

(B) Assign the preliminary classification and continue on to § 1610.6(b) when:

(1) The average burn time is less than 4.0 seconds with no more than two base burns (SFBB). The preliminary classification is Class 1, Normal Flammability; or

(2) The average burn time is 4.0 to 7.0 seconds (both inclusive) with no more than 2 base burns (SFBB). The preliminary classification is Class 1, Normal Flammability; or

(3) The average burn time is greater than 7.0 seconds. The preliminary classification is Class 1, Normal Flammability; or

(4) The average burn time is 4.0 to 7.0 seconds (both inclusive) with three or more base burns (SFBB). The preliminary classification is Class 2, Intermediate Flammability; or

(v) If there is only one burn time out of the 10 specimens, the test is inconclusive. The fabric cannot be classified.

(4) Step 2, Raised Surface Textile Fabric After Refurbishing in accordance with § 1610.6(b).

(i) Determine the area to be most flammable in accordance with § 1610.6(a)(3)(i).

(ii) Prepare and test five specimens from the most flammable area. Burn times and visual observations determine whether to stop testing and determine the preliminary classification or to test five additional specimens.

(iii) Stop testing and assign the preliminary classification when:

(A) There are no burn times. The preliminary classification is Class 1, Normal Flammability; or

(B) There is only one burn time, and it is less than 4.0 seconds without an SFBB test result code; or it is 4.0 seconds or greater with or without an SFBB test result code. The preliminary classification is Class 1, Normal Flammability; or

(C) There are no base burns (SFBB) regardless of the burn time(s). The preliminary classification is Class 1, Normal Flammability; or

(D) There are two or more burn times with an average burn time of 0.0 to 7.0 seconds with a surface flash only. The preliminary classification is Class 1, Normal Flammability; or

(E) There are two or more burn times with an average burn time greater than 7.0 seconds with any number of base burns (SFBB). The preliminary classification is Class 1, Normal Flammability; or

(F) There are two or more burn times with an average burn time of 4.0 to 7.0 seconds (both inclusive) with no more than one base burn (SFBB). The

preliminary classification is Class 1, Normal Flammability; or

(G) There are two or more burn times with an average burn time less than 4.0 seconds with no more than one base burn (SFBB). The preliminary classification is Class 1, Normal Flammability; or

(H) There are two or more burn times with an average burn time of 4.0 to 7.0 seconds (both inclusive) with two or more base burns (SFBB). The preliminary classification is Class 2, Intermediate Flammability.

(iv) Test five additional specimens when the tests of the initial five specimens result in either of the following: There is only one burn time, and it is less than 4.0 seconds with a base burn (SFBB); or the average of two or more burn times is less than 4.0 seconds with two or more base burns (SFBB).

(v) If required, test five additional specimens from the most flammable area. The burn times and visual observations for the 10 specimens determine the preliminary classification when:

(A) The average burn time is less than 4.0 seconds with no more than two base burns (SFBB). The preliminary classification is Class 1, Normal Flammability; or

(B) The average burn time is less than 4.0 seconds with three or more base burns (SFBB). The preliminary and final classification is Class 3, Rapid and Intense Burning; or

(C) The average burn time is greater than 7.0 seconds. The preliminary classification is Class 1, Normal Flammability; or

(D) The average burn time is 4.0 to 7.0 seconds (both inclusive), with no more than two base burns (SFBB). The preliminary classification is Class 1, Normal Flammability; or

(E) The average burn time is 4.0 to 7.0 seconds (both inclusive), with three or more base burns (SFBB). The preliminary classification is Class 2, Intermediate Flammability; or

(vi) If there is only one burn time out of the 10 specimens, the test is inconclusive. The fabric cannot be classified.

■ 7. Amend § 1610.8 by revising paragraph (b) to read as follows:

#### § 1610.8 Reporting results.

\* \* \* \* \*

(b) *Test result codes.* The following are definitions for the test result codes, which shall be used for recording flammability results for each specimen that is burned.

(1) For Plain Surface Textile Fabrics:  
(i) DNI Did not ignite.

(ii) IBE Ignited, but extinguished.

(iii) \_.\_sec. Actual burn time measured and recorded by the timing device.

(2) For Raised Surface Textile Fabrics:  
(i) SF ntr Surface flash, does not break the stop thread. No time recorded.

(ii) \_.\_SF only Time in seconds, surface flash only. No damage to the base fabric.

(iii) \_.\_SFBB Time in seconds, surface flash base burn starting at places other than the point of impingement as a result of surface flash.

(iv) \_.\_SFBB poi Time in seconds, surface flash base burn starting at the point of impingement.

(v) \_.\_SFBB poi\* Time in seconds, surface flash base burn possibly starting at the point of impingement. The asterisk is accompanied by the following statement: "Unable to make absolute determination as to source of base burns." This statement is added to the result of any specimen if there is a question as to origin of the base burn.

**Alberta E. Mills,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 2022–19505 Filed 9–13–22; 8:45 am]

**BILLING CODE 6355–01–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### 20 CFR Part 677

[Docket No. ETA–2022–0006]

RIN 1205–AC01

## DEPARTMENT OF EDUCATION

### 34 CFR Parts 361 and 463

RIN 1830–AA32

### Workforce Innovation and Opportunity Act Effectiveness in Serving Employers Performance Indicator

**AGENCY:** Office of Career, Technical, and Adult Education (OCTAE), Rehabilitation Services Administration (RSA), Education; Employment and Training Administration (ETA), Labor.

**ACTION:** Joint proposed rule.

**SUMMARY:** The Workforce Innovation and Opportunity Act (WIOA) establishes six primary indicators of performance. Currently, the regulations contain definitions for five of the six performance indicators. However, in the final rule implementing WIOA, the U.S. Departments of Labor and Education (the Departments) indicated that they

would initially implement the sixth indicator of performance—effectiveness in serving employers—in the form of a pilot program to test the feasibility and rigor of the three proposed approaches. With the pilot completed, the Departments are engaging in this rulemaking that proposes to define in a standardized way the performance indicator for effectiveness in serving employers for the regulations implementing the jointly administered requirements governing WIOA's six core programs.

**DATES:** Interested persons are invited to submit written comments on the proposed rule on or before November 14, 2022.

**ADDRESSES:** You may submit comments, identified by Docket No. ETA–2022–0006 and Regulatory Identification Number (RIN) 1205–AC01, through the Federal eRulemaking Portal: <https://www.regulations.gov>. Search for the above-referenced RIN, open the proposed rule, and follow the on-screen instructions for submitting comments.

**Instructions:** All submissions received must include the agency name and docket number for this rulemaking or “RIN 1205–AC01.” Because of the narrow scope of this proposed regulation, the Departments encourage commenters to submit, and the Departments will consider, comments regarding the definition of the effectiveness in serving employers performance indicator and the indicator's use in determining if sanctions are necessary for failure to achieve adjusted levels of performance as set forth herein. The proposed amendments are limited to the sections of the regulations detailed in this rulemaking.

Please be advised that the Departments will post all comments received that relate to this notice of proposed rulemaking (NPRM) without changes to <https://www.regulations.gov>, including any personal information provided. The <https://www.regulations.gov> website is the Federal eRulemaking Portal and all comments posted there are available and accessible to the public. Therefore, the Departments recommend that commenters remove personal information (either about themselves or others), such as Social Security numbers, personal addresses, telephone numbers, and email addresses included in their comments, as such information may become easily available to the public via the <https://www.regulations.gov> website. The responsibility to safeguard personal

information remains with the commenter.

**Docket:** For access to the docket to read background documents or comments received, go to <https://www.regulations.gov> (search using RIN 1205–AC01 or Docket No. ETA–2022–0006).

**Comments under the Paperwork Reduction Act of 1995 (PRA):** In addition to filing comments on any aspect of this proposed rule with the Departments, interested parties may submit comments that concern the information collection (IC) aspects of this NPRM to the Office of Information and Regulatory Affairs (OIRA) at <https://www.reginfo.gov/public/do/PRAMain>. Find the relevant information collection by selecting “Currently under Review—Open for Public Comments” or by using the search function.

#### FOR FURTHER INFORMATION CONTACT:

**U.S. Department of Labor:** Heidi Casta, Acting Administrator, Office of Policy Development and Research, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW, Room N–5641, Washington, DC 20210, Telephone: (202) 693–3700 (voice) (this is not a toll-free number), 1–877–872–5627, or 1–800–326–2577 (telecommunications device for the deaf).

**U.S. Department of Education:** Braden Goetz, Director of Policy, Planning and Research, U.S. Department of Education, OCTAE, 400 Maryland Avenue SW, PCP, Washington, DC 20202–7240, Telephone: (202) 245–7405; or Jessica Hawes, WIOA Team Coordinator, Office of Special Education and Rehabilitative Services, U.S. Department of Education, RSA, 400 Maryland Avenue SW, PCP, Washington, DC 20202–2800, Telephone: (202) 245–8232.

#### SUPPLEMENTARY INFORMATION:

##### Preamble Table of Contents

- I. Rulemaking Authority and Background
- II. Effectiveness in Serving Employers
  - Performance Indicator for Workforce Innovation and Opportunity Act Core Programs
  - A. Pilot Programs for Workforce Innovation and Opportunity Act Core Programs
  - B. Proposed Changes to § 677.155
  - C. Adjusted Levels of Performance for Workforce Innovation and Opportunity Act Core Programs—Proposed Changes to § 677.190
- III. Regulatory Analysis and Review
  - A. Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)
  - B. Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, and Executive Order 13272

- (Proper Consideration of Small Entities in Agency Rulemaking)
- C. Paperwork Reduction Act of 1995
- D. Executive Order 13132 (Federalism)
- E. Unfunded Mandates Reform Act of 1995
- F. Executive Order 13175 (Indian Tribal Governments)

#### Acronyms and Abbreviations

- AEFLA Adult Education and Family Literacy Act
- BLS Bureau of Labor Statistics
- CFR Code of Federal Regulations
- Departments U.S. Departments of Labor and Education
- DOL U.S. Department of Labor
- E.O. Executive Order
- ES Employment Service
- ETA Employment and Training Administration
- FR Federal Register
- ICR Information Collection Request
- INA Indian and Native American
- NAICS North American Industry Classification System
- NPRM or proposed rule Notice of proposed rulemaking
- OCTAE Office of Career, Technical, and Adult Education
- OIRA Office of Information and Regulatory Affairs
- OMB Office of Management and Budget
- PIRL Participant Individual Record Layout
- PRA Paperwork Reduction Act of 1995
- Pub. L. Public Law
- PY Program Year
- QCEW Quarterly Census of Employment and Wages
- RFA Regulatory Flexibility Act
- RIA Regulatory impact analysis
- RIN Regulation Identifier Number
- RSA Rehabilitation Services Administration
- SBA U.S. Small Business Administration
- Stat. United States Statutes at Large
- TAC Technical Assistance Circular
- TEGL Training and Employment Guidance Letter
- UMRA Unfunded Mandates Reform Act
- U.S.C. United States Code
- VR Vocational Rehabilitation
- WDB Workforce Development Board
- WIOA Workforce Innovation and Opportunity Act

#### I. Rulemaking Authority and Background

President Barack Obama signed WIOA into law on July 22, 2014. WIOA, the first legislative reform of the public workforce system in more than 15 years, superseded titles I and II of the Workforce Investment Act of 1998 and amended the Wagner-Peyser Act and the Rehabilitation Act of 1973 (Rehabilitation Act). WIOA reaffirmed the role of the customer-focused one-stop delivery system, a cornerstone of the public workforce system, and enhanced and increased coordination among several key employment, education, and training programs. In WIOA, Congress directed the Departments to issue regulations implementing statutory requirements to

ensure that the public workforce system operates as a comprehensive, integrated, and streamlined system to provide pathways to prosperity and continuously improve the quality and performance of its services to job seekers and to employers.

WIOA sec. 116 establishes the performance indicators and performance reporting requirements to assess the effectiveness of the WIOA six core programs (sec. 116(b)(3)(A)(ii)) in serving WIOA customers (*i.e.*, participants, other job seekers, and employers).<sup>1</sup> The core programs are the adult, dislocated worker, and youth programs under title I of WIOA; the Adult Education and Family Literacy Act (AEFLA) program under title II; the Employment Service (ES) program authorized under the Wagner-Peyser Act as amended by WIOA title III; and the Vocational Rehabilitation (VR) program authorized under title I of the Rehabilitation Act as amended by WIOA title IV.

In the 2016 Joint WIOA Final Rule,<sup>2</sup> the Departments initiated a phased approach to defining the effectiveness in serving employers performance indicator, which included a pilot study to explore different possible definitions of this performance measure. This proposed rulemaking is necessary to complete implementation of the performance accountability requirements as discussed in the Joint WIOA Final Rule and required by statute.

Currently, 20 CFR 677.155(a)(1)(vi) and 34 CFR 361.155(a)(1)(vi) and 463.155(a)(1)(vi) implement the effectiveness in serving employers performance indicator as described in sec. 116(b)(2)(A)(i)(VI) of WIOA, subject to sec. 116(b)(2)(A)(iv), which requires the Secretaries of Labor and Education to jointly develop and establish the performance indicator, after

consultation with representatives of State and local governments, business and industry, and other interested parties.

In developing the Joint WIOA Final Rule, the Departments consulted with stakeholders and considered public comments through the Joint WIOA NPRM<sup>3</sup> and the WIOA Joint Performance Information Collection Request (ICR) (Office of Management and Budget (OMB) Control Number 1205–0526) on three proposed approaches to defining the performance indicator. In the Joint WIOA Final Rule, the Departments acknowledged the dissatisfaction expressed by commenters with using any Joint WIOA NPRM proposed approaches as a sole indicator of successful service to employers and agreed with comments discussing the utility of piloting multiple alternative measures to ensure that States are required to report on employer satisfaction in the most effective manner. As such, the Departments stated they would work to implement a pilot program, the details of which would be further delineated in joint Departmental guidance (81 FR at 55846).

