crises that have exposed and exacerbated inequities within our communities during the past two years since approval of their PYs 2020-2023 Unified or Combined State Plans. Past economic recoveries inequitably impacted people of different demographics, geographic locations, occupations, and industries; this recovery can be different with intentional planning and action. With this in mind, and in light of the reassessment by states of education and workforce needs and strategic approaches to addressing the shifting economic and workforce landscape, strategic planning and cross-partner conversations are more important than ever. Such planning can drive implementation that more fully realizes the opportunities, innovations, and equitable prosperity that WIOA envisions for America's workers and learners.

WIOA PLANNING PRIORITIES:

Data-driven decisions

When states last submitted WIOA State Plans in March 2020, the COVID-19 pandemic, and its significant disruptions to the global and to local economies had only just begun. As a result, it is particularly critical, for purposes of developing and submitting the State Plan modification for PYs 2022 and 2023, that states reassess economic and labor market information (LMI) and adjust strategies for what may now be a different set of growing and declining industries, occupations, and skills, thereby ensuring the State Plan modification reflects changes in the labor market and economic conditions and other factors affecting implementation of the State Plan as required by section 102(c)(3)(A) of WIOA. LMI informs both immediate response and ongoing recovery efforts during this rapidly changing economic environment, and state planners must work closely with the LMI Directors¹ within their states to understand the current and growing needs of their economy. In their examination of LMI, states must analyze data to assess disparities in labor market outcomes among various populations² and should focus planning efforts on not just how to tackle workforce challenges generally, but also how best to adapt and adjust their workforce goals and strategic focus for those communities with disproportionately higher unemployment rates and lower earnings—particularly among underserved population groups, or individuals facing barriers to employment (e.g., low-income individuals, English language learners, individuals without housing, individuals with disabilities). The State Plan modification must reflect any such strategic re-focusing. The Departments encourage states to widely share state LMI, including the state LMI used in state plans across state agencies, regardless of inclusion in the WIOA State Plan, to support data-informed decisions. For example, such data analysis could support Perkins V subrecipients in carrying out comprehensive local needs assessments³.

Reemployment

WIOA emphasizes integrating services to better serve workforce customers. All workforce system partners have a shared responsibility to facilitate the reemployment of unemployed individuals and the improved employment of underemployed individuals. To accomplish this shared responsibility, each one-stop partner program contributes services to individuals who meet program eligibility requirements and offers opportunities for individuals to co-enroll in more than one program. The Departments encourage states to examine how well their systems and operations across the WIOA one-stop partner programs, including Unemployment Insurance

¹ A list of all LMI Directors is available at <https://www.bls.gov/bls/ofolist.htm>

² WIOA Section 102(b)(1)(B) and *Workforce Innovation and Opportunity Act (WIOA) Unified and Combined State Plan Requirements* (OMB control # 1205-0522), section II(a)(1)(B).

³ Perkins V is the Carl D. Perkins Career and Technical Education Act of 2006, as amended by the Strengthening Career and Technical Education for the 21st Century Act. Section 135(c) requires comprehensive local needs assessments.

(UI), can work more seamlessly together to positively affect the shared goal of reemployment, particularly for individuals with barriers to employment, including individuals with disabilities.

Equity in service delivery and education programming

States should examine which population groups, particularly those identified in the LMI analysis as having higher unemployment and lower earnings than the overall population, experience inequities in access to and participation in public workforce programs that lead to quality jobs. States and local areas can examine, where data are available, which communities and neighborhoods were particularly economically impacted during the pandemic in order to focus resources and referral networks for maximum impact. The Departments encourage states to develop education, training, and career service strategies that better address and promote equity in recruitment, service design, implementation, and support services that aim to provide equitable access and outcomes to all communities seeking access to state services. Smooth transitions and alignment among programs, including programs that support low-income jobseekers such as recipients of Temporary Assistance for Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP), and those supporting individuals with disabilities such as state Mental Health or Medicaid services, promote economic stability. States are also encouraged to consider ways they can continue to leverage pandemic related investment, from both the public and private sector, to build and improve capacity of educational programming. This includes supporting educators to leverage technology for innovative and personalized instruction and increasing access to internet and devices for students and families. Nimble, modularized, innovative, and personalized services—including better leveraging technology for synchronous and asynchronous program delivery—can provide flexibility and adaptability to workers and learners, increasing equitable engagement in services and meeting their needs while they are balancing competing commitments and schedule challenges.

