

**Pennsylvania Department of Labor & Industry**  
Bureau of Workforce Development Partnership  
WORKFORCE INVESTMENT INFORMATION NOTICE NO. 1-11  
July 15, 2011

**TO:** All Local Workforce Investments Boards  
All Bureau of Workforce Development Partnership (BWDP) Regional Directors,  
Assistant Directors, Managers, Supervisors and Workforce Development  
Analysts

**FROM:** Daniel Kuba, Acting Director, Bureau of Workforce Development Partnership

**SUBJECT:** Workforce Investment Act of 1998 (WIA) Performance Incentive  
Award, Technical Assistance and Sanctions Policy

**INQUIRIES:** Please direct inquiries to: [RA-LI-BWDP-PCS@state.pa.us](mailto:RA-LI-BWDP-PCS@state.pa.us)

**1. Purpose.** The purpose of this Workforce Investment Information Notice (WIIN) is to inform local workforce investment boards (LWIBs) of the expectations for Workforce Investment Act (WIA) incentive award, technical assistance and sanctions policy as it pertains to LWIB performance in WIA Title I Adult, Dislocated Worker and Youth funded program activities. Specifically, this WIIN identifies the following: 1) criteria for awarding incentive awards to LWIBs; 2) minimum levels of acceptable performance; and (3) actions that may be taken when LWIBs fail to meet the commonwealth's performance criteria.

**2. References.**

Workforce Investment Act of 1998 (Public Law 105-220), §§ 121(c), 134(a), 136 and 503; 20 CFR § 661.305(a)(5) to § 662.310(c), Parts 666, 667.650 and 667.700; 29 CFR § 97.40, Monitoring and Reporting Program Performance.

Training Employment and Guidance Letter (TEGL) No. 17-05, Common Measures Policy for the Employment and Training Administrations (ETA) Performance Accountability System and Related Performance Issues, TEGL 17-05, Change 1; TEGL 17-05, Change 2; TEGL 09-07, Revised Incentive and Sanction Policy for Workforce Investment Act Title IB Programs; TEGL 23-09, Negotiating Performance Goals for the WIA Title IB Programs and Wagner-Peyser Act Funded Activities for Program Year 2010; TEGL 29-10, Negotiating Performance Goals for the WIA Title 1B Programs; TEGL 37-10, Workforce Investment Act (WIA) and Appropriations

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Area of Responsibility: BWDP/CPCS  
Supersedes: None  
Revisions: None

Certified by: BWDP/CPCS (Michael Fuller)  
Pages: 7

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Act Provisions on the Designation of Local Workforce Investments Areas (LWIAs) and Wagner-Peyser Act Funded Activities for Program Year 2011.

**3. Discussion.** Section 136 of the WIA establishes the WIA Performance Accountability System. A stated goal of the WIA is to increase the employment, retention and earnings of participants. Section 136 specifies core indicators of performance as the basis of a comprehensive performance accountability system that includes employment, retention and earnings, as well as attainment of credentials or diplomas (for youth ages 14-21) and customer satisfaction.

The implementation of Common Performance Measures Reporting followed the U.S. Department of Labor (USDOL) approval of a waiver of the WIA statutory performance criteria in January 2005. The Common Measures were developed to provide uniformity in program performance and reporting requirements, facilitate the integration of service delivery and cooperation among partners and increase accountability. This WIIN has been developed to reinforce Pennsylvania's commitment to implement and oversee the statewide administration and program operation that promotes maximum-level coordination with all partners and resources, as well as programmatic performance that ensures taxpayers an effective return on their investment. This policy also aligns with USDOL policies for incentives, sanctions and performance improvement.

**4. Performance Incentive Awards.**

- a. Section 134(a)(2)(B)(iii) of the WIA and the WIA Regulation at 20 CFR § 666.400 requires states to use a portion of the funds reserved for statewide workforce investment activities, when such funds are made available, to provide incentive awards to LWIBs for exemplary performance relative to negotiated performance levels.
- b. Criteria. Incentive funding will only be made available to LWIBs that are determined to have achieved actual performance outcomes at or above 90 percent of the approved performance levels for each of the Common Performance Measures in a Program Year (PY).
  - 1). In addition to this baseline, prior to the beginning of each Program Year (PY), the Bureau of Workforce Development Partnership (Bureau) may provide notice that establishes additional criteria or conditions for incentive award eligibility for the upcoming PY.
  - 2). Any Local Workforce Investment Board (LWIB) that fails to execute a Memorandum of Understanding (MOU) with all of the entities that are responsible for administering the required One-Stop programs and activities in the LWIA, may be disqualified from incentive eligibility. The MOU will describe how WIA activities and services are provided through the one-stop delivery system and demonstrate local cooperation. The MOU must also describe how each partner will ensure performance accountability. If an impasse develops in the MOU process, the LWIB must notify the Bureau and

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describe all actions taken to resolve the impasse. The Bureau, representing the Governor, will work with the affected parties and will report to the USDOL should no resolution occur at the statewide level. WIA § 121(c); WIA Final Rule § 662.310.