After considering all input, the Departments implemented a pilot to test the rigor and feasibility of the proposed approaches to inform the development of a standard definition of the effectiveness in serving employers performance indicator. The pilot tested all three approaches described by the Departments in the Joint WIOA NPRM and Final Rule, with the intent of assessing each approach for its efficacy in measuring effectiveness in serving employers. The Departments included these approaches in the WIOA Joint Performance ICR and required each State to report on any two of the three approaches set out in the Joint WIOA Final Rule, as well as any additional measure a State established related to services to employers.<sup>4</sup> This approach provided States with flexibility in selecting the approaches to the effectiveness in serving employers performance indicator that best suited their needs, while providing the Departments the opportunity to evaluate States' experiences in using these measures from Program Year (PY) 2016

through PY 2020. This approach also allowed the Departments to obtain employer feedback regarding the extent to which these different approaches indicate effectiveness in serving employers. On behalf of the Departments, DOL commissioned an examination of State experiences with the various approaches through a third-party contractor and the Departments used the results of that study to help inform the Departments' analysis of which definition of the effectiveness in serving employers performance indicator to implement.

## II. Effectiveness in Serving Employers Performance Indicator for Workforce Innovation and Opportunity Act Core Programs

Because of the narrow scope of this proposed regulation, the Departments encourage commenters to submit, and the Departments will consider, comments regarding the definition of the effectiveness in serving employers performance indicator and the indicator's use in determining if sanctions are necessary for failure to achieve adjusted levels of performance as set forth herein. The proposed amendments are limited to the sections of the regulations detailed in this rulemaking. Comments on other provisions and aspects of the WIOA regulations, whether promulgated jointly by the Departments or independently by each agency, will be considered outside the scope of this rulemaking and will not be considered by the Departments.

In the discussion of the proposed regulatory text changes below, the heading references the DOL CFR part and section number. However, the U.S. Department of Education has identical provisions at 34 CFR part 361, subpart E (under its State VR program regulations) and at 34 CFR part 463, subpart I (under its AEFLA regulations). For purposes of brevity, the discussion of proposed regulatory text changes below appears only once—in conjunction with the DOL section number—and constitutes the Departments' collective explanation of the change. These changes to the joint performance regulations will appear in each of the CFR parts identified in this paragraph when the regulations are finalized and published in the CFR. In this preamble, the Departments describe only the proposed substantive changes. However, for transparency, the Departments note we propose only one purely technical edit to the regulatory text, specifically the replacement of a semicolon with a period at the end of

<sup>1</sup> Section 116(b)(2)(A) of WIOA states the primary indicators of performance: (1) the percentage of participants who are employed during the second and (2) fourth quarters after exit from the program, (3) the median earnings of participants who are employed during the second quarter after exit, (4) the percentage of participants who obtain a recognized postsecondary credential during the program or within 1 year of exit, (5) the percentage of participants who achieve measurable skill gains during a program year, and (6) "indicators of effectiveness in serving employers." This last indicator is the subject of this NPRM. Definitions of the others were included in the WIOA regulations promulgated in August 2016 (81 FR 55791; see 20 CFR 677.155, 34 CFR 361.155, 34 CFR 463.155).

<sup>2</sup> *Workforce Innovation and Opportunity Act; Joint Rule for Unified and Combined State Plans, Performance Accountability, and the One-Stop System Joint Provisions; Final Rule*, 81 FR 55792 (Aug. 19, 2016) (hereinafter "Joint WIOA Final Rule").

<sup>3</sup> *Workforce Innovation and Opportunity Act; Joint Rule for Unified and Combined State Plans, Performance Accountability, and the One-Stop System Joint Provisions; Notice of Proposed Rulemaking*, 80 FR 20689 (Apr. 15, 2015) (hereinafter "Joint WIOA NPRM").

<sup>4</sup> Governors had the option to establish and report on a third State-specific approach for measuring effectiveness in serving employers, in addition to two of the three Departmental pilot approaches selected by the State.

§ 166.190(c)(3) for grammatical correctness and consistency.

#### A. Pilot Programs for Workforce Innovation and Opportunity Act Core Programs

The Departments reviewed annual report data<sup>5</sup> for PY 2017 through PY 2020<sup>6</sup> for each of the three approaches for measuring effectiveness in serving employers with a focus on minimizing employer burden and using information that would provide an accurate picture of how well the public workforce system serves employers. Specifically, States, under guidance from the Departments (hereinafter “joint guidance”), piloted the following definitions for the effectiveness in serving employers performance indicator:<sup>7</sup>

- Retention with the Same Employer: Percentage of participants with wage records who exit from WIOA core programs and were employed by the same employer in the second and fourth quarters after exit.

- Repeat Business Customer: Percentage of employers who have used WIOA core program services more than once during the last three reporting periods.

- Employer Penetration: Percentage of employers using WIOA core program services out of all employers in the State.

During the pilot, the Departments determined that the effectiveness in serving employers performance indicator should be a shared outcome across all six core programs within each State (*i.e.*, meaning that one program would report on behalf of all six core programs in the State), rather than reported separately by each of the six core programs. In the joint guidance for the pilot, the Departments recommended that States centralize the coordination of data collection and reporting into a single agency and select one core program to report the data statewide, representing all six core programs, on an annual basis.<sup>8</sup> This

recommendation promoted coordination at the State level and encouraged a holistic approach to serving employers.

The pilot began during PY 2016 and continued through PY 2021. For PY 2020—the most recent data available—the piloted approaches for the effectiveness in serving employers performance indicator provided the following performance results:<sup>9</sup>

- Retention with the Same Employer PY 2020 Rate: 54 percent (36 States reported effectiveness in serving employers performance using this definition);

- Repeat Business Customer PY 2020 Rate: 35 percent (47 States reported using this definition); and

- Employer Penetration PY 2020 Rate: 8 percent (44 States reported using this definition).

Exhibit 1 summarizes this information and provides further detail about the calculation methodology used to determine the outcome rate for the three approaches.

#### EXHIBIT 1—PILOT DEFINITION OUTCOMES FOR PROGRAM YEAR 2020

Pilot definition	Performance outcome national rate (%)	Pilot definition calculation methodology *	Number of states reporting outcomes for definition
Retention with the Same Employer	54	The number of participants with wage records who exit during the reporting period and were employed by the same employer during the second quarter after exit and the fourth quarter after exit <i>DIVIDED</i> by the number of participants with wage records who exit and were employed during the second quarter after exit.	36
Repeat Business Customer .....	35	The total number of establishments, as defined by Bureau of Labor Statistics (BLS) Quarterly Census of Employment and Wages (QCEW) program, served during the current reporting period ( <i>i.e.</i> , one program year) and that during the prior three reporting periods have used core program services more than once <i>DIVIDED</i> by the number of establishments, as defined by BLS QCEW, served during the current reporting period.	47

<sup>5</sup> The indicator is reported on an annual basis; therefore, the reporting period is the program year from July 1 through June 30.

<sup>6</sup> ETA, “Workforce Performance Results,” <https://www.dol.gov/agencies/eta/performance/results> (last visited Oct. 23, 2021); ETA, “PY 2020 WIOA National Performance Summary,” Feb. 28, 2022, <https://www.dol.gov/sites/dolgov/files/ETA/Performance/pdfs/PY%202020%20WIOA%20National%20Performance%20Summary.pdf> (last visited Feb. 28, 2022).

<sup>7</sup> The Departments issued joint guidance on December 19, 2016, “Performance Accountability Guidance for Workforce Innovation and Opportunity Act (WIOA) Title I, Title II, Title III, and Title IV Core Programs” (Training and Employment Guidance Letter [TEGL] No. 10–16, OCTAE Program Memorandum 17–2, and RSA Technical Assistance Circular [TAC] 17–01), that described the pilot indicators for effectiveness in serving employers. The Departments updated this joint guidance in August 2017, with the issuance of a change to the guidance and required States to

submit the first report of annual results using data collected during PY 2017 (July 1, 2017–June 30, 2018), meaning that States did not report any data for the pilot study for purposes of PY 2016. However, due to the lag in Quarterly Census of Employment and Wages data availability for the Retention with the Same Employer and Repeat Business Customers approaches, the initial results for the effectiveness in serving employers performance indicator pilot were not available for reporting in the WIOA annual report due October 16, 2017. As a result, States reported their initial data in PY 2017. ETA, TEGL No. 10–16, Change 1, “Performance Accountability Guidance for Workforce Innovation and Opportunity Act (WIOA) Title I, Title II, Title III, and Title IV Core Programs,” Aug. 23, 2017, page 26, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=3255](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3255); U.S. Department of Education, OCTAE Program Memorandum 17–2, “Performance Accountability Guidance for Workforce Innovation and Opportunity Act (WIOA) Title I, Title II, Title III, and Title IV Core Programs,” Aug. 23, 2017, page 26, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=3255](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3255); U.S. Department of Education, OCTAE Program Memorandum 17–2, “Performance Accountability Guidance for Workforce Innovation and Opportunity Act (WIOA) Title I, Title II, Title III, and Title IV Core

Programs,” Aug. 23, 2017, page 23, <https://www2.ed.gov/about/offices/list/ovae/pi/AdultEd/octae-program-memo-17-2.pdf>; U.S. Department of Education, RSA–TAC–17–01, “Performance Accountability Guidance for Workforce Innovation and Opportunity Act (WIOA) Title I, Title II, Title III, and Title IV Core Programs,” Aug. 17, 2017, page 23, <https://rsa.ed.gov/sites/default/files/subregulatory/tac-17-01.pdf>.

<sup>8</sup> ETA, TEGL No. 10–16, Change 1, page 26; U.S. Department of Education, OCTAE Program Memorandum 17–2, page 23; U.S. Department of Education, RSA–TAC–17–01, page 23.

<sup>9</sup> The most current public workforce system performance accountability data can be found on ETA’s website. ETA, “Workforce Performance Results,” <https://www.dol.gov/agencies/eta/performance/results> (last visited Feb. 28, 2022). See ETA, “PY 2020 WIOA National Performance Summary,” Feb. 28, 2022, page 9, <https://www.dol.gov/sites/dolgov/files/ETA/Performance/pdfs/PY%202020%20WIOA%20National%20Performance%20Summary.pdf>.

## EXHIBIT 1—PILOT DEFINITION OUTCOMES FOR PROGRAM YEAR 2020—Continued

Pilot definition	Performance outcome national rate (%)	Pilot definition calculation methodology *	Number of states reporting outcomes for definition
Employer Penetration Rate .....	8	The total number of establishments, as defined by the BLS QCEW program, that received a service or, if it is an ongoing activity, are continuing to receive a service or other assistance during the reporting period <i>DIVIDED</i> by the total number of establishments, as defined by BLS QCEW. This measure is a unique count of employers using WIOA core programs. If an establishment receives, or continues to receive, more than one service during the reporting period (i.e., during the program year), that establishment should be counted only once in this calculation.	44

\* As described in the joint guidance issued by the Departments.

Throughout the pilot period, only one State reported on a State-specific approach to the effectiveness in serving employers performance indicator.<sup>10</sup> However, this State-specific approach may not be replicable across other States and does not reflect the effectiveness of serving employers across all six core programs because the State only applied it to the title III Wagner-Peyser Act ES program.<sup>11</sup>

The Departments assessed the pilot through a Department of Labor contract that resulted in a final report titled *Measuring the Effectiveness of Services to Employers: Options for Performance Measures under the Workforce Innovation and Opportunity Act*.<sup>12</sup> Specifically, the study assessed each approach to defining the effectiveness in serving employers performance indicator for validity, reliability, practicality, and unintended consequences.<sup>13</sup> Though the study did

not definitively recommend one approach, in assessing the study's findings for each of the three approaches of the effectiveness in serving employers performance indicator, the Departments concluded that the Retention with the Same Employer approach placed the least amount of burden on States to implement, while also providing a valid and reliable approach to measuring the indicator.

The study authors identified strengths for the Repeat Business Customer approach, including that it serves as a proxy for employer satisfaction. The study authors identified weaknesses in the Repeat Business Customer approach, including that it: (1) may provide a disincentive to reach out to new employers; (2) is subject to variation in industry and sector economic conditions; and (3) may require a statistical adjustment model to mitigate the weaknesses and improve implementation and interpretation.<sup>14</sup> The study authors identified strengths for the Employer Penetration approach, including that the dataset used for this measure is comprehensive, covering more than 95 percent of U.S. jobs. The study authors also identified weaknesses in the Employer Penetration

approach, including: (1) emphasis on quantity rather than quality or intensity of the employer service provided; (2) reliability issues associated with data entry and the process to count unique establishments; (3) measurement of program output rather than outcome; (4) potential for creation of perverse incentives to prioritize program breadth rather than depth in service and delivery; and (5) lack of sensitivity to industry sectors targeted by State and local workforce agencies.<sup>15</sup> The Departments considered the study's findings and concurred with its conclusions on the Repeat Business Customer approach and Employer Penetration approach. As noted above, the study did not identify any significantly advantageous alternatives to defining the effectiveness in serving employers performance indicator outside of the three proposals (Executive Summary, pp. xx-xxi). Nevertheless, the Departments identified the following advantages regarding the Retention with the Same Employer definition of the effectiveness in serving employers performance indicator:

- *Demonstration of Effectiveness:* Retention with the Same Employer demonstrates a continued relationship between the employer and participants who have exited WIOA programs. While many circumstances affect an employer's retention of employees, an indication that an employee maintains employment with the same employer in both the second and fourth quarters after exiting from a WIOA program demonstrates a level of success for

<sup>10</sup> See Shayne Spaulding, Burt Barnow, Amanda Briggs, John Trutko, Alex Trutko, and Ian Hecker, "Measuring the Effectiveness of Services to Employers: Options for Performance Measures under the Workforce Innovation and Opportunity Act," Jan. 2021, Chapter 5 (Alternative Measures and Data Sources), [https://wdr.doleta.gov/research/FullText\\_Documents/ETAOP2021-17%20Measures%20of%20Effectiveness%20in%20Serving%20Employers\\_Final%20Report.pdf](https://wdr.doleta.gov/research/FullText_Documents/ETAOP2021-17%20Measures%20of%20Effectiveness%20in%20Serving%20Employers_Final%20Report.pdf).