Enhance supportive service offerings

Services that assist individuals to begin to return to work not only include education, training, and employment services, but also include services that support individuals' personal, and family needs to address barriers to work. States should consider providing assistance with access to transportation, referrals to physical and mental health assistance, housing assistance, child and dependent care, and income supports such as UI and TANF. Supportive services are essential to ensure that youth and adults can stay engaged in program offerings and reach their educational and employment goals, and are particularly critical for those with justice and child welfare system involvement, individuals with disabilities, individuals without housing, or those with limited English proficiency. Partnerships with community-based organizations with deep roots in underserved communities are key to improve outreach and supports for an equitable recovery.

PLANNING REQUIREMENTS:

States must use the ICR *Workforce Innovation and Opportunity Act (WIOA) Unified and Combined State Plan Requirements* (OMB control # 1205-0522) to develop and submit both the WIOA Unified or Combined State Plan and the two-year modification. A copy of the ICR, which complies with statutory requirements set forth in, as appropriate, sections 102 and 103 of WIOA, is available at <https://www.dol.gov/sites/dolgov/files/ETA/wioa/pdfs/State-Plan-ICR.pdf>. A copy of these requirements is also available through the State Plan portal, developed specifically for the required electronic submission.

STAKEHOLDER COLLABORATION AND COMMENT:

Stakeholder collaboration, review, and comment are key requirements of the four-year planning process, as well as the two-year modification. State Workforce Development Boards (State Boards) are responsible for assisting the Governor in the development, implementation, and modification of the plan and for convening all relevant programs, required partners, and stakeholders to contribute to the State Plan. The Departments encourage inclusion of the state LMI and evaluation offices (or their equivalent) during plan development and modification to obtain assistance with labor market data, evidence, and analysis. The State Plan must be developed with the assistance of the State Board, as required by Section 101(d) of WIOA, and in coordination with administrators that have optimal policymaking authority for the core programs and required one-stop partner programs. For Combined State Plans, the portions of the plan that cover partner programs other than the core programs are subject to any public comment requirements applicable to those partner programs.⁴ States must provide the opportunity for public comment and input which allows interested stakeholders to participate actively, effectively, and transparently in the development of the plan and the modification, including via accessible means for individuals with disabilities. The Governor must ensure that the State Plan modification is developed with an opportunity for public comment from representatives of:

- Local Workforce Development Boards and chief elected officials;
- businesses;
- labor organizations;
- community-based organizations;
- adult education providers;
- institutions of higher education;
- other stakeholders with an interest in the services provided by the six core programs; and
- the general public, including individuals with disabilities.

The State Board also must make information regarding the modification of the State Plan and planning process available to the public through electronic and accessible means and by holding

⁴ See 20 CFR § 676.143(c)(3) and 34 CFR §§ 361.143(c)(3) and 463.143(c)(3).

regularly occurring open meetings in accordance with state law prior to the submission of the State Plan.⁵

INSTRUCTIONS FOR STATE PLAN MODIFICATION SUBMISSION:

States must submit their modification of their State Plan via the State Plan Portal (<https://wioaplans.ed.gov>), which has been developed for the purpose of cross-program collaboration in states and to facilitate the simultaneous receipt and review of plans across multiple federal agencies. While multiple individuals in states may enter content into the portal, only one individual from each state may submit to the Departments the entire plan on behalf of the Governor for all included programs. The Office of the Governor for each state must notify the Departments of the individual designated to submit the State Plan modification on behalf of the Governor for all programs included in the State Plan, even if that designee has not changed since the PY 2020 submission. By March 15, 2022, the Governor's office must submit a letter or email with the name of the designee to WIOA.Plan@dol.gov with a copy to the appropriate ETA Regional Office.

