

mass job dislocation, the State or designated entity may:

(a) In conjunction, with other appropriate Federal, State and Local agencies and officials, employer associations, technical councils or other industry business councils, and labor organizations:

(1) Develop prospective strategies for addressing dislocation events, that ensure rapid access to the broad range of allowable assistance;

(2) Identify strategies for the aversion of layoffs; and

(3) Develop and maintain mechanisms for the regular exchange of information relating to potential dislocations, available adjustment assistance, and the effectiveness of rapid response strategies.

(b) In collaboration with the appropriate State agency(ies), collect and analyze information related to economic dislocations, including potential closings and layoffs, and all available resources in the State for dislocated workers in order to provide an adequate basis for effective program management, review and evaluation of rapid response and layoff aversion efforts in the State.

(c) Participate in capacity building activities, including providing information about innovative and successful strategies for serving dislocated workers, with local areas serving smaller layoffs.

(d) Assist in devising and overseeing strategies for:

(1) Layoff aversion, such as prefeasibility studies of avoiding a plant closure through an option for a company or group, including the workers, to purchase the plant or company and continue it in operation;

(2) Incumbent worker training, including employer loan programs for employee skill upgrading; and

(3) Linkages with economic development activities at the Federal, State and local levels, including Federal Department of Commerce programs and available State and local business retention and recruitment activities.

§ 665.330 Are the NAFTA/TAA requirements for rapid response also required activities?

The Governor must ensure that rapid response activities under WIA are made available to workers who, under the NAFTA Worker Security Act (Pub. L. 103-182), are members of a group of workers (including those in any agricultural firm or subdivision of an agricultural firm) for which the Governor has made a finding that:

(a) The sales or production, or both, of such firm or subdivision have decreased absolutely, and

(b)(1) Imports from Mexico or Canada of articles like or directly competitive with those produced by such firm or subdivision have increased; or

(2) There has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles which are produced by the firm or subdivision.

PART 666—PERFORMANCE ACCOUNTABILITY UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

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Subpart A—State Measures of Performance

§ 666.100 What performance indicators must be included in a State's plan?

(a) All States submitting a State Plan under WIA title I, subtitle B must propose expected levels of performance for each of the core indicators of performance for the adult, dislocated worker and youth programs, respectively and the two customer satisfaction indicators.

(1) For the Adult program, these indicators are:

- (i) Entry into unsubsidized employment;
- (ii) Retention in unsubsidized employment six months after entry into the employment;
- (iii) Earnings received in unsubsidized employment six months after entry into the employment; and
- (iv) Attainment of a recognized credential related to achievement of educational skills (such as a secondary school diploma or its recognized equivalent), or occupational skills, by par-

ticipants who enter unsubsidized employment.

(2) For the Dislocated Worker program, these indicators are:

- (i) Entry into unsubsidized employment;
- (ii) Retention in unsubsidized employment six months after entry into the employment;
- (iii) Earnings received in unsubsidized employment six months after entry into the employment; and
- (iv) Attainment of a recognized credential related to achievement of educational skills (such as a secondary school diploma or its recognized equivalent), or occupational skills, by participants who enter unsubsidized employment.

(3) For the Youth program, these indicators are:

- (i) For eligible youth aged 14 through 18:
 - (A) Attainment of basic skills, and, as appropriate, work readiness or occupational skills;
 - (B) Attainment of secondary school diplomas and their recognized equivalents; and
 - (C) Placement and retention in post-secondary education, advanced training, military service, employment, or qualified apprenticeships.

(ii) For eligible youth aged 19 through 21:

- (A) Entry into unsubsidized employment;
- (B) Retention in unsubsidized employment six months after entry into the employment;
- (C) Earnings received in unsubsidized employment six months after entry into the employment; and
- (D) Attainment of a recognized credential related to achievement of educational skills (such as a secondary school diploma or its recognized equivalent), or occupational skills, by participants who enter post-secondary education, advanced training, or unsubsidized employment.

(4) A single customer satisfaction measure for employers and a single customer satisfaction indicator for participants must be used for the WIA title I, subtitle B programs for adults, dislocated workers and youth. (WIA sec. 136(b)(2).)

(b) After consultation with the representatives identified in WIA secs. 136(i) and 502(b), the Departments of Labor and Education will issue definitions for the performance indicators established under title I and title II of WIA. (WIA secs. 136(b), (f) and (i).)