<sup>11</sup> One State reported a State-specific approach to measuring effectiveness in serving employers, which the State called "Active Job Orders with Referrals." This measure is explained in the State's PY 2019 WIOA Annual Statewide Performance Report Narrative, which can be accessed at [https://www.dol.gov/sites/dolgov/files/eta/performance/pdfs/PY2019/PA\\_PY19%20WIOA%20Annual%20Report%20Narrative.pdf](https://www.dol.gov/sites/dolgov/files/eta/performance/pdfs/PY2019/PA_PY19%20WIOA%20Annual%20Report%20Narrative.pdf) (last visited Jan. 27, 2022).

<sup>12</sup> S. Spaulding, et al., "Measuring the Effectiveness of Services to Employers: Options for Performance Measures under the Workforce Innovation and Opportunity Act," Jan. 2021, [https://wdr.doleta.gov/research/FullText\\_Documents/ETAOP2021-17%20Measures%20of%20Effectiveness%20in%20Serving%20Employers\\_Final%20Report.pdf](https://wdr.doleta.gov/research/FullText_Documents/ETAOP2021-17%20Measures%20of%20Effectiveness%20in%20Serving%20Employers_Final%20Report.pdf).

<sup>13</sup> See *id.* at 3–6 (stating that validity "is used to assess whether you are measuring what you intend

to measure"; that reliability "refers to the ability to maintain consistency in data collection over time and across organizations collecting the data"; that practicality means that the measure "must be relatively uncomplicated and simple to administer to avoid threats to reliability and validity" and "must be practical to use in administering programs"; and that unintended consequences are "negative consequences or behaviors that result, like the displacement of goals or conflict with other goals").

<sup>14</sup> S. Spaulding, et al., "Measuring the Effectiveness of Services to Employers: Options for Performance Measures under the Workforce Innovation and Opportunity Act," Jan. 2021, page 67, [https://wdr.doleta.gov/research/FullText\\_Documents/ETAOP2021-17%20Measures%20of%20Effectiveness%20in%20Serving%20Employers\\_Final%20Report.pdf](https://wdr.doleta.gov/research/FullText_Documents/ETAOP2021-17%20Measures%20of%20Effectiveness%20in%20Serving%20Employers_Final%20Report.pdf).

<sup>15</sup> S. Spaulding, et al., "Measuring the Effectiveness of Services to Employers: Options for Performance Measures under the Workforce Innovation and Opportunity Act," Jan. 2021, page 68, [https://wdr.doleta.gov/research/FullText\\_Documents/ETAOP2021-17%20Measures%20of%20Effectiveness%20in%20Serving%20Employers\\_Final%20Report.pdf](https://wdr.doleta.gov/research/FullText_Documents/ETAOP2021-17%20Measures%20of%20Effectiveness%20in%20Serving%20Employers_Final%20Report.pdf).

WIOA customers (*i.e.*, successfully preparing participants to fill jobs that meet employers' needs). Retention of an employee reduces the costs to the employer associated with employee turnover and retraining. The other two approaches are based only on employer data and fail to capture any level of job match effectiveness.

- *Stable Collection Mechanism:*

Retention with the Same Employer uses data already collected in the WIOA Joint Performance ICR (OMB Control Number 1205–0526). While not all States selected this approach in the pilot, all States collect this information under the existing WIOA Joint Performance ICR. In contrast, the Participant Individual Record Layout (PIRL) in the WIOA Joint Performance ICR does not currently collect data elements used for the Repeat Business Customer and Employer Penetration approaches to the performance indicator.

- *Alignment with Employment*

*Performance Indicators:* Retention with the Same Employer aligns with the performance indicators for employment in the second and fourth quarters after exit, which are existing performance indicators that all WIOA core programs already report.

The Departments acknowledge that the limitations for Retention with the Same Employer could include the unintended consequence that this approach may be at odds with an employee seeking a higher paying job or employment benefits, and the possibility that the performance outcome for this indicator might not be the result of an employer receiving a service from the workforce development system. The Departments seek public comment on additional ways to mitigate potential unintended consequences and downsides. However, notwithstanding these considerations, the Departments have determined that the strengths of this approach outweigh its limitations, as well as the disadvantages of the other two approaches discussed above. Prioritizing these advantages (*i.e.*, stable data collection mechanism, alignment with other employment performance indicators, and demonstrating maintained relationships between employers and employees), the Departments have determined Retention with the Same Employer is the preferred approach of measuring effectiveness in serving employers. Performance on this indicator, like the other performance indicators, would be affected by fluctuating economic conditions. The Departments will use the statistical adjustment model, as WIOA requires, to assess performance affected by

fluctuating economic conditions and participant characteristics.

Of the three piloted approaches, Retention with the Same Employer is the least burdensome for both States and employers, as noted in the Joint WIOA Final Rule regulatory impact analysis (RIA) (81 FR at 55968). Retention with the Same Employer uses wage records to calculate the measure. Wage records are the least burdensome records to use because States already have these records for other WIOA-required reporting, and they are the most standardized and statistically valid records available. Because the records are the most standardized records available, States would be able to coordinate data aggregation for the six core programs more easily for Retention with the Same Employer than they would for either Repeat Business Customer or Employer Penetration.

While not all States selected the Retention with the Same Employer indicator for the pilot, all States have the mechanism to collect this information. Data for the Repeat Business Customer and Employer Penetration Rate are collected and reported outside of the PIRL and present obstacles for core programs in terms of data aggregation. As noted above, the Retention with the Same Employer indicator is based on wage records and is the only indicator of these three that collects data through the OMB-approved ICR. As such, the data source for the Retention with the Same Employer indicator is stable and is available to all programs in all States. With respect to the Repeat Business Customer and Employer Penetration indicators, States had to develop data sources on an ad hoc basis; therefore, the data sources vary from State to State using either of these other two indicators, making comparisons less reliable for performance accountability purposes. Because effectiveness in serving employers is a statewide indicator in which one core program would report data on behalf of all six core programs in the State, the Departments are giving heavy consideration to the benefits of the data used to calculate this measure described above.

In addition, the Departments note that Retention with the Same Employer has the benefit of aligning with two of the three employment-related performance indicators, specifically the employment in the 2nd and 4th quarter after exit indicators that measure the employment outcomes of program participants. As such, it promotes the statutory purpose of WIOA, particularly that set forth in WIOA sec. 2(3): “To improve the quality and labor market relevance of workforce

investment, education, and economic development efforts . . . to provide America's employers with the skilled workers the employers need to succeed in a global economy.” Using Retention with the Same Employer would measure two levels of program effort—from the standpoint of the employer in retaining an employee on a long-term basis and from the standpoint of a State's efforts to help a participant obtain and maintain stable employment.

After careful consideration of the information gained from the States' reports on using the three piloted approaches and the pilot study's findings, including the strengths and weaknesses described above, the Departments are proposing to define the effectiveness in serving employers performance indicator as Retention with the Same Employer on a statewide level, as tested in the pilot. To encourage programs to work together to serve employers using well-rounded approaches, the Departments have determined this indicator would be measured as a shared outcome across all core programs within each State, rather than measured as an individual performance indicator separately for each of the core programs. As such, the data would be reported by one core program on behalf of all six core programs in the State. This means that the indicator would include participant data from all six core programs in the State to generate one overall State indicator score. As such, this score assesses the State's workforce development system as a whole in terms of its effectiveness in serving employers. Finally, measuring a statewide effectiveness in serving employers performance indicator at the individual program level would be contrary to WIOA's efforts to streamline reporting across the core programs, and this approach reduces the burden of collecting and reporting data for effectiveness in serving employers on these grantees.

This determination requires that changes be made to 20 CFR 677.155(a)(1)(vi) and (c)(6), 34 CFR 361.155(a)(1)(vi) and (c)(6), and 34 CFR 463.155(a)(1)(vi) and (c)(6). These proposed changes are discussed in section II.B of this NPRM.

Section 116(b)(2)(A)(i)(VI) of WIOA applies the same effectiveness in serving employers performance indicator to four non-core programs DOL administers under WIOA title I.<sup>16</sup> For consistency

<sup>16</sup> WIOA secs. 159(c), 166(h), 167(c)(3), and 171(f) direct the Secretary of Labor to establish levels of performance for the relevant primary indicators of

and alignment across WIOA programs, in addition to all the reasons discussed above, DOL proposes to incorporate this same definition for the effectiveness in serving employers performance indicator into regulations in a related rulemaking, *DOL-Only Performance Accountability NPRM* (RIN 1205-AC08), published concurrently with this NPRM elsewhere in the **Federal Register**.

#### *B. Proposed Changes to § 677.155*

**Section 677.155** What are the primary indicators of performance under the Workforce Innovation and Opportunity Act?

Section 677.155 sets forth the primary indicators that the Departments use to evaluate the performance of WIOA's six core programs, as required by WIOA sec. 116(b)(2)(A)(i). These primary performance indicators apply to the adult, dislocated worker, and youth programs, the AEFLA program, the Wagner-Peyser Act ES program, and the VR program. These primary performance indicators create a common language shared across the programs' performance measures, support system alignment, enhance programmatic decision-making, and help participants make informed decisions related to training. Paragraphs 677.155(a)(1)(vi) and (c)(6) implement the sixth statutory performance indicator as described in sec. 116(b)(2)(A)(i)(VI) of WIOA, subject to sec. 116(b)(2)(A)(iv), which requires the Departments to develop the indicator after consultation with the stakeholders listed at sec. 116(b)(4)(B) and discussed above. This performance indicator measures program effectiveness in serving employers.

For the reasons discussed above, the Departments propose to revise § 677.155(a)(1)(vi) to establish Retention with the Same Employer as the standard definition for measuring effectiveness in serving employers, the sixth performance indicator for all WIOA core programs. The proposed regulation removes the title effectiveness in serving employers<sup>17</sup> and defines Retention with the Same Employer as the percentage of participants with wage records who exited the program and were employed

by the same employer in the second and fourth quarters after exiting the program. The proposed definition also clarifies that, for the six WIOA core programs, the indicator is a statewide indicator that is reported by one core program on behalf of all six core programs in the State. Finally, the proposed definition references guidance to signal to States that the Departments will provide additional details and explanations for reporting on the effectiveness in serving employers performance indicator in joint guidance. This reference to guidance is consistent with other sections of the Departments' Joint WIOA Performance Accountability regulations.

The Departments also propose to make corresponding changes to § 677.155(c)(6) to define effectiveness in serving employers as Retention with the Same Employer for the WIOA title I youth program.

#### *C. Adjusted Levels of Performance for Workforce Innovation and Opportunity Act Core Programs—Proposed Changes to § 677.190*

**§ 677.190** When are sanctions applied for failure to achieve adjusted levels of performance?

Currently, 20 CFR 677.190 details the circumstances under which sanctions are applied when WIOA core programs fail to achieve adjusted levels of performance. Paragraph (c) sets forth criteria the Departments use to determine which States have met adjusted levels of performance: (1) the overall State program score (§ 677.190(c)(1)); (2) the overall State indicator score (§ 677.190(c)(3)); and (3) the individual indicator score (§ 677.190(c)(5)).

The Departments propose revising § 677.190 to include the effectiveness in serving employers performance indicator in the criteria for determining if a State has failed to meet adjusted levels of performance as part of the overall State indicator score. The proposed revision would establish conforming language regarding the assessment of effectiveness in serving employers as a statewide performance indicator, as expressed in the Joint WIOA Final Rule, and the definition for effectiveness in serving employers proposed in § 677.155(a)(vi) and (c)(6).

As clarified and detailed in the Joint WIOA Final Rule preamble (81 FR at 55847) and joint guidance, the Departments conclude that the collaborative nature of the indicator supports implementing the effectiveness in serving employers performance indicator as a shared measure across all

core programs. WIOA sec.

116(b)(2)(A)(i)(VI) requires assessing effectiveness in serving employers. Unlike the statutory provisions describing the other primary indicators of performance in sec. 116(b)(2)(A)(i), the statute does not describe effectiveness in serving employers as based on individual participants' outcomes. Based on this distinction, the Departments are proposing to assess this indicator as a shared indicator across all core programs. The Departments intend to encourage cross-program collaboration, coordination, and a holistic approach to serving employers. To further this collaborative approach, the Departments are requiring that this performance indicator be reported by one core program on behalf of all six core programs within each State.

As proposed, States would continue using the approach recommended in the joint guidance and discussed above, in which one core program reports the data statewide, on behalf of and representing all six core programs, on an annual basis.

The proposed regulatory text for § 677.190 clarifies that effectiveness in serving employers is to be assessed as an overall State indicator score and is excluded from the overall State program score and the individual indicator score. Effectiveness in serving employers is a statewide indicator shared across all core programs and is assessed only as an overall State indicator score, and, therefore, it cannot be attributed to any one program by itself (consequently, one program is reporting on behalf of all six core programs in the State). This is consistent with the holistic nature of the indicator. Furthermore, establishing the effectiveness in serving employers performance assessment as just one statewide indicator ensures that the effectiveness in serving employers indicator does not have the potential to be an outsized influence on the determination of a State's performance success or failure, which could lead to the possible application of sanctions. Because the indicator is a shared score, there is only one score generated for this indicator. Therefore, if the effectiveness in serving employers indicator were assessed as part of each of the six overall State program scores, this same score would repeat for each program in assessing the overall State program score, despite not being attributable to each program as noted above, thereby giving the indicator the potential to be an outsized influence in assessing State performance.