To request a State Plan portal user account or to update existing account login information, visit <https://wioaplans.ed.gov>. Previously approved WIOA State Plans are available within the portal for editing; content from the PYs 2020-2023 plans will be available in the data entry fields, so state editors can either delete entire sections or update specific portions of the plan.

PERFORMANCE NEGOTIATIONS FOR CORE PROGRAMS:

To outline the requirements for reaching agreement on the negotiated levels of performance for the states outlined in WIOA Section 116, the Departments issued joint guidance titled, *Negotiations and Sanctions Guidance for the Workforce Innovation and Opportunity Act (WIOA) Core Programs* (ETA TEGL 11-19, OCTAE Program Memorandum 20-2, and RSA TAC-20-02) and updated that guidance with the issuance of the Workforce Innovation and Opportunity Act (WIOA) Core Program Performance Accountability Assessment for Program Years (PYs) 2020 and PY 2021 (ETA Training and Employment Notice 14-21, OCTAE Program Memorandum 22-1, and RSA Frequently Asked Questions (FAQ) 22-01), dated October 27, 2021. The Departments will continue to use a "phased-in" approach to establish negotiated and adjusted levels of performance for certain indicators for specific programs. The appendix in the Unified and Combined State Plan ICR discussed in this section, and in Attachment I of this guidance, reflect which indicators/programs the Departments will negotiate for PYs 2022 and 2023. See Attachment I of this guidance for more instructions on establishing performance levels.

⁵ See WIOA Section 101(g) and 20 CFR § 676.130(d) and 34 CFR §§ 361.130(d) and 463.130(d).

WAIVERS:

As discussed in TEGL 08-18, *Workforce Innovation and Opportunity Act (WIOA) Title I and Wagner-Peyser Act Waiver Requirements and Request Process*, the Secretary of Labor may grant states additional flexibility through the waiver authority for portions of WIOA Title I and Wagner-Peyser Act requirements when permitted. Waivers are a tool for reducing barriers to WIOA implementation and spurring innovative programming options. States may submit WIOA Title I and III waiver requests as part of their State Plan or as a separate waiver plan.

All currently approved waivers expire on June 30, 2022.⁶ Therefore, states should submit new waiver requests as part of the State Plan modification submission for re-consideration if they wish to continue implementing particular waivers that had been approved previously. As articulated in waiver approval letters, states agreed to meet certain performance or other program measures resulting from the waiver. States requesting a waiver renewal beyond June 30, 2022, must provide the most recent data available about the outcomes of the waiver in the renewal request.⁷ The Department of Labor will consider this information as part of its thorough consideration on whether to approve the requested waiver. Find waiver-related resources at <https://www.dol.gov/agencies/eta/wioa/waivers>.

Inquiries

Questions regarding this guidance should be directed to the appropriate Area Coordinator.

⁶ For waivers related to the 75% out-of-school youth expenditure requirement, waivers are in effect for the full amount of time that states have to spend program year funds.

⁷ See 20 CFR § 679.620(d)(7).

Attachment I: Performance Goals and Instructions for the Core Programs

State Plan modifications must identify expected levels of performance for each primary indicator of performance for the two years covered by the plan modification. The state must reach agreement with the Secretary of Labor, in conjunction with the Secretary of Education, on the negotiated levels of performance for the indicators for each of the two years of the plan modification.

The Adult, Dislocated Worker, Youth, Adult Education and Family Literacy Act (AEFLA) and Vocational Rehabilitation (VR) programs will have two full years of data available to make reasonable determinations of expected levels of performance for the following indicators for Program Year (PY) 2022 and PY 2023:

- Employment⁸ (Second Quarter after Exit);
- Employment⁹ (Fourth Quarter after Exit);
- Median Earnings (Second Quarter after Exit);
- Credential Attainment Rate; and
- Measurable Skill Gains.

(I)

The Wagner-Peyser Act Employment Service (Wagner-Peyser) program will have two full years of data available to make a reasonable determination of expected levels of performance for the following indicators for PY 2022 and PY 2023:

- Employment (Second Quarter after Exit);
- Employment (Fourth Quarter after Exit); and
- Median Earnings (Second Quarter after Exit).