- c. The Bureau will review all participant data provided by the Center for Workforce Information and Analysis (CWIA), as included in the Governor's Annual Report to the Secretary, and will notify each LWIB that satisfies the criteria for performance incentive eligibility.
- d. If a LWIB has requested a revision to lower its negotiated performance levels for any measure after the end of the third quarter of the program year (March 31), the LWIB will not be eligible for an incentive award for that program year.
- e. Funds for incentive awards will be allocated using the commonwealth's set-aside funds, when available, or any funds recovered from the application of financial sanctions, or both. A LWIB that satisfies the incentive award criteria will receive one percent (1 percent) of the total WIA allocation the LWIA received in the PY being reviewed.
- f. Local incentive award funds may be used for any activity permitted under WIA Title I-B. In order to ensure that funds are employed most effectively, qualifying LWIBs will submit a proposal for use of the funds to the Bureau Director. The proposal must be approved prior to awarding of incentive funds.
  - 1). LWIBs shall submit the Request for Funds (RFF) form. Electronic copies can be provided upon request.
  - 2). The commonwealth will review submitted proposals, and may request revisions prior to approval.
- g. Incentive awards must be fully expended within 12 months of the award date.

**5. Sanctions.**

- a. First Program Year
  - 1). Any LWIB that fails to meet at least 80 percent of the negotiated level for a specific performance measure for one year shall be considered as having unacceptable performance.
  - 2). The Bureau may:
    - i. Review reports provided by CWIA, as included in the Governor's Annual Report to the Secretary, to determine which LWIB(s) failed to

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achieve at least 80 percent of the negotiated level for a specific performance measure(s).

ii. Convene a performance technical assistance workgroup. The workgroup, in partnership with LWIB staff, will be responsible for determining the appropriate actions necessary for performance improvement in each LWIB that failed to achieve performance measure(s). The technical assistance workgroup may consider the following:

1. LWIBs performance relative to other LWIBs;
2. Improvement efforts in progress;
3. Incremental improvement on the performance measures;
4. Technical assistance previously provided;
5. Changes in economic conditions and program design;
6. The characteristics of participants served; and
7. Other performance indicators.

iii. Notify the LWIB Chair and Executive Director regarding what actions shall be taken to remedy performance.

iv. Ensure all performance improvement plans are submitted as required by paragraph 5.a.3.

v. Track performance improvement plans to ensure plans are being executed.

vi. Issue a subsequent determination as to whether the LWIB instituted appropriate corrective action.

3). LWIB Responsibilities: LWIBs shall submit a ***performance improvement plan*** to the Bureau Director upon notification of failed performance. The performance improvement plan shall be submitted to the Bureau not later than 30 days following the date of notification, and must address the following: 1) all deficiencies; 2) the actions and processes that will ensure performance improvement; 3) technical assistance workgroup recommendations; 4) a timeframe for completion of the implementation; and 5) any request for technical assistance.

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- 4). The LWIB may be required to modify the Local Plan and receive mandatory, targeted technical assistance. Technical assistance may be provided through conference calls, on-site visits, training sessions, special performance reports, webinars, roundtables, mentor/protégé partnerships, peer mentors, or any other method deemed necessary.
  - i. Technical assistance will continue until the LWIB attains the required performance levels.
  - ii. LWIBs that meet or exceed performance may request technical assistance, as deemed necessary, for maintaining or improving performance.

**b. Non-Performance, Second PY**

- 1). Any LWIB that fails to meet 80 percent of the negotiated level for a specific performance measure for a second consecutive year may be subject to sanctions.
- 2). In addition to the actions stated in 5.a.2) through 5.a.4), above, the Pennsylvania Department of Labor & Industry may take corrective actions, as discussed below:
  - i. Financial sanctions may be applied to the LWIB program area, i.e., WIA Adult, Dislocated Worker, or Youth, in which the LWIB failed to achieve the negotiated performance level.
    1. The financial sanction amount for unsatisfactory performance within a program area will be directly related to the number of negotiated performance levels the LWIB failed to meet for two (2) consecutive years.
    2. The percentage of the financial sanction will coincide with the number of measures failed in any program area, i.e., one percent (1 percent) for one failed measure, two percent (2 percent) for two failed measures, three percent (3 percent) for three failed measures, etc.
    3. The total amount of financial sanctions will not exceed five percent (5 percent) of the combined WIA Adult, Dislocated Worker and Youth allocations for the LWIA. The sanction percentage amount will be applied based upon a consecutive year process. This means that the year following the year(s) of deficient performance will be the year in which the commonwealth assesses compliance with the performance

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measures (for the prior year(s)); and recaptures and reallocates applicable funds. In other words, when LWIB falls under paragraph 5.b.1., the commonwealth will apply the financial sanctions to the subsequent year's funding stream(s).

ii. A reorganization plan may be required. If so, the Governor may:

1. Require the appointment and certification of a new LWIB consistent with the criteria established under § 1167(b);
2. Prohibit the use of providers identified as achieving unsatisfactory performance; and

iii. Redesignate the LWIA

iv. Other corrective actions as the Governor may deem necessary.

**6. Actions Required.**

a. LWIBs shall widely distribute copies of this WIIN to staff, PA CareerLink® partners, contractors and sub-contractors within the local area.

b. WIIN No. 1-11 has been posted on the PA Workforce website and may be accessed at [www.paworkforce.state.pa.us](http://www.paworkforce.state.pa.us)

**7. Appeal Procedure.** The complaint or appeal procedure as it relates to this policy may be obtained in the Bureau policy entitled, "*Grievances or Complaints of a Non-Discriminatory Nature.*"

**8. Effective Date.** This policy is effective immediately, and shall remain in effect until modified or replaced.

**9. Expiration Date.** Ongoing.