To reflect the effectiveness in serving employers performance indicator's status as a shared statewide indicator as

performance in WIOA sec. 116(b)(2)(A) for the Job Corps program, Indian and Native American programs, the National Farmworker Jobs Program, and the YouthBuild program, respectively.

<sup>17</sup> The regulations for definitions for the other WIOA performance indicators do not include the names of the indicators; they simply provide the definitions of the indicators. For consistency with the regulations for the other indicators, proposed § 677.155(a)(1)(vi) removes the name of the effectiveness in serving employer indicator and adds the definition.



proposed in § 677.155(a)(vi) and (c)(6), the Departments propose to add language to § 677.190(c)(3)(ii) stating that the overall State indicator score for effectiveness in serving employers equals the statewide percentage achieved of the statewide adjusted level of performance. Although the Departments propose a definition for the effectiveness in serving employers performance indicator, consistent with how the Departments have implemented the provisions for the other five performance indicators, the indicator would not be included in sanctions determinations until the Departments collect a minimum of 2 years of performance data, develop a statistical adjustment model that yields reliable estimates for the indicator, and negotiate performance levels for the indicator. As explained in the Departments' jointly issued guidance on February 6, 2020, the Departments will continue to review how the negotiations process applies to the effectiveness in serving employers indicator until at least 2 years of sufficient baseline data are collected and then will provide additional guidance regarding the process for negotiating this joint indicator.<sup>18</sup> The Departments propose changing § 677.190(c)(1) to exclude the effectiveness in serving employers performance indicator from the calculation of an overall State program score, which compares a program's results regarding the other primary indicators of performance with the adjusted levels of performance for that program. As explained above, the statewide and collaborative nature of the indicator cannot be attributed to any one program by itself because it measures the effectiveness of serving employers by the State's workforce development system as a whole.

The Departments propose to add two paragraphs to § 677.190(c)(3) to ensure the effectiveness in serving employers performance indicator's sole use as a

shared statewide indicator. The first proposed paragraph, § 677.190(c)(3)(i), begins with language currently found in § 677.190(c)(3), which specifies that the overall State indicator score is the average of the percentages achieved of the adjusted levels of performance by all the core programs on the performance indicator. The Departments propose to exclude the effectiveness in serving employers performance indicator from this calculation.

The second proposed paragraph, § 677.190(c)(3)(ii), ensures the statewide nature of the effectiveness in serving employers performance indicator shared across all core programs and that it would be assessed only as an overall State indicator score. Proposed § 677.190(c)(3)(ii) would adopt in regulations the recommendation in the joint guidance—that one core program report performance data for the effectiveness in serving employers performance indicator on behalf of all six core programs. In addition, proposed § 677.190(c)(3)(ii) specifies that the overall State indicator score for effectiveness in serving employers is calculated as the statewide percentage achieved of the statewide adjusted level of performance. Finally, proposed § 677.190(c)(3)(ii) also references guidance to signal to States that the Departments will provide additional details and explanations for reporting on the effectiveness in serving employers performance indicator in joint guidance. This reference to guidance is consistent with other sections of the Departments' Joint WIOA Performance Accountability regulations.

Therefore, all core programs would collect the necessary information for this indicator and submit the information to one core program. That core program would report the performance data to the relevant Federal agency. This approach is consistent with current practice under the joint guidance, whereby the State selects the core program to receive the information and then report to the relevant Federal agency. This reporting requirement differentiates this indicator from the other five primary indicators of performance. The performance outcomes for the other five primary indicators of performance are reported by each core program to its respective Federal agency.

For the other five primary indicators of performance, the overall State indicator score is based on averages divided by the adjusted level of performance, whereas for the effectiveness in serving employers performance indicator, the overall State indicator score is based on actual results

divided by the adjusted level of performance. Because effectiveness in serving employers is a statewide indicator, there are no individual indicator scores to average for each core program.

The Departments propose to revise paragraph (c)(5) to specify that the Departments will not include the effectiveness in serving employers performance indicator when calculating individual indicator scores.

### III. Regulatory Analysis and Review

#### A. Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)

Under Executive Order (E.O.) 12866, OIRA determines whether a regulatory action is significant and, therefore, subject to the requirements of the E.O. and review by OMB. See 58 FR 51735 (Oct. 4, 1993). Section 3(f) of E.O. 12866 defines a “significant regulatory action” as an action that is likely to result in a rule that (1) has an annual effect on the economy of \$100 million or more, or adversely affects in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities (also referred to as economically significant); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O. Id. This proposed rule is a significant regulatory action, although not an economically significant regulatory action under sec. 3(f) of E.O. 12866. Accordingly, OMB reviewed this proposed rule.

E.O. 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; the regulation is tailored to impose the least burden on society, consistent with achieving the regulatory objectives; and, in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits. E.O. 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

<sup>18</sup> The Departments issued guidance on February 6, 2020, to delineate the process for negotiating levels of performance and the application of sanctions for the States outlined in sec. 116 of WIOA and its implementing joint regulations. ETA, TEGL No. 11–19, “Negotiations and Sanctions Guidance for the Workforce Innovation and Opportunity Act (WIOA) Core Programs,” Feb. 6, 2020, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?docn=3430](https://wdr.doleta.gov/directives/corr_doc.cfm?docn=3430); U.S. Department of Education, OCTAE Program Memorandum 20–2, “Negotiations and Sanctions Guidance for the Workforce Innovation and Opportunity Act (WIOA) Core Programs,” Feb. 6, 2020, <https://www2.ed.gov/about/offices/list/ovae/pi/AdultEd/octae-program-memo-20-2.pdf>; U.S. Department of Education, RSA–TAC–20–02, “Negotiations and Sanctions Guidance for the Workforce Innovation and Opportunity Act (WIOA) Core Programs,” Feb. 6, 2020, <https://www2.ed.gov/policy/speced/guid/ras/subregulatory/tac-20-02.pdf>.



### 1. Outline of the Analysis

Section III.A.2 provides a summary of the results of the RIA. Section III.A.3 describes the need for the proposed rule, and section III.A.4 describes the process used to estimate the costs and cost savings of the proposed rule and the general inputs used, such as wages and number of affected entities. Section III.A.5 explains how the provisions of the proposed rule would result in quantifiable costs and cost savings and presents the calculations the Departments used to estimate them. In addition, section III.A.5 describes the

qualitative benefits of the proposed rule. Section III.A.6 summarizes the estimated first-year and 10-year total and annualized costs, cost savings, net costs, and transfer payments of the proposed rule. Finally, section III.A.7 describes the regulatory alternatives considered when developing the proposed rule.

### 2. Analysis Summary

The Departments estimate that the proposed rule would result in costs and cost savings. As shown in Exhibit 2, the proposed rule is expected to have an annualized quantifiable cost of \$44,573

and a total 10-year quantifiable cost of \$313,071 at a discount rate of 7 percent.<sup>19</sup> The proposed rule is estimated to have annualized quantifiable cost savings of \$1.96 million and total 10-year quantifiable cost savings of \$14.28 million at a discount rate of 7 percent.<sup>20</sup> The Departments estimate that the proposed rule would result in an annualized net quantifiable cost savings of \$1.99 million and a total 10-year net cost of \$13.96 million, both at a discount rate of 7 percent and expressed in 2020 dollars.<sup>21</sup>

**EXHIBIT 2—ESTIMATED MONETIZED COSTS, COST SAVINGS, AND NET COST SAVINGS OF THE PROPOSED RULE**  
[2020 \$millions]

	Costs	Cost savings	Net cost savings
Undiscounted 10-Year Total .....	\$0.35	\$19.00	\$18.64
10-Year Total with a Discount Rate of 3% .....	0.33	16.69	16.36
10-Year Total with a Discount Rate of 7% .....	0.31	14.28	13.96
10-Year Average .....	0.04	1.90	1.86
Annualized at a Discount Rate of 3% .....	0.04	1.96	1.92
Annualized at a Discount Rate of 7% .....	0.04	2.03	1.99

The cost of the proposed rule is associated with rule familiarization and the requirement to calculate and report Retention with the Same Employer for the effectiveness in serving employers performance indicator for 57 States and 78 VR agencies.<sup>22</sup> No longer requiring States to collect, calculate, and report for two alternative definitions of the effectiveness in serving employers performance indicator and instead requiring States to calculate and report only the Retention with the Same Employer definition of the indicator would contribute to the cost savings of the proposed rule. See the costs and cost savings subsections of section III.A.5 (Subject-by-Subject Analysis) below for a detailed explanation.

The Departments cannot quantify the benefits of the proposed rule; therefore, section III.A.5 (Subject-by-Subject Analysis) describes the benefits qualitatively.

### 3. Need for Regulation

In the Joint WIOA Final Rule, the Departments described a phased approach, which included a pilot study, to defining in regulation the sixth statutory performance indicator—effectiveness in serving employers—

required by WIOA. This proposed rulemaking is necessary to complete implementation of the performance accountability requirements as discussed in the Joint WIOA Final Rule and required by statute. Specifically, States, under the Departments' joint guidance, piloted the following definitions for the effectiveness in serving employers performance indicator:

- **Retention with the Same Employer:** Percentage of participants with wage records who exit from WIOA core programs and were employed by the same employer in the second and fourth quarters after exit.

- **Repeat Business Customer:** Percentage of employers who have used WIOA core program services more than once during the last three reporting periods.

- **Employer Penetration:** Percentage of employers using WIOA core program services out of all employers in the State.

The Departments propose establishing Retention with the Same Employer as the standard definition of the effectiveness in serving employers performance indicator to complete implementation of the WIOA

performance accountability requirements to assess the effectiveness of States and local areas in achieving positive outcomes.

### 4. Analysis Considerations

#### a. WIOA Core Programs

The Departments estimated the costs and cost savings of the proposed rule relative to the existing baseline (*i.e.*, the current practices for complying with the joint WIOA performance accountability regulations and the Departments' joint guidance). WIOA sec. 116 establishes the requirement for performance indicators and performance reporting requirements to assess the effectiveness of the WIOA core programs enumerated in sec. 116(b)(3)(A)(ii) in serving employers. The core programs include adult, dislocated worker, and youth programs under title I of WIOA; the AEFLA programs under title II; the ES services program authorized under the Wagner-Peyser Act as amended by WIOA title III; and the VR program authorized under title I of the Rehabilitation Act as amended by WIOA title IV. The analysis refers to the title I and title III programs jointly as the DOL programs.

<sup>19</sup> The proposed rule would have an annualized cost of \$37,360 and a total 10-year cost of \$318,690 at a discount rate of 3 percent in 2020 dollars.

<sup>20</sup> The proposed rule would have an annualized cost savings of \$1.88 million and a total 10-year cost savings of \$16.02 million at a discount rate of 3 percent in 2020 dollars.

<sup>21</sup> The proposed rule would have an annualized net cost savings of \$1.84 million and a total 10-year cost of \$15.70 million at a discount rate of 3 percent in 2020 dollars.

<sup>22</sup> Consistent with sec. 3(56) of WIOA and 20 CFR 677.150(d), the use of the term "States" in this RIA refers to the 50 States; the District of Columbia; the

U.S. territories of American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the Virgin Islands; and the Republic of Palau, a country in free association with the United States.

The baseline consists of the combination of piloted approaches for effectiveness in serving employers that States collected in 2020 and would be expected to continue to report in the absence of this proposed rule. The baseline uses DOL historical data on the

number of States that report each combination of the three piloted approaches for the effectiveness in serving employers performance indicator. Exhibit 3 displays DOL data from 2017 through 2020 on the existing effectiveness in serving employers

approach combinations. The Departments used the most recent year of State data reported for PY 2020 to define the existing baseline of States reporting combinations of approaches to the effectiveness in serving employers performance indicator.

#### EXHIBIT 3—STATE REPORTING COMBINATIONS OF EFFECTIVENESS IN SERVING EMPLOYERS DEFINITIONS <sup>a</sup>

	Retention with the same employer + employer penetration	Retention with the same employer + repeat business customer	Repeat business customer + employer penetration	All three effectiveness in serving employers approaches
2017 .....	12	5	17	10
2018 .....	10	10	17	15
2019 .....	9	11	18	14
2020 <sup>b</sup> .....	9	12	20	15

<sup>a</sup> DOL collects data on 52 of 57 States.

<sup>b</sup> For PY 2020, DOL received data from 56 of 57 States. DOL assumes the remaining State reports the least costly combination of pilot approaches (Retention with the Same Employer + Employer Penetration).

In accordance with the RIA guidance articulated in OMB's Circular A-4 and consistent with the Departments' practices in previous rulemakings, this RIA focuses on the likely consequences of the proposed rule (*i.e.*, costs and cost savings that accrue to entities affected). The analysis covers 10 years (from 2022 through 2031) to ensure it captures major costs and cost savings that accrue over time. The Departments express all quantifiable impacts in 2020 dollars and use discount rates of 3 and 7 percent, pursuant to Circular A-4.

Exhibit 4 presents the number of entities that are expected to be affected by the proposed rule. The Departments provide these estimates and use them throughout this analysis to estimate the costs and cost savings of the proposed rule.

#### EXHIBIT 4—WIOA CORE PROGRAMS—NUMBER OF AFFECTED ENTITIES BY TYPE

Entity type	Number
<b>DOL Programs:</b>	
States .....	57
Local Workforce Development Boards (WDBs) .....	580
<b>AEFLA Program:</b>	
States .....	57
Local AEFLA providers <sup>23</sup> .....	1,719

<sup>23</sup> Local AEFLA providers include local education agencies; community-based organizations; faith-based organizations; libraries; community, junior, and technical colleges; 4-year colleges and universities; correctional institutions; and other agencies and institutions.