§ 666.110 May a Governor require additional indicators of performance?

Yes. Governors may develop additional indicators of performance for adults, youth and dislocated worker activities. These indicators must be included in the State Plan. (WIA sec. 136(b)(2)(C).)

§ 666.120 What are the procedures for negotiating annual levels of performance?

(a) The Department issues instructions on the specific information that must accompany the State Plan and that is used to review the State's expected levels of performance. The instructions may require that levels of performance for years two and three be expressed as a percentage improvement over the immediately preceding year's actual performance, consistent with the objective of continuous improvement.

(b) States must submit expected levels of performance for the required indicators for each of the first three program years covered by the Plan.

(c) The Secretary and the Governor must reach agreement on levels of performance for each core indicator and the customer satisfaction indicators. In negotiating these levels, the following must be taken into account:

- (1) The expected levels of performance identified in the State Plan;
- (2) The extent to which the levels of performance for each core indicator assist in achieving high customer satisfaction;
- (3) The extent to which the levels of performance promote continuous improvement and ensure optimal return on the investment of Federal funds; and
- (4) How the levels compare with those of other States, taking into account factors including differences in economic conditions, participant characteristics, and the proposed service mix and strategies.

(d) The levels of performance agreed to under paragraph (c) of this section will be the State's adjusted levels of performance for the first three years of the State Plan. These levels will be used to determine whether sanctions will be applied or incentive grant funds will be awarded.

(e) Before the fourth year of the State Plan, the Secretary and the Governor must reach agreement on levels of performance for each core indicator and the customer satisfaction indicators for the fourth and fifth years covered by the plan. In negotiating these levels, the factors listed in paragraph (c) of this section must be taken into account.

(f) The levels of performance agreed to under paragraph (e) of this section will be the State adjusted levels of performance for the fourth and fifth years of the plan and must be incorporated into the State Plan.

(g) Levels of performance for the additional indicators developed by the Governor are considered to be State adjusted levels of performance, but are not part of the negotiations described in paragraphs (c) and (e) of this section. (WIA sec. 136(b)(3).)

(h) State adjusted levels of performance may be revised in accordance with § 666.130 of this subpart.

§ 666.130 Under what conditions may a State or DOL request revisions to the State adjusted levels of performance?

(a) The DOL guidelines describe when and under what circumstances a Governor may request revisions to negotiated levels. These circumstances include significant changes in economic conditions, in the characteristics of participants entering the program, or in the services to be provided from when the initial plan was submitted and approved. (WIA sec. 136(b)(3)(A)(vi).)

(b) The guidelines will establish the circumstances under which a State will be required to submit revisions under specified circumstances.

§ 666.140 Which individuals receiving services are included in the core indicators of performance?

(a) The core indicators of performance apply to all individuals who are

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registered under 20 CFR 663.105 and 664.215 for the adult, dislocated worker and youth programs, except for those adults and dislocated workers who participate exclusively in self-service or informational activities. (WIA sec. 136(b)(2)(A).)

(b) For registered participants, a standardized record that includes appropriate performance information must be maintained in accordance with WIA section 185(a)(3).

§ 666.150 What responsibility do States have to use quarterly wage record information for performance accountability?

(a) States must, consistent with State law, use quarterly wage record information in measuring the progress on State and local performance measures.

(b) The State must include in the State Plan a description of the State's performance accountability system, and a description of the State's strategy for using quarterly wage record information to measure the progress on State and local performance measures. The description must identify the entities that may have access to quarterly wage record information for this purpose.

(c) "Quarterly wage record information" means information regarding wages paid to an individual, the social security account number (or numbers, if more than one) of the individual and the name, address, State, and (when known) the Federal employer identification number of the employer paying the wages to the individual. (WIA sec. 136(f)(2).)

Subpart B—Incentives and Sanctions for State Performance

§ 666.200 Under what circumstances is a State eligible for an Incentive Grant?