(II)

The Credential Attainment Rate and Measurable Skill Gains indicators do not apply to the Wagner-Peyser program; therefore, this program will not submit expected levels of performance for these indicators.

The U.S. Departments of Labor and Education (Departments) determined that the Effectiveness in Serving Employers (ESE) indicator will be measured as a shared outcome across all six core programs within each state to ensure a holistic approach to serving employers. In the spring 2021 Unified Agenda, the Departments announced plans to engage in rulemaking to incorporate a standard definition of the ESE indicator into the regulations implementing the Workforce Innovation and Opportunity Act (WIOA). Until that definition of the ESE indicator is in effect, the Departments will continue to require states to report performance results for ESE of the pilot approaches for PY 2022 and PY 2023. Because of a lack of historical data, states are not required to submit expected levels of performance for the ESE indicator for PY 2022 and PY 2023.

⁸ For Title I Youth programs, employment, education or training.

⁹ For Title I Youth programs, employment, education or training.

Each core program must submit an expected level of performance for all of the other indicators, as applicable. Each state must update its plan to include the agreed-upon negotiated levels of performance before the Departments approve a State Plan.

States may identify additional indicators in the plan, including additional approaches to measuring ESE, and may establish levels of performance for each of the state indicators. Please identify any such state indicators under Additional Indicators of Performance.

Include the state’s expected levels of performance relating to the performance accountability indicators based on primary indicators of performance described in section 116(b)(2)(A) of WIOA.

	TITLE I – ADULT PROGRAM			
	Program Year:		Program Year:	
	Expected Level	Negotiated Level	Expected Level	Negotiated Level
Employment (Second Quarter after Exit)				
Employment (Fourth Quarter after Exit)				
Median Earnings (Second Quarter after Exit)				
Credential Attainment Rate				
Measurable Skill Gains				

	TITLE I – DISLOCATED WORKER PROGRAM			
	Program Year:		Program Year:	
	Expected Level	Negotiated Level	Expected Level	Negotiated Level
Employment (Second Quarter after Exit)				
Employment (Fourth Quarter after Exit)				
Median Earnings (Second Quarter after Exit)				
Credential Attainment Rate				
Measurable Skill Gains				

	Title I – Youth Program			
	Program Year:		Program Year:	
	Expected Level	Negotiated Level	Expected Level	Negotiated Level
Education, Training, or Employment (Second Quarter after Exit)				
Education, Training, or Employment (Fourth Quarter after Exit)				
Median Earnings (Second Quarter after Exit)				
Credential Attainment Rate				
Measurable Skill Gains				

	Title II – Adult Education and Family Literacy Act Program			
	Program Year:		Program Year:	
	Expected Level	Negotiated Level	Expected Level	Negotiated Level
Employment (Second Quarter after Exit)				
Employment (Fourth Quarter after Exit)				
Median Earnings (Second Quarter after Exit)				
Credential Attainment Rate				
Measurable Skill Gains				

	Wagner-Peyser Act Employment Service Program			
	Program Year:		Program Year:	
	Expected Level	Negotiated Level	Expected Level	Negotiated Level
Employment (Second Quarter after Exit)				
Employment (Fourth Quarter after Exit)				
Median Earnings (Second Quarter after Exit)				
Credential Attainment Rate	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Measurable Skill Gains	Not Applicable	Not Applicable	Not Applicable	Not Applicable

	Vocational Rehabilitation Program			
	Program Year:		Program Year:	
	Expected Level	Negotiated Level	Expected Level	Negotiated Level
Employment (Second Quarter after Exit)				
Employment (Fourth Quarter after Exit)				
Median Earnings (Second Quarter after Exit)				
Credential Attainment Rate				
Measurable Skill Gains				

	All WIOA Core Programs			
	Program Year:		Program Year:	
	Expected Level	Negotiated Level	Expected Level	Negotiated Level
Effectiveness in Serving Employers	Not applicable	Not applicable	Not applicable	Not applicable

Additional Indicators of Performance
1.
2.
3.
4.
5.
6.