#### EXHIBIT 4—WIOA CORE PROGRAMS—NUMBER OF AFFECTED ENTITIES BY TYPE—Continued

Entity type	Number
<b>RSA Program:</b>	
VR agencies .....	78

#### b. Compensation Rates

In section III.A.5 (Subject-by-Subject Analysis), the Departments present the costs, including labor, associated with the implementation of the provisions of the proposed rule. Exhibits 5a through 5c present the hourly compensation rates for the occupational categories expected to experience a change in level of effort (workload) due to the proposed rule. We used the Bureau of Labor Statistics' mean hourly wage rate for State and local employees.<sup>24 25</sup> We also used the wage rate from the Office of Personnel Management's Salary Table for the 2021 General Schedule for Federal employees in the management analyst occupation (Grade 14, Step 5).<sup>26</sup>

<sup>24</sup> BLS, "May 2020 National Industry-Specific Occupational Employment and Wage Estimates: NAICS 999200—State Government, excluding schools and hospitals (OEWS Designation)," [https://www.bls.gov/oes/current/naics4\\_999200.htm](https://www.bls.gov/oes/current/naics4_999200.htm) (last updated Mar. 31, 2021).

<sup>25</sup> BLS, "May 2020 National Industry-Specific Occupational Employment and Wage Estimates: NAICS 999300—Local Government, excluding schools and hospitals (OEWS Designation)," [https://www.bls.gov/oes/current/naics4\\_999300.htm](https://www.bls.gov/oes/current/naics4_999300.htm) (last updated Mar. 31, 2021).

<sup>26</sup> Office of Personnel Management, "Salary Table 2021," [https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2021/GS\\_h.pdf](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2021/GS_h.pdf) (last visited Oct. 21, 2021).

To reflect total compensation, wage rates include nonwage factors, such as overhead and fringe benefits (*e.g.*, health and retirement benefits). For all labor groups (*i.e.*, local, State, and Federal Government), we used an overhead rate of 17 percent.<sup>27</sup> For the State and local sectors, we used a fringe benefits rate of 62 percent, which represents the ratio of average total compensation to average wages for State and local government workers in March 2021.<sup>28</sup> For the Federal Government, we used a fringe benefits rate of 63 percent.<sup>29</sup> We then multiplied the sum of the loaded wage factor and overhead rate by the corresponding occupational category wage rate to calculate an hourly compensation rate.<sup>30</sup>

<sup>27</sup> Cody Rice, U.S. Environmental Protection Agency, "Wage Rates for Economic Analyses of the Toxics Release Inventory Program," June 10, 2002, <https://www.regulations.gov/document?D=EPA-HQ-OPPT-2014-0650-0005>.

<sup>28</sup> BLS, "Employer Costs for Employee Compensation—March 2021," Sept. 16, 2021, <https://www.bls.gov/news.release/pdf/eccec.pdf>. Calculated using Table 1. Employer Costs for Employee Compensation by ownership.

<sup>29</sup> Department of Labor, "Workforce Innovation and Opportunity Act (WIOA) Common Performance Reporting" OMB Control No. 1205-0526, [https://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=202012-1205-003](https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202012-1205-003) (last visited Oct. 21, 2021).

<sup>30</sup> The hourly compensation rates presented in Exhibit 5a, Exhibit 5b, and Exhibit 5c are rounded. Calculations used throughout the RIA use the unrounded value. Therefore, numbers may not sum due to rounding for the convenience of the reader.

**EXHIBIT 5A—COMPENSATION RATES FOR LOCAL EMPLOYEES**  
[2020 dollars]

Position	Grade level	Base hourly wage rate	Loaded wage factor	Overhead costs	Hourly compensation rate
		(a)	(b)	(c)	d = a + b + c
Management Analyst .....	N/A	\$41.23	\$25.43 (\$41.23 × 0.62)	\$7.01 (\$41.23 × 0.17)	\$73.67
Database Administrator .....	N/A	\$26.14	\$16.12 (\$26.14 × 0.62)	\$4.44 (\$26.14 × 0.17)	\$46.71

**EXHIBIT 5B—COMPENSATION RATES FOR STATE EMPLOYEES**  
[2020 dollars]

Position	Grade level	Base hourly wage rate	Loaded wage factor	Overhead costs	Hourly compensation rate
		(a)	(b)	(c)	d = a + b + c
Management Analyst .....	N/A	\$33.41	\$20.61 (\$33.41 × 0.62)	\$5.68 (\$33.41 × 0.17)	\$59.70
Staff Trainer .....	N/A	\$37.23	\$22.97 (\$37.23 × 0.62)	\$6.33 (\$37.23 × 0.17)	\$66.53
Rehabilitation Counselor .....	N/A	\$26.83	\$16.55 (\$26.83 × 0.62)	\$4.56 (\$26.83 × 0.17)	\$47.94

**EXHIBIT 5C—COMPENSATION RATES FOR FEDERAL EMPLOYEES**

Position	Grade level	Base hourly wage rate	Loaded wage factor	Overhead costs	Hourly compensation rate
		(a)	(b)	(c)	d = a + b + c
Management Analyst .....	GS-14, Step 5	\$51.00	\$32.13 (\$51.00 × 0.63)	\$8.67 (\$51.00 × 0.17)	\$91.80

### 5. Subject-by-Subject Analysis

The Departments' analysis below covers the estimated costs and cost savings of the proposed rule.

#### c. Costs

The following sections describe the costs of the proposed rule.<sup>31</sup>

#### (1) WIOA Core Programs Rule Familiarization

If the proposed rule is finalized, State- and local-level DOL programs, State- and local-level AEFLA programs, and State VR agencies would need to familiarize themselves with the new regulations. Consequently, this would impose a one-time cost in the first year.

To estimate the first-year cost of rule familiarization at the State level, the Departments multiplied the estimated number of management analysts (one) by the time required to read and review the rule (1 hour), and by the applicable hourly compensation rate (\$59.70/hour). We multiplied this result by the sum of the number of States (57) for the DOL programs, the number of States (57) for the AEFLA programs, and the number of VR agencies (78). This calculation yields

\$11,462 in one-time labor costs, which is equal to an average annual cost of \$1,146 over the 10-year analysis period.

At the local level for the DOL programs, the Departments multiplied the estimated number of management analysts (one) by the time required to read and review the rule (1 hour), by the applicable hourly compensation rate (\$73.67/hour), and by the number of local boards (580). This calculation yields \$42,730 in one-time labor costs, which is equal to an average annual cost of \$4,273 over the 10-year analysis period.<sup>32</sup>

At the local level for the AEFLA programs, the Departments multiplied the estimated number of management analysts (one) by the time required to read and review the rule (1 hour), by the applicable hourly compensation rate (\$73.67/hour), and by the number of local AEFLA providers (1,719). This calculation yields \$126,643 in one-time labor costs, which is equal to an average annual cost of \$12,664 over the 10-year analysis period.

The sum of these costs yields a total one-time labor cost of \$180,835 for State- and local-level DOL programs, State- and local-level AEFLA programs,

and State VR agencies to read and review the new rule. Over the 10-year period of analysis, these estimated one-time costs result in an average annual cost of \$18,084 undiscounted, or \$21,199 and \$25,747 at discount rates of 3 and 7 percent, respectively.

#### (2) Calculating and Reporting Retention With the Same Employer

WIOA sec. 116(b)(2)(A)(i)(VI) provides that the sixth primary indicator of performance will be an indicator that measures program effectiveness in serving employers, which WIOA sec. 116(b)(2)(A)(iv) directs the Departments to establish. Currently, under the Departments' joint guidance, States must report at least two of the following three approaches to measuring effectiveness in serving employers: Retention with the Same Employer, Employer Penetration, and Repeat Business Customer. If the proposed rule is finalized, all States would be required to adopt the same approach to measure effectiveness in serving employers: Retention with the Same Employer. Twenty States do not currently report the Retention with the Same Employer approach to the effectiveness in serving employers

<sup>31</sup> Numbers may not sum due to rounding for the convenience of the reader.

<sup>32</sup> Numbers may not sum due to rounding for the convenience of the reader.

performance indicator.<sup>33</sup> These 20 States would have new costs associated with setting up procedures to calculate and report Retention with the Same Employer and annual costs associated with continuing to calculate and report Retention with the Same Employer. To estimate the cost of establishing Retention with the Same Employer as the effectiveness in serving employers performance indicator, the Departments followed the assumptions used to estimate the pilot cost of the Retention with the Same Employer approach to effectiveness in serving employers in the 2016 Joint WIOA Final Rule. However, we updated those assumptions for this analysis by removing the cost of collecting data (4 hours) because all States are already collecting the required data in the baseline. We then increased the number of hours we assume State-level DOL programs require for one-time costs of programming (from 4 to 6 hours) based on the Departments' experience with initial costs for programming following the Joint WIOA Final Rule. The assumptions and costs are summarized as follows:

At the Federal level for the DOL core programs, the Departments estimate the one-time labor cost associated with calculating and reporting Retention with the Same Employer by multiplying the estimated number of GS-14, Step 5 management analysts (one) by the time required for technical assistance development (8 hours) and by the hourly compensation rate (\$91.80/hour). This calculation results in a one-time labor cost of \$734.

The Departments estimated DOL's annual labor costs for calculating and reporting Retention with the Same Employer by multiplying the estimated number of GS-14, Step 5 management analysts (one) by the time required for technical assistance delivery (4 hours) and by the hourly compensation rate (\$91.80/hour). This calculation would result in an annual labor cost of \$367.

At the State level for the DOL core programs, the Departments estimated the one-time labor cost associated with calculating and reporting Retention with the Same Employer by multiplying the

estimated number of management analysts (one) by the time required for programming (6 hours) and by the hourly compensation rate (\$59.70/hour). We multiplied the labor cost (\$358) by the number of States (57) to estimate this one-time cost at \$20,417.

The Departments estimated the State-level DOL core programs' annual labor cost associated with calculating and reporting Retention with the Same Employer by multiplying the estimated number of management analysts (one) by the time required for Federal reporting (4 hours) and by the hourly compensation rate (\$59.70/hour). We multiplied the labor cost (\$239) by the number of States (57) to estimate this annual cost at \$13,611.

At the Federal level for the AEFLA program, the Departments estimated the one-time labor cost associated with calculating and reporting Retention with the Same Employer by multiplying the estimated number of GS-14, Step 5 management analysts (one) by the time required for technical assistance development (8 hours) and by the hourly compensation rate (\$91.80/hour). This calculation would result in a one-time labor cost of \$734.

The Departments estimated AEFLA's annual labor cost for calculating and reporting Retention with the Same Employer at the Federal level by multiplying the estimated number of GS-14, Step 5 management analysts (one) by the time required for technical assistance delivery (4 hours) and by the hourly compensation rate (\$91.80/hour). This calculation would result in an annual labor cost of \$367.

At the State level for the AEFLA program, the Departments estimated the one-time labor cost associated with calculating and reporting Retention with the Same Employer by multiplying the estimated number of management analysts (one) by the time required for programming and data collection (6 hours) and by the hourly compensation rate (\$59.70). We multiplied the labor cost (\$358) by the number of States (57) to estimate this one-time cost at \$20,417.<sup>34</sup>

The Departments estimated the State-level AEFLA program's annual labor cost associated with calculating and reporting Retention with the Same Employer by multiplying the estimated number of management analysts (one) by the time required for Federal

reporting (4 hours) and by the hourly compensation rate (\$59.70/hour). We multiplied the labor cost (\$239) by the number of States (57) to estimate this annual cost at \$13,611.

At the Federal level for the VR program, the Departments estimated the one-time labor cost associated with calculating and reporting Retention with the Same Employer by multiplying the estimated number of GS-14, Step 5 management analysts (one) by the time required for technical assistance development (8 hours) and by the hourly compensation rate (\$91.80/hour). This calculation would result in a one-time labor cost of \$734.

The Departments estimated the annual labor costs associated with calculating and reporting Retention with the Same Employer at the Federal level for the VR program by multiplying the estimated number of GS-14, Step 5 management analysts (one) by the time required for technical assistance delivery (4 hours) and by the hourly compensation rate (\$91.80/hour). This calculation would result in an annual labor cost of \$367.

At the State level for the VR program, the Departments estimated the one-time labor cost associated with calculating and reporting Retention with the Same Employer by multiplying the estimated number of management analysts (one) by the time required for programming (6 hours) and by the hourly compensation rate (\$59.70/hour). We multiplied the labor cost (\$358) by the number of VR agencies (78) to estimate this one-time cost at \$27,939.

The Departments estimated the State-level VR program's annual labor cost associated with calculating and reporting Retention with the Same Employer by multiplying the estimated number of management analysts (one) by the time required for Federal reporting (4 hours) and by the hourly compensation rate (\$59.70/hour). We multiplied the labor cost (\$239) by the number of VR agencies (78) to estimate this annual cost of \$18,626.

The sum of these one-time costs of the retention measure yields \$70,977 for individuals from the Federal- and State-level DOL core programs, AEFLA program, and VR program. In addition, the sum of the annual costs associated with calculating and reporting Retention with the Same Employer for these entities yields \$46,951 per year. Exhibits 6a and 6b summarize the above calculations.

<sup>33</sup> Thirty-four States report Retention with the Same Employer according to DOL data. DOL collects data on 52 of 57 States defined in this analysis. DOL assumes the remaining 5 States report the cheapest combination of pilot approaches (Retention with the Same Employer + Employer Penetration), resulting in the RIA assuming 39 States report Retention with the Same Employer.