A State is eligible to apply for an Incentive Grant if its performance for the immediately preceding year exceeds:

(a) The State's adjusted levels of performance for the required core indicators for the adult, dislocated worker and youth programs under title I of WIA as well as the customer satisfac-

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tion indicators for WIA title I programs;

(b) The adjusted levels of performance included in plans submitted to the Department of Education for title II Adult Education and Literacy programs; and

(c) The adjusted levels of performance under title I of the Carl D. Perkins Vocational and Technical Education Act (20 U.S.C. 2301 *et seq.*). (WIA sec. 503.)

§ 666.205 What are the time frames under which States submit performance progress reports and apply for incentive grants?

(a) State performance progress reports must be filed by the due date established in reporting instructions issued by the Department.

(b) Based upon the reports filed under paragraph (a) of this section, the Secretary will determine the amount of funds available, under WIA title I, to each eligible State for incentive grants, in accordance with the criteria of § 666.230. The award amounts for each eligible State will be published by the Secretary, after consultation with the Secretary of Education, within ninety (90) days after the due date for performance progress reports established under paragraph (a) of this section.

(c) Within forty-five (45) days of the publication of award amounts under paragraph (b) of this section, States may apply for incentive grants in accordance with the requirements of § 666.220.

§ 666.210 How may Incentive Grant funds be used?

Incentive grant funds are awarded to States to carry out any one or more innovative programs under titles I or II of WIA or the Carl D. Perkins Vocational and Technical Education Act, regardless of which Act is the source of the incentive funds. (WIA section 503(a).)

§ 666.220 What information must be included in State Board's application for an Incentive Grant?

(a) The Secretary of Labor, after consultation with the Secretary of Education, will issue instructions annually which will include the amount of funds available to be awarded for each State

and provide instructions for submitting applications for an Incentive Grant.

(b) Each State desiring an incentive grant must submit to the Secretary an application, developed by the State Board, containing the following assurances:

(1) The State legislature was consulted regarding the development of the application.

(2) The application was approved by the Governor, the eligible agency (as defined in WIA section 203), and the State agency responsible for vocational and technical programs under the Carl D. Perkins Vocational and Technical Education Act.

(3) The State exceeded the State adjusted levels of performance for title I, the adjusted levels of performance under title II and the adjusted levels for vocational and technical programs under the Carl D. Perkins Vocational and Technical Education Act. (WIA section 503(b).)

§ 666.230 How does the Department determine the amounts for Incentive Grant awards?

(a) DOL determines the total amount to be allocated from funds available under WIA section 174(b) for Incentive Grants taking into consideration such factors as:

(1) The availability of funds under section 174(b) for technical assistance, demonstration and pilot projects, evaluations, and Incentive Grants and the needs for these activities;

(2) The number of States that are eligible for Incentive Grants and their relative program formula allocations under title I;

(3) The availability of funds under WIA section 136(g)(2) resulting from funds withheld for poor performance by States; and

(4) The range of awards established in WIA section 503(c).

(b) The award amount for eligible States will be published by the Secretary of Labor, after consultation with the Secretary of Education, within 90 days after the due date established under § 666.205(a) of the latest State performance progress report providing the annual information needed to determine State eligibility.

(c) In determining the amount available to an eligible State, the Secretary, with the Secretary of Education, may consider such factors as:

(1) The relative allocations of the eligible State compared to other States;

(2) The extent to which the adjusted levels of performance were exceeded;

(3) Performance improvement relative to previous years;

(4) Changes in economic conditions, participant characteristics and proposed service design since the adjusted levels of performance were negotiated;

(5) The eligible State's relative performance for each of the indicators compared to other States; and

(6) The performance on those indicators considered most important in terms of accomplishing national goals established by each of the respective Secretaries.

§ 666.240 Under what circumstances may a sanction be applied to a State that fails to achieve adjusted levels of performance for title I?

(a) If a State fails to meet the adjusted levels of performance agreed to under § 666.120 for core indicators of performance or customer satisfaction indicators for the adult, dislocated worker or youth program under title I of WIA, the Secretary must, upon request, provide technical assistance, as authorized under WIA sections 136(g) and 170.

(b) If a State fails to meet the adjusted levels of performance for core indicators of performance or customer satisfaction indicators for the same program in two successive years, the amount of the succeeding year's allocation for the applicable program may be reduced by up to five percent.

