

**TITLE 11      LABOR AND WORKERS' COMPENSATION**  
**CHAPTER 2    JOB TRAINING**  
**PART 21      WIA TECHNICAL ASSISTANCE AND CORRECTIVE ACTION - LOCAL**  
**WORKFORCE DEVELOPMENT BOARD FAILURE TO MEET PERFORMANCE**

**11.2.21.1      ISSUING AGENCY:** The New Mexico Office of Workforce Training and Development (OWTD).

[11.2.21.1 NMAC - N, 12/31/05]

**11.2.21.2      SCOPE:** The Workforce Investment Act (WIA) state administrative entity (SAE), state workforce development board (SWDB), local workforce development boards (LWDBs), and all SAE WIA subrecipients.

[11.2.21.2 NMAC - N, 12/31/05]

**11.2.21.3      STATUTORY AUTHORITY:** Workforce Development Act, Chapter 50, Article 14, NMSA 1978

[11.2.21.3 NMAC - N, 12/31/05]

**11.2.21.4      DURATION:** Permanent.

[11.2.21.4 NMAC - N, 12/31/05]

**11.2.21.5      EFFECTIVE DATE:** December 31, 2005 unless a later date is cited at the end of a section.

[11.2.21.5 NMAC - N, 12/31/05]

**11.2.21.6      OBJECTIVE:** To establish policy for local workforce development boards (LWDBs) regarding technical assistance and corrective action to be taken when LWDBs fail to meet performance.

[11.2.21.6 NMAC - N, 12/31/05]

**11.2.21.7      DEFINITIONS:** [RESERVED]

**11.2.21.8      BACKGROUND:** The corrective action and technical assistance plan required by this rule gives LWDBs the opportunity to identify and request technical assistance as needed to effectively improve performance.

This requirement will take effect beginning with the LWDBs *annual* performance outcomes for program year 2214.

[11.2.21.8 NMAC - N, 12/31/05]

**11.2.21.9      ACTION:** References include the following: Pub.L. 105-220, Workforce Investment Act (WIA), Section 136 (h)(1)(2), Section 666-420 (sanctions for poor performance), 20 CFR Part 652 et al., Training and Employment Guidance Letter (TEGL) No. 8-99, and Training and Employment Guidance Letter (TEGL) No. 19-02.

**A.** Within *thirty (30) days* following the LWDBs receipt of its annual performance outcomes for the year in which one or more negotiated levels of performance were not met, a LWDB shall submit to the SAE a corrective action plan that addresses each core performance measure for which the LWDBs annual performance level falls below 80% of the level negotiated with SAE. The PY 04 core performance measures are as follows:

- (1) Adults
  - (a) entered employment rate
  - (b) employment retention rate
  - (c) earnings change in six months
  - (d) employment and credential rate
- (2) Dislocated workers
  - (a) entered employment rate
  - (b) employment retention rate
  - (c) earnings replacement rate
  - (d) credential rate
- (3) Older youth (aged 19-21)
  - (a) entered employment rate
  - (b) employment retention rate

- (c) earnings change in six months
- (d) credential rate
- (4) Younger youth (aged 14-18)
  - (a) skill attainment rate
  - (b) diploma or equivalent attainment rate
  - (c) retention rate
- (5) Customer satisfaction
  - (a) employer satisfaction
  - (b) customer satisfaction
- (6) Under re-authorization of WIA, the core measures of performance may change. Unless LWDBs are notified, the corrective action policy in this rule shall apply to any new or modified core measure.

**B.** For purposes of this rule, the following definitions apply for each category/measure.

(1) "Exceeds performance" is a local performance result that is 100% or higher of a negotiated performance level.

(2) "Meets performance" is a local performance result between 80% and 99% of a negotiated performance level.

(3) "Fails performance" is a local performance result that is less than 80% of a negotiated performance level.