<sup>34</sup> Numbers may not sum due to rounding for the convenience of the reader.

## EXHIBIT 6a—RETENTION WITH THE SAME EMPLOYER, INITIAL COST

Agency	Management analyst hours <sup>1</sup>	Number of management analysts	Loaded wage rate	Population <sup>2</sup>	Total <sup>3</sup>
Federal-level DOL .....	8	1	\$91.80	NA	\$734
State-level DOL .....	6	1	59.70	57	20,417
Federal-level AEFLA .....	8	1	91.80	NA	734
State-level AEFLA .....	6	1	59.70	57	20,417
Federal-level RSA .....	8	1	91.80	NA	734
State-level RSA .....	6	1	59.70	78	27,939
Total Initial Cost .....					70,977

<sup>1</sup> Management analysts on the Federal level are GS-14, Step 5.<sup>2</sup> Population figures represent States (57) and VR agencies (78).<sup>3</sup> Numbers may not sum due to rounding for the convenience of the reader.

## EXHIBIT 6b—RETENTION WITH THE SAME EMPLOYER, ANNUAL COST

Agency	Management analyst hours <sup>1</sup>	Number of management analysts	Loaded wage rate	Population <sup>2</sup>	Total <sup>3</sup>
Federal-level DOL .....	4	1	\$91.80	NA	\$367
State-level DOL .....	4	1	59.70	57	13,611
Federal-level AEFLA .....	4	1	91.80	NA	367
State-level AEFLA .....	4	1	59.70	57	13,611
Federal-level RSA .....	4	1	91.80	NA	367
State-level RSA .....	4	1	59.70	78	18,626
Total Annual Cost .....					46,951

<sup>1</sup> Management analysts on the Federal level are GS-14, Step 5.<sup>2</sup> Population figures represent States (57) and VR agencies (78).<sup>3</sup> Numbers may not sum due to rounding for the convenience of the reader.

The costs in Exhibits 6a and 6b represent the costs for all 57 States to report the Retention with the Same Employer approach to the effectiveness in serving employers performance indicator. Currently, 37 States already report Retention with the Same Employer. The remaining 20 States would face costs with having to start reporting Retention with the Same Employer. We therefore multiply the total one-time costs (\$70,977) and annual costs (\$46,951) by the 35.1 percent of States not currently reporting the retention measure (20 out of 57) yielding \$24,904 in one-time costs and an additional \$16,474 in annual costs to increase the number of States reporting the retention measure from 37 to all 57.

The estimated total cost from requiring all States to report Retention with the Same Employer over the 10-year period is \$173,169 undiscounted, or \$153,172 and \$132,235 at discount rates of 3 and 7 percent, respectively, with an annualized cost over the 10-year period of \$17,956 and \$18,827 at discount rates of 3 and 7 percent, respectively.

## d. Cost Savings

The following sections describe the cost savings of the proposed rule.

## (1) Summary of Approach

The pilot program announced in the 2016 Joint WIOA Final Rule required States to report two of the three approaches for measuring effectiveness in serving employers. Under this proposed rule States would no longer face costs associated with collecting the information required to calculate the Employer Penetration or Repeat Business Customer approaches to the effectiveness in serving employers performance indicator. To estimate the cost savings, we first update the costs associated with collecting each of these pilot approaches following the assumptions used to estimate the cost of the Retention with the Same Employer pilot approach in the 2016 Joint WIOA Final Rule. We then estimate the cost savings under the proposed rule associated with the proportion of States that would no longer report the various combinations of the pilot approaches that States report in the baseline.

Currently, 9 States report Retention with the Same Employer and Employer Penetration, 12 States report Retention with the Same Employer and Repeat Business Customer, 20 States report Employer Penetration and Repeat Business Customer, and 15 States report all 3 approaches to defining the effectiveness in serving employers

performance indicator. To estimate cost savings, we first estimate the annual cost of all 57 States collecting data for, calculating, and reporting the percentage of employers using services out of all employers in the State (Employer Penetration) and the percentage of repeat employers using services within the previous 3 years (Repeat Business Customer). We then multiply the annual cost by the percentage of States currently using the pilot approach to estimate the cost savings. Below, we present the updated costs associated with all 57 States reporting each pilot approach, and then present the cost savings associated with the proportion of States no longer reporting them.

## (2) Employer Penetration: Percentage of Employers Using Services Out of All Employers in the State

Under the pilot program, States must use two of three specified approaches to measure effectiveness in serving employers. The proposed rule would only require States to collect data for, calculate, and report the first approach (Retention with the Same Employer). This section calculates the cost for all 57 States to collect data, calculate, and report Employer Penetration and then uses these costs to estimate cost savings

for the proportion of States that would no longer report Employer Penetration under the proposed rule.

At the Federal level for the DOL core programs, the Departments estimated the annual labor cost associated with Employer Penetration by multiplying the estimated number of GS-14, Step 5 management analysts (one) by the time required for technical assistance delivery (4 hours) and by the hourly compensation rate (\$91.80/hour). This calculation would result in an annual labor cost of \$367.

At the State level for the DOL core programs, the Departments estimated Employer Penetration's annual labor cost by multiplying the estimated number of management analysts (one) by the sum of time required for data collection (4 hours), providing training and technical assistance to Local WDBs (3 hours), and Federal reporting (4 hours) and by the hourly compensation rate (\$59.70/hour). We multiplied the labor cost (\$657) by the number of States (57) to estimate this annual cost at \$37,431.

For local-level DOL core programs, the Departments estimated the annual labor cost for Employer Penetration by multiplying the estimated number of management analysts (one) by the time required for data collection (4 hours) and by the hourly compensation rate (\$73.67/hour). We multiplied the labor cost (\$295) by the number of Local

WDBs (580) to estimate this annual cost at \$170,920.

At the Federal level for the AEFLA program, the Departments estimated the annual labor cost associated with Employer Penetration by multiplying the estimated number of GS-14, Step 5 management analysts (one) by the time required for technical assistance delivery (4 hours) and by the hourly compensation rate (\$91.80/hour). This calculation would result in an annual labor cost of \$367.

At the State level for the AEFLA program, the Departments estimated Employer Penetration's annual labor cost by multiplying the estimated number of management analysts (one) by the sum of time required for data collection (4 hours), providing training and technical assistance to local AEFLA providers (3 hours), and Federal reporting (4 hours) and by the hourly compensation rate (\$59.70/hour). We multiplied the labor cost (\$657) by the number of States (57) to estimate this annual cost at \$37,431.

For the local-level AEFLA program, the Departments estimated the annual labor cost for Employer Penetration by multiplying the estimated number of management analysts (one) by the time required for data collection (4 hours) and by the hourly compensation rate (\$73.67/hour). We multiplied the labor cost (\$295) by the number of local AEFLA providers (1,719) to estimate this annual cost at \$506,572.<sup>35</sup>

At the Federal level for the VR program, the Departments estimated the annual labor cost associated with Employer Penetration by multiplying the estimated number of GS-14, Step 5 management analysts (one) by the time required for technical assistance delivery (4 hours) and by the hourly compensation rate (\$91.80/hour). This calculation would result in an annual labor cost of \$367.

At the State level for the VR program, the Departments estimated Employer Penetration's annual labor cost by multiplying the estimated number of management analysts (one) by the time required for Federal reporting (4 hours) and by the hourly compensation rate (\$59.70/hour). In addition, we added the estimated number of rehabilitation counselors (62 assistants) by the time required for data collection (1 hour each) and by the hourly compensation rate (\$47.94/hour). We summed the labor cost for both categories and multiplied it (\$3,211) by the number of VR agencies (78) to estimate this annual cost at \$250,472.

Summing these annual costs for all 57 States to calculate and report Employer Penetration yields \$1,003,929 per year for the Federal-, State-, and local-level DOL core programs and AEFLA programs and the State-level VR programs. The Departments used the updated costs in Exhibit 7 to estimate the cost savings for States that would no longer report this pilot approach.

#### EXHIBIT 7—EMPLOYER PENETRATION, ANNUAL

Agency	Labor category <sup>1</sup>	Hours	Workers	Loaded wage rate	Population <sup>2</sup>	Total <sup>3</sup>
Federal-level DOL .....	Management Analyst .....	4	1	\$91.80	NA	\$367
State-level DOL .....	Management Analyst .....	11	1	59.70	57	37,431
Local-Level DOL .....	Management Analyst .....	4	1	73.67	580	170,920
Federal-level AEFLA .....	Management Analyst .....	4	1	91.80	NA	367
State-level AEFLA .....	Management Analyst .....	11	1	59.70	57	37,431
Local-Level AEFLA .....	Management Analyst .....	4	1	73.67	1,719	506,572
Federal-level RSA .....	Management Analyst .....	4	1	91.80	NA	367
State-level RSA .....	Management Analyst .....	4	1	59.70	78	18,626
State-level RSA .....	Rehab Counselor .....	1	62	47.94	78	231,846
Annual Total .....	.....	.....	.....	.....	.....	1,003,929

<sup>1</sup> Management analysts on the Federal level are GS-14, Step 5.

<sup>2</sup> Population figures represent States (57), VR agencies (78), and AEFLA providers (1,719).

<sup>3</sup> Numbers may not sum due to rounding for the convenience of the reader.

#### (3) Repeat Business Customer: Percentage of Repeat Employers Using Services Within the Previous 3 Years

This section calculates the cost for all 57 States to collect data, calculate, and report the Repeat Business Customer approach to the effectiveness in serving

employers performance indicator. The Departments use these costs to estimate cost savings for the proportion of States that would no longer report this pilot approach under the proposed rule.

At the Federal level for the DOL core programs, the Departments estimated

the annual labor cost associated with Repeat Business Customer by multiplying the estimated number of GS-14, Step 5 management analysts (one) by the time required for technical assistance delivery (4 hours) and by the hourly compensation rate (\$91.80/hour).

<sup>35</sup> Numbers may not sum due to rounding for the convenience of the reader.

This calculation would result in an annual labor cost of \$367.

At the State level for the DOL core programs, the Departments estimated Repeat Business Customer's annual labor cost by multiplying the estimated number of management analysts (one) by the sum of time required for data collection (4 hours), providing training and technical assistance to Local WDBs (3 hours), and Federal reporting (4 hours) and by the hourly compensation rate (\$59.70/hour). We multiplied the labor cost (\$657) by the number of States (57) to estimate this annual cost at \$37,431.

For the local-level DOL core programs, the Departments estimated the annual labor cost for Repeat Business Customer by multiplying the estimated number of management analysts (one) by the time required for data collection (6 hours) and by the hourly compensation rate (\$73.67/hour). We multiplied the labor cost (\$442) by the number of Local WDBs (580) to estimate this annual cost at \$256,380.

At the Federal level for the AEFLA program, the Departments estimated the annual labor cost associated with Repeat Business Customer by multiplying the estimated number of GS-14, Step 5 management analysts (one) by the time required for technical assistance

delivery (4 hours) and by the hourly compensation rate (\$91.80/hour). This calculation would result in an annual labor cost of \$367.

At the State level for the DOL core programs, the Departments estimated Repeat Business Customer's annual labor cost by multiplying the estimated number of management analysts (one) by the sum of time required for data collection (4 hours), providing training and technical assistance to local AEFLA providers (3 hours), and Federal reporting (4 hours) and by the hourly compensation rate (\$59.70/hour). We multiplied the labor cost (\$657) by the number of States (57) to estimate this annual cost at \$37,431.

For the local-level AEFLA program, the Departments estimated the annual labor cost for Repeat Business Customer by multiplying the estimated number of management analysts (one) by the time required for data collection (6 hours) and by the hourly compensation rate (\$73.67/hour). We multiplied the labor cost (\$442) by the number of local AEFLA providers (1,719) to estimate this annual cost at \$759,859.

At the Federal level for the VR program, the Departments estimated the annual labor cost associated with Repeat Business Customer by multiplying the estimated number of GS-14, Step 5

management analysts (one) by the time required for technical assistance delivery (4 hours) and by the hourly compensation rate (\$91.80/hour). This calculation would result in an annual labor cost of \$367.

At the State level for the VR program, the Departments estimated Repeat Business Customer's annual labor cost by multiplying the estimated number of management analysts (one) by the time required for Federal reporting (4 hours) and by the hourly compensation rate (\$59.70/hour). In addition, we added the estimated number of rehabilitation counselors (62 counselors) by the time required for data collection (1 hour each) and by the hourly compensation rate (\$47.94/hour). We summed the labor cost for both categories (\$3,211) and multiplied it by the number of VR agencies (78) to estimate this annual cost of \$250,472.

Summing these annual costs for all States to calculate and report Repeat Business Customer yields \$1,342,676 per year for the Federal-, State-, and local-level DOL core programs and AEFLA programs and the State-level VR programs. The Departments used the updated costs in Exhibit 8 to estimate the cost savings for States to no longer report this pilot approach.

#### EXHIBIT 8—REPEAT BUSINESS CUSTOMER, ANNUAL

Agency	Labor category <sup>1</sup>	Hours	Workers	Loaded wage rate	Population <sup>2</sup>	Total <sup>3</sup>
Federal-level DOL .....	Management Analyst .....	4	1	\$91.80	NA	\$367
State-level DOL .....	Management Analyst .....	11	1	59.70	57	37,431
Local-level DOL .....	Management Analyst .....	6	1	73.67	580	256,380
Federal-level AEFLA .....	Management Analyst .....	4	1	91.80	NA	367
State-level AEFLA .....	Management Analyst .....	11	1	59.70	57	37,431
Local-level AEFLA .....	Management Analyst .....	6	1	73.67	1,719	759,859
Federal-level RSA .....	Management Analyst .....	4	1	91.80	NA	367
State-level RSA .....	Management Analyst .....	4	1	59.70	78	18,626
State-level RSA .....	Rehab Counselor .....	1	62	47.94	78	231,846
Annual Total .....	.....	.....	.....	.....	.....	1,342,676

<sup>1</sup> Management analysts on the Federal level are GS-14, Step 5.