(c) The exact amount of any allocation reduction will be based upon the degree of failure to meet the adjusted levels of performance for core indicators. In making a determination of the amount, if any, of such a sanction, the Department may consider factors such as:

(1) The State's performance relative to other States;

(2) Improvement efforts underway;

(3) Incremental improvement on the performance measures;

(4) Technical assistance previously provided;

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(5) Changes in economic conditions and program design;

(6) The characteristics of participants served compared to the participant characteristics described in the State Plan; and

(7) Performance on other core indicators of performance and customer satisfaction indicators for that program. (WIA section 136(g).)

(d) In accordance with 20 CFR 667.300(e), a State grant may be reduced for failure to submit an annual performance progress report.

(e) A State may request review of a sanction imposed by the Department in accordance with the provisions of 20 CFR 667.800.

Subpart C—Local Measures of Performance

§ 666.300 What performance indicators apply to local areas?

(a) Each local workforce investment area in a State is subject to the same core indicators of performance and the customer satisfaction indicators that apply to the State under § 666.100(a).

(b) In addition to the indicators described in paragraph (a) of this section, under § 666.110 of this part, the Governor may apply additional indicators of performance to local areas in the State. (WIA sec. 136(c)(1).)

§ 666.310 What levels of performance apply to the indicators of performance in local areas?

(a) The Local Board and the chief elected official must negotiate with the Governor and reach agreement on the local levels of performance for each indicator identified in § 666.300 of this subpart. The levels must be based on the State adjusted levels of performance established under § 666.120 and take into account the factors described in paragraph (b) of this section.

(b) In determining the appropriate local levels of performance, the Governor, Local Board and chief elected official must take into account specific economic, demographic and other characteristics of the populations to be served in the local area.

(c) The performance levels agreed to under paragraph (a) of this section

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must be incorporated in the local plan. (WIA secs. 118(b)(3) and 136(c).)

Subpart D—Incentives and Sanctions for Local Performance

§ 666.400 Under what circumstances are local areas eligible for State Incentive Grants?

(a) States must use a portion of the funds reserved for Statewide workforce investment activities under WIA sections 128(a) and 133(a)(1) to provide Incentive Grants to local areas for regional cooperation among local boards (including local boards for a designated region as described in WIA section 116(c)), for local coordination of activities carried out under this Act, and for exemplary performance on the local performance measures established under subpart C of this part.

(b) The amount of funds used for Incentive Grants under paragraph (a) of this section and the criteria used for determining exemplary local performance levels to qualify for the incentive grants are determined by the Governor. (WIA sec. 134(a)(2)(B)(iii).)

§ 666.410 How may local incentive awards be used?

The local incentive grant funds may be used for any activities allowed under WIA title I-B.

§ 666.420 Under what circumstances may a sanction be applied to local areas for poor performance?

(a) If a local area fails to meet the levels of performance agreed to under § 666.310 for the core indicators of performance or customer satisfaction indicators for a program in any program year, technical assistance must be provided. The technical assistance must be provided by the Governor with funds reserved for Statewide workforce investment activities under WIA sections 128(a) and 133(a)(1), or, upon the Governor's request, by the Secretary. The technical assistance may include the development of a performance improvement plan, a modified local plan, or other actions designed to assist the local area in improving performance.

(b) If a local area fails to meet the levels of performance agreed to under

§666.310 for the core indicators of performance or customer satisfaction indicators for a program for two consecutive program years, the Governor must take corrective actions. The corrective actions may include the development of a reorganization plan under which the Governor:

(1) Requires the appointment and certification of a new Local Board;

(2) Prohibits the use of particular service providers or One-Stop partners that have been identified as achieving poor levels of performance; or

(3) Requires other appropriate measures designed to improve the performance of the local area.

(c) A local area may appeal to the Governor to rescind or revise a reorganization plan imposed under paragraph (b) of this section not later than thirty (30) days after receiving notice of the plan. The Governor must make a final decision within 30 days after receipt of the appeal. The Governor's final decision may be appealed by the Local Board to the Secretary under 20 CFR 667.650(b) not later than thirty (30) days after the local areas receives the decision. The decision by the Governor to impose a reorganization plan becomes effective at the time it is issued, and remains effective unless the Secretary rescinds or revises the reorganization plan. Upon receipt of the appeal from the local area, the Secretary must make a final decision within thirty (30) days. (WIA sec. 136(h).)

PART 667—ADMINISTRATIVE PROVISIONS UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

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