**C.** If a LWDB fails to meet one or more negotiated performance levels in a single program year beginning with program year 2004 (July 1, 2004 through June 30, 2004) based on annual performance outcomes, the LWDB is precluded from receiving incentive funds for each category in which performance outcomes were not met. The LWDB must develop a corrective action and technical assistance plan as provided below.

**D.** If a LWDB fails to meet one or more negotiated performance levels for the same performance measure(s) for a second consecutive program year beginning with PY 2004 annual performance outcomes, the LWDB is precluded from receiving incentive funds for each category for the two program years in which the performance outcomes were not met. The LWDB must also submit a corrective action and technical assistance plan as provided below.

**E.** Further, a monetary reduction (deobligation) of WIA Title IB formula funds shall be imposed on the funding allocation for the program year immediately succeeding the two program years of failed performance. The amount of the reduction will be determined by the SAE and will be based on the number of measures failed for two consecutive years. This funding reduction will be held by the SAE and used to provide technical assistance to the LWDB as identified in the LWDBs corrective action and technical assistance plan.

**F.** Continued failure to meet negotiated levels of performance beyond two years will require the governor to take additional corrective action. This may include a reorganization plan under which the governor requires appointment of a new LWDB, prohibits use of particular service providers or one-stop partners, or other appropriate measures designed to improve performance.

**G.** The LWDBs corrective action and technical assistance plan for year number one addressing performance failure(s) shall include, at a minimum, the following:

(1) a list of the performance measure(s) for which the LWDB failed to achieve at least 80% and the actual percentage achieved for each;

(2) for each of the failed measures, a detailed explanation and analysis of why the LWDB failed to achieve the minimum 80%;

(3) a description of the corrective actions to be taken and the timeline for such actions to ensure that the minimum 80% performance will be achieved in subsequent program years;

(4) identification of technical assistance needed to ensure successful performance, to include the source and type of assistance;

(5) a monitoring plan with timelines for monitoring performance of the plan.

**H.** A LWDB corrective action and technical assistance plan for year number two addressing performance failure(s) shall include all of the above and an analysis of why the corrective action and technical assistance plan for year number one was unsuccessful.

**I.** The corrective and technical assistance plan submitted by the LWDB may be modified by the SAE as deemed necessary. The SAE will assist the LWDB with identification of technical assistance resources upon request.

**J.** LWDBs may apply to the SAE for technical assistance funds for failure to meet performance measures. Such funds shall *not* be provided for the following: administrative costs, staff salaries or benefits, out-of-state travel, meals or refreshments, capital equipment purchases, including computers or other equipment. A LWDB

may not receive more funding for technical assistance than it would have been eligible for through performance incentive awards for the program year.

**K.** A list of items to consider in developing a corrective action and technical plan follows:

- (1) improving assessment methodology to ensure appropriate referrals to intensive and training services;
- (2) in-service training by a combination of cross training by strong performers and site visits elsewhere in the LWDB or other LWDBs in the state;
- (3) training on adult, dislocated worker and youth performance management;
- (4) training on WIA case management;
- (5) improving monitoring of service providers;
- (6) training on use of the virtual one-stop system (VOSS);
- (7) improving participant follow-up services;
- (8) improving linkages with business community and publication about services available in the one-stop career centers;
- (9) restructuring of staff;
- (10) training of management staff.

[11.2.21.9 NMAC - N, 12/31/05]

**11.2.21.10 CONTACT ENTITY:** Inquiries regarding this rule should be directed to the state administrative entity (SAE) in Santa Fe at (505) 827-6827.

[11.2.21.10 NMAC - N, 12/31/05]

**11.2.21.11 DISTRIBUTION:** SWDB and LWDB chairpersons, LWDB administrative entities, all SAE WIA subrecipients, SAE legal counsel, SAE EEO officer, USDOL federal representative and New Mexico commission of public records.

[11.2.21.11 NMAC - N, 12/31/05]

**HISTORY OF 11.2.21 NMAC: [RESERVED]**