<sup>2</sup> Population figures represent States (57), VR agencies (78), and AEFLA providers (1,719).

<sup>3</sup> Numbers may not sum due to rounding for the convenience of the reader.

#### (4) Summary of Cost Savings

Under the proposed rule, the 14 States that currently report only the Retention with the Same Employer and Employer Penetration pilot approaches would have cost savings from no longer having to collect data for, calculate, and report Employer Penetration. Multiplying the annual cost for all 57 States to collect data for, calculate, and report Employer Penetration (\$1,003,929) by the 17.5 percent of States reporting these two pilot approaches only (10 out of 57) yields annual cost savings of \$176,128.

The 12 States currently reporting only the Retention with the Same Employer and Repeat Business Customer pilot approaches would have cost savings from no longer collecting data for, calculating, and reporting Repeat Business Customer. Multiplying the annual cost for all 57 States to collect data for, calculate, and report Repeat Business Customer (\$1,342,676) by the 21.1 percent of States reporting these two pilot approaches only (12 out of 57) yields annual cost savings of \$282,669.

The 20 States currently reporting only Employer Penetration and Repeat Business Customer and the 15 States currently reporting all three pilot approaches to the effectiveness in serving employers performance indicator would have cost savings from no longer collecting data for, calculating, and reporting both Employer Penetration and Repeat Business Customer. Multiplying the sum of annual costs for all 57 States to collect data for, calculate, and report both Employer Penetration and Repeat



Business Customer (\$2,346,605) by the 35.1 percent of States reporting Employer Penetration and Repeat Business Customer only and by the 26.3 percent of States reporting all three approaches yields annual cost savings of \$823,370 and \$617,528, respectively.

Summing these annual cost savings yields total annual cost savings for all 57 States of \$1,899,694 from the proposed rule. The Departments estimate total cost savings over the 10-year period at \$18,996,941 undiscounted, or \$16,690,919 and \$14,276,642 at discount rates of 3 and 7 percent, respectively. At discount rates of 3 and 7 percent, the 10-year period results in annualized cost savings of \$1,956,685 and \$2,032,673, respectively.

#### e. Qualitative Benefits Discussion

##### (1) General Benefits of Measuring Effectiveness in Serving Employers

The Departments cannot quantify the proposed rule's benefits associated with improving the WIOA core programs' effectiveness in serving employers. Measuring effectiveness in serving employers allows DOL, AEFLA, and RSA programs to set goals, monitor, and learn how to serve employers more effectively.<sup>36</sup> Reporting a measure of

effectiveness in serving employers also helps Federal, State, and local policymakers evaluate program performance and inform future policy changes to better meet program goals, particularly providing employers with skilled workers and other services.

The Departments cannot quantify these estimated benefits because we do not have quantitative data on how the effectiveness in serving employers performance measure has influenced program implementation and how much it would influence future policies.

##### (2) Specific Benefits of Reporting Retention With the Same Employer

Requiring all States to calculate and report Retention with the Same Employer as the effectiveness in serving employers performance indicator would make it easier to compare WIOA core programs' effectiveness in serving employers performance across States and ensure all States have an indicator of job turnover and match quality between workers exiting WIOA core programs and employers. Retention with the Same Employer demonstrates a continued relationship between the employer and participants who have exited WIOA core programs. While many circumstances can have an impact on an employer's retention of

employees, an indication that an employee is still working for the same employer in both the second and fourth quarters after exiting from a WIOA program demonstrates a level of success for both parties, as retention of an employee reduces the costs to the employer associated with employee turnover and retraining. Thus, reporting Retention with the Same Employer can help inform design and implementation of program services to reduce job turnover and improve employer-employee match quality. Improved matching and reduced turnover allow employees and employers to operate closer to their productive potential and can make it more worthwhile for employers to invest in training their employees and for employees to invest in learning employer-specific skills.

#### 6. Summary of the Analysis

Exhibit 9 summarizes the estimated total costs and cost savings of the proposed rule over the 10-year analysis period. Discontinuing reporting of Employer Penetration and Repeat Business Customer has the largest effect as a cost savings. The Departments estimate the total net cost savings of the proposed rule at \$13,963,572 at a discount rate of 7 percent.

**EXHIBIT 9—ESTIMATED 10-YEAR MONETIZED COSTS AND COST SAVINGS OF THE PROPOSED RULE BY PROVISION**  
[2020 \$millions]

Provision	Cost	Cost savings	Total net cost savings
Rule Familiarization .....	\$0.13	.....	.....
Reporting Retention with the Same Employer .....	0.17	.....	.....
No Longer Reporting Other Measures .....	.....	\$19.00	.....
Undiscounted .....	0.35	19.00	\$18.64
With a Discount Rate of 3% .....	0.33	16.69	16.36
With a Discount Rate of 7% .....	0.31	14.28	13.96

The Departments estimate the annualized costs of the proposed rule at \$44,574 and the annualized cost savings at \$2,032,673, at a discount rate of 7 percent. The Departments estimate the

proposed rule would result in an annualized net quantifiable cost savings of \$1,988,098 and a total 10-year net cost savings of \$13,963,572, both at a discount rate of 7 percent and expressed

in 2020 dollars. Exhibit 10 summarizes the estimated total costs and cost savings of the proposed rule over the 10-year analysis period.

**EXHIBIT 10—ESTIMATED MONETIZED COSTS, COST SAVINGS, AND NET COST SAVINGS OF THE PROPOSED RULE**  
[2020 \$]

	Costs	Costs savings	Net cost savings
2022 .....	\$205,740	\$1,899,694	\$1,693,955
2023 .....	16,474	1,899,694	1,883,220
2024 .....	16,474	1,899,694	1,883,220
2025 .....	16,474	1,899,694	1,883,220
2026 .....	16,474	1,899,694	1,883,220
2027 .....	16,474	1,899,694	1,883,220
2028 .....	16,474	1,899,694	1,883,220

<sup>36</sup> S. Spaulding, et al., "Measuring the Effectiveness of Services to Employers: Options for Performance Measures under the Workforce

Innovation and Opportunity Act," Jan. 2021, [https://wdr.doleta.gov/research/FullText\\_Documents/ETAOP2021-17%20Measures%20](https://wdr.doleta.gov/research/FullText_Documents/ETAOP2021-17%20Measures%20)

[of%20Effectiveness%20in%20Serving%20Employers\\_Final%20Report.pdf](#).

**EXHIBIT 10—ESTIMATED MONETIZED COSTS, COST SAVINGS, AND NET COST SAVINGS OF THE PROPOSED RULE—  
Continued**  
[2020 \$]

	Costs	Costs savings	Net cost savings
2029 .....	16,474	1,899,694	1,883,220
2030 .....	16,474	1,899,694	1,883,220
2031 .....	16,474	1,899,694	1,883,220
Undiscounted 10-Year Total .....	354,005	18,996,941	18,642,936
10-Year Total with a Discount Rate of 3% .....	334,007	16,690,919	16,356,912
10-Year Total with a Discount Rate of 7% .....	313,071	14,276,642	13,963,572
10-Year Average .....	35,400	1,899,694	1,864,294
Annualized with a Discount Rate of 3% .....	39,156	1,956,685	1,917,529
Annualized with a Discount Rate of 7% .....	44,574	2,032,673	1,988,098

## 7. Regulatory Alternatives

The Departments considered two alternatives to the proposed definition of the effectiveness in serving employers performance indicator. First, the Departments considered requiring use of the Employer Penetration pilot approach, which reports the percentage of employers using services out of all employers in the State. This approach would have required counts of services provided to employers, requiring States and local areas to report unique counts of individual employers receiving services through WIOA's programs. Employer Penetration would require a more data-intensive analysis than the proposed approach of Retention with the Same Employer. Employer

Penetration would have the benefit of capturing the extent to which employers within a State are engaged with WIOA-funded services and would provide State programs an incentive to work with additional employers. As discussed earlier in Section II.A (Pilot Programs for Workforce Innovation and Opportunity Act Core Programs), on behalf of the Departments, DOL commissioned an examination of State experiences with the various approaches through a third-party contractor, which found weaknesses in this pilot approach, including (1) an emphasis on quantity rather than quality or intensity of the employer service provided; (2) reliability issues associated with data entry and the process to count unique establishments;

(3) measurement of program output rather than outcome; (4) potential for creation of perverse incentives to prioritize program breadth rather than depth in service and delivery; and (5) a lack of sensitivity to industry sectors targeted by State and local workforce agencies.<sup>37</sup> The Departments estimated the costs and cost savings of this alternative using the same method as the proposed approach. That is, the Departments used the estimated cost of collecting data, calculating, and reporting Employer Penetration, and then estimated the cost for the proportion of States that would need to start using this approach to reporting effectiveness in serving employers (12 States). Exhibit 11 summarizes these calculations below.

## EXHIBIT 11—SUMMARY OF REGULATORY ALTERNATIVE 1 COSTS

Non-reported measure	Number of States	Updated 2016 cost estimates: initial cost	Updated 2016 cost estimates: annual cost	Adjusted cost estimates: updated cost estimates × (# States ÷ 57), initial cost	Adjusted cost estimates: updated cost estimates × (# States ÷ 57), annual cost
Employer Penetration .....	12	\$258,208	\$1,003,929	\$54,360	\$211,354

Costs include calculating and reporting Employer Penetration and rule familiarization for WIOA core programs. The Departments estimate the total cost of the first alternative over the 10-year period at \$2.1 million undiscounted, or \$1.9 million and \$1.6 million at discount rates of 3 and 7 percent, respectively, and an annualized cost of the 10-year period at \$220,489 and

\$229,543 with discount rates of 3 and 7 percent, respectively.

To calculate cost savings the Departments used the estimated cost of collecting data for, calculating, and reporting the two other effectiveness in serving employers approaches (Retention with the Same Employer and Repeat Business Customer), and then estimated the cost savings for the

proportion of States that would transition from their existing reporting combination of two or three effectiveness in serving employers approaches to the single Employer Penetration approach to the performance indicator. Exhibit 12 summarizes these calculations below.

<sup>37</sup> S. Spaulding, et al., "Measuring the Effectiveness of Services to Employers: Options for Performance Measures under the Workforce

Innovation and Opportunity Act," Jan. 2021, page 68, [https://wdr.doleta.gov/research/FullText\\_Documents/ETAOP2021-](https://wdr.doleta.gov/research/FullText_Documents/ETAOP2021-)

[17%20Measures%20of%20Effectiveness%20in%20Serving%20Employers\\_Final%20Report.pdf](#).

## EXHIBIT 12—SUMMARY OF REGULATORY ALTERNATIVE 1 COST SAVINGS

Reported measures	Number of States	Updated 2016 cost estimates: annual cost savings	Adjusted cost savings estimates: updated cost estimates × (# States ÷ 57): annual cost savings
Employer Penetration + Retention with the Same Employer .....	10	\$46,951	\$8,237
Employer Penetration + Repeat Business Customer .....	20	1,342,676	471,114
Retention with the Same Employer + Repeat Business Customer (No Employer Penetration) .....	12	1,389,626	292,553
All Three .....	15	1,389,626	365,691

The Departments estimated the total cost savings associated with the first alternative over the 10-year period at \$11.4 million undiscounted, or \$10.0 million and \$8.5 million at discount rates of 3 and 7 percent, respectively, with an annualized cost savings associated with the first alternative over the 10-year period at \$1,171,723 and \$1,217,227 with discount rates of 3 and 7 percent, respectively.

We estimate the first regulatory alternative to result in total net cost savings over the 10-year period of \$9.2 million undiscounted, or \$8.1 million and \$6.9 million at discount rates of 3 and 7 percent, respectively, with an annualized net cost savings of the 10-year period at \$951,233 and \$987,684 with discount rates of 3 and 7 percent, respectively.

The Departments considered a second regulatory alternative that would require the use of the Repeat Business Customer approach to the effectiveness in serving employers performance indicator, which reports the percentage of employers receiving services in a year who also received services within the previous 3 years. This approach to the effectiveness in serving employers measure requires counts of services provided to employers through WIOA's programs. Repeat Business Customer requires a more data-intensive analysis than the proposed approach of Retention with the Same Employer. Repeat Business Customer captures the extent to which employers within a State can find workers and the employer's level of satisfaction with the public workforce system services. The Departments, in an Urban Institute

study, found weaknesses in this pilot approach including that it (1) may provide a disincentive to reach out to new employers; (2) is subject to variation in industry and sector economic conditions; and (3) may require a statistical adjustment model to mitigate the weaknesses and improve implementation and interpretation.<sup>38</sup> The Departments estimated the costs and cost savings of this alternative using the same method as the proposed approach. That is, the Departments used the estimated cost of collecting data, calculating, and reporting Repeat Business Customer, and then estimated the cost for the proportion of States that would need to start using this approach to reporting effectiveness in serving employers (10 States). Exhibit 13 summarizes these calculations below.

## EXHIBIT 13—SUMMARY OF REGULATORY ALTERNATIVE 2 COSTS

Non-reported measure	Number of States	Updated 2016 cost estimates: initial cost	Updated 2016 cost estimates: annual cost	Adjusted cost estimates: updated cost estimates × (# States ÷ 57), initial cost	Adjusted cost estimates: updated cost estimates × (# States ÷ 57), annual cost
Repeat Business Customer .....	10	\$254,805	\$1,342,676	\$44,703	\$235,557

Costs include the cost of calculating and reporting Repeat Business Customer and the cost of rule familiarization for WIOA core programs. The Departments estimated the total cost of the second alternative over the 10-year period at \$2.3 million undiscounted, or \$2.1 million and \$1.8 million at discount rates of 3 and 7 percent, respectively, with an annualized cost of the 10-year

period at \$241,449 and \$250,620 with discount rates of 3 and 7 percent, respectively.

To calculate cost savings, the Departments used the estimated cost of collecting data for, calculating, and reporting the two other effectiveness in serving employers approaches (Retention with the Same Employer and Employer Penetration), and then

estimated the cost savings for the proportion of States that would transition from their existing reporting combination of two or three effectiveness in serving employers approaches to the single Repeat Business Customer approach to the performance indicator. Exhibit 14 summarizes these calculations below.

<sup>38</sup> S. Spaulding, et al., "Measuring the Effectiveness of Services to Employers: Options for Performance Measures under the Workforce Innovation and Opportunity Act," Jan. 2021, page

67, [https://wdr.doleta.gov/research/FullText\\_Documents/ETAOP2021-17%20Measures%20of%20Effectiveness%20in%20Serving%20Employers\\_Final%20Report.pdf](https://wdr.doleta.gov/research/FullText_Documents/ETAOP2021-17%20Measures%20of%20Effectiveness%20in%20Serving%20Employers_Final%20Report.pdf).

## EXHIBIT 14—SUMMARY OF REGULATORY ALTERNATIVE 2 COST SAVINGS

Reported measures	Number of States	Updated 2016 cost estimates: annual cost savings	Adjusted cost savings estimates: updated cost estimates × (# States ÷ 57): annual cost savings
Repeat Business Customer + Retention with the Same Employer .....	12	\$46,951	\$9,884
Repeat Business Customer + Employer Penetration .....	20	1,003,929	352,256
Employer Penetration + Retention with the Same Employer (No Repeat Business Customer) .....	10	1,050,880	184,365
All Three .....	15	1,050,880	276,547

The Departments estimated total cost savings associated with the second alternative over the 10-year period is \$8.2 million undiscounted, or \$7.2 million and \$6.2 million at discount rates of 3 and 7 percent, respectively with an annualized cost associated with the second alternative over the 10-year period is \$847,744 and \$880,666 with discount rates of 3 and 7 percent, respectively.

The Departments estimate the second regulatory alternative to result in total net cost savings over the 10-year period

of \$5.9 million undiscounted, or \$5.2 million and \$4.4 million at discount rates of 3 and 7 percent, respectively, with an annualized net cost savings of the 10-year period at \$606,295 and \$630,046 with discount rates of 3 and 7 percent, respectively.

Exhibit 15 summarizes the estimated net cost savings associated with the three considered approaches to the effectiveness in serving employers performance indicator (*i.e.*, the three piloted approaches). The Departments prefer the proposed approach of

requiring the use of Retention with the Same Employer because it has data more readily available, and, therefore, is less burdensome. The Retention with the Same Employer approach better aligns with workforce system goals of supporting employer-employee job match quality and reducing turnover without the weaknesses associated with the other two approaches to defining the effectiveness in serving employers performance indicator.

## EXHIBIT 15—ESTIMATED MONETIZED COSTS OF THE PROPOSED RULE AND REGULATORY ALTERNATIVES

[2020 \$Millions]

	Proposed rule	Regulatory alternative 1	Regulatory alternative 2
Total 10-Year Net Cost Savings .....	\$18.6	\$9.2	\$5.9
Total with 3% Discount .....	16.4	8.1	5.2
Total with 7% Discount .....	14.0	6.9	4.4
Annualized with 3% Discount .....	1.86	0.92	0.59
Annualized with 7% Discount .....	1.92	0.95	0.61

*B. Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, and Executive Order 13272 (Proper Consideration of Small Entities in Agency Rulemaking)*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (Mar. 29, 1996), requires Federal agencies engaged in rulemaking to consider the impact of their proposals on small entities, consider alternatives to minimize that impact, and solicit public comment on their analyses. The RFA requires the assessment of the impact of a regulation on a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions. Agencies must perform a review to determine whether a proposed or final rule would have a significant economic impact on a substantial number of small entities. 5

U.S.C. 603 and 604. The RFA permits an agency, in lieu of preparing such an analysis, to certify that the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605.

The Departments determined that the proposed rule would not have a significant economic impact on a substantial number of small entities because any impacted small entities are already receiving financial assistance under the WIOA program and likely would continue to do so. The Departments have certified this to the Chief Counsel for Advocacy, Small Business Administration, pursuant to the RFA. 5 U.S.C. 605.

*Affected Small Entities*

The WIOA title I adult, dislocated worker, and youth program grantees, the WIOA title II State-level AEFLA grantees, WIOA title III Wagner-Peyser ES grantees, and VR program grantees (under the Rehabilitation Act as

amended by WIOA title IV), are State government agencies and, therefore, are not considered small entities. However, the proposed rule could have a minimal impact on a variety of AEFLA local providers, some of which are small entities by U.S. Small Business Administration (SBA) size standards:<sup>39</sup> (1) local educational agencies (NAICS 611710; \$21 million); (2) community-based organizations (NAICS 813410; \$8.5 million); (3) faith-based organizations (NAICS 813110; \$11.5 million); (4) libraries (NAICS 519120; \$18.5 million); (5) community, junior (NAICS 611210; \$28.5 million), and technical colleges (NAICS 611519; \$18.5 million); (6) 4-year colleges and universities (NAICS 611310; \$30.5

<sup>39</sup> SBA, “Table of size standards,” Effective May 2, 2022, <https://www.sba.gov/document/support-table-size-standards> (last visited June 15, 2022). Dollar values provided in parentheses are the SBA average annual receipts small entity threshold (2017\$) for the relevant North American Industry Classification System (NAICS) code.

million); (7) correctional institutions (NAICS 922410; NA 40); (8) other institutions, such as medical and special institutions not designed for justice-involved individuals (NAICS 623210; \$16.5 million); and (9) other public or private non-profit agencies or institutions (NAICS 813319; \$16 million).

#### Impact on Small Entities

As proposed in this NPRM, the definition of the effectiveness in serving employers performance indicator would have a minimal impact on AEFLA local providers. Each local AEFLA provider is expected to incur a \$73.67 cost to review the rule. The \$73.67 cost to review the rule is a de minimis burden on the entities incurring the cost, including the smallest entities subject to the rule. For example, the average community-based organization (NAICS 813410—civic and social organizations)—the business type with the smallest average revenue at \$702,445—would spend much less than 1 percent of their annual revenue on this cost. Among libraries (NAICS 519120) with fewer than 5 employees (the subset of the above listed entity types with the least average revenue, by size in employees, at \$110,980), this cost is 0.066 percent of the average entity's annual revenue.

Local AEFLA providers are not estimated to incur any new costs to report Retention with the Same Employer and may incur cost savings if they currently report Employer Penetration or Repeat Business Customers. Local AEFLA providers that currently report Employer Penetration would incur cost savings of \$295 and local AEFLA providers that currently report Repeat Business Customers would incur cost savings of \$442. Federal transfer payments to States would fully finance the minor WIOA program cost burdens on grantees that would result from finalizing the proposed rule. Therefore, the Department hereby certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

#### C. Paperwork Reduction Act of 1995

The purposes of the PRA, 44 U.S.C. 3501 *et seq.*, include minimizing the paperwork burden on affected entities. The PRA requires certain actions before an agency can adopt or revise a collection of information, including publishing for public comment a summary of the collection of

information and a brief description of the need for and proposed use of the information.

As part of their continuing efforts to reduce paperwork and respondent burden, the Departments conduct a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the PRA. See 44 U.S.C. 3506(c)(2)(A). This activity helps to ensure that (1) the public understands the Departments' collection instructions; (2) respondents can provide the requested data in the desired format; (3) reporting burden (time and financial resources) is minimized; (4) collection instruments are clearly understood; and (5) the Departments can properly assess the impact of collection requirements on respondents. Furthermore, the PRA requires all Federal agencies to analyze proposed regulations for potential time burdens on the regulated community created by provisions in the proposed regulations that require any party to obtain, maintain, retain, report, or disclose information. The information collection requirements also must be submitted to OMB for approval.

A Federal agency may not conduct or sponsor a collection of information unless it is approved by OMB under the PRA and displays a currently valid OMB control number. The public also is not required to respond to a collection of information unless it displays a currently valid OMB control number. In addition, notwithstanding any other provisions of law, no person will be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. See 44 U.S.C. 3512.

The proposed rule would revise ETA 9169, WIOA Statewide and Local Performance Report Template approved under OMB Control Number 1205–0526. The revision would require “Retention with the Same Employer” as the only definition of the effectiveness in serving employers performance indicator in the WIOA Common Performance Reporting ICR by an entity that reports to the Departments on behalf of the State. Data elements for the collection and calculation for the two other piloted definitions of the effectiveness in serving employers performance indicator—Repeat Business Customer and Employer Penetration—would be removed from the ICR, along with the corresponding breakouts of the employer services that comprise them. No other changes are proposed for this

ICR. In accordance with the PRA, the Departments have submitted the associated ICR to OMB in concert with the publishing of this proposed rule. This provides the public the opportunity to submit comments on the ICR, either directly to the Departments or to OMB. The Departments will only consider comments within the scope of this ICR. The 60-day period for the public to submit comments begins with the submission of the ICR to OMB. Comments regarding this ICR may be submitted electronically through <https://www.regulations.gov> and/or to OIRA at <https://www.reginfo.gov/public/do/PRAMain>. See the ADDRESSES section of this proposed rule for more information about submitting comments.

*Agency:* DOL–ETA.

*Title of Collection:* Workforce Innovation and Opportunity Act (WIOA) Common Performance Reporting.

*Type of Review:* Revision of an approved ICR.

*OMB Control Number:* 1205–0526.

*Description:* The proposed rule would require Retention with the Same Employer as the only definition of the effectiveness in serving employers performance indicator in ETA 9169, WIOA Statewide and Local Performance Report Template by an entity that reports to the Departments on behalf of the State. Data elements for the collection and calculation for the two other piloted definitions of the effectiveness in serving employers performance indicator—Repeat Business Customer and Employer Penetration—would be removed from the ICR, along with the corresponding breakouts of the employer services that comprise them. This package is unchanged except to remove the data elements discussed above. No other changes are proposed for this ICR.

*Affected Public:* State Governments.

*Obligation to Respond:* Required to Obtain or Retain Benefits.

*Frequency:* Annually.

*Estimated Total Annual Respondents:* 19,114,129.

*Estimated Total Annual Responses:* 38,216,054.

*Estimated Total Annual Burden*

*Hours:* 9,863,057.

*Estimated Total Annual Other Burden Costs:* \$34,594,532.

*Authority for the Information*

*Collection:* 20 CFR 677.155(a)(1)(vi), and 34 CFR 361.155(a)(1)(vi) and 463.155(a)(1)(vi).

#### D. Executive Order 13132 (Federalism)

E.O. 13132 aims to guarantee the division of governmental

<sup>40</sup> There is no SBA size standard for this NAICS code.

responsibilities between the National Government and the States and to further the policies of the Unfunded Mandates Reform Act of 1995 (UMRA). Accordingly, E.O. 13132 requires executive departments and agencies to ensure that the principles of federalism guide them in the formulation and implementation of policies. Further, agencies must adhere to constitutional principles, examine the constitutional and statutory authority supporting a regulation that would limit the policymaking discretion of the States, and assess the need for such a regulation. To the extent practicable, agencies must consult State and local officials before implementing any such regulation.

E.O. 13132 further provides that agencies must implement a regulation that limits the policymaking discretion of the States only where there is constitutional and statutory authority for the regulation, and it addresses a problem of national significance. For a regulation administered by the States, the National Government must grant the States the maximum administrative discretion possible to avoid intrusive Federal oversight of State administration, and agencies must adhere to special requirements for a regulation that pre-empts State law. E.O. 13132 also sets forth the procedures agencies must follow for certain regulations with federalism implications, such as preparation of a summary impact statement.

Accordingly, the Departments reviewed this WIOA-required NPRM for federalism implications and have concluded that none exist in this rulemaking. This joint NPRM does not contain any substantial direct effects on States, on the relationships between the States, or on the distribution of power and responsibilities among the various levels of government as described by E.O. 13132. Therefore, the Departments concluded that this NPRM does not have a sufficient federalism implication to warrant the preparation of a summary impact statement.

#### *E. Unfunded Mandates Reform Act of 1995*

UMRA directs agencies to assess the effects of Federal regulatory actions on State, local, and Tribal governments, and the private sector. A Federal mandate is any provision in a regulation that imposes an enforceable duty upon State, local, or Tribal governments, or imposes a duty upon the private sector.

Following the consideration of the above factors, the Departments concluded this joint NPRM contains no unfunded Federal mandates, as defined

in 2 U.S.C. 658(6) to include either a “Federal intergovernmental mandate” or a “Federal private sector mandate.” Reporting Retention with the Same Employer as the effectiveness in serving employers performance indicator as proposed does not place any additional burdens on State, local, and Tribal governments because the WIOA core programs already collect and report the necessary information. Furthermore, Federal program funding triggers the reporting requirement; therefore, the Departments provide funding for any associated reporting mandate. Private training entities participate as a provider under a WIOA core program on a purely voluntary basis, and voluntarily assume the information collection.

#### *F. Executive Order 13175 (Indian Tribal Governments)*

The Departments reviewed this proposed rule under the terms of E.O. 13175 and DOL’s Tribal Consultation Policy and have determined that it would have Tribal implications, because the proposed regulations would have substantial direct effects on: one or more Indian Tribes; the relationship between the Federal government and Indian Tribes; or the distribution of power and responsibilities between the Federal government and Indian Tribes. Therefore, DOL has prepared a Tribal summary impact statement. Because the Tribal implications of this proposed rule relate only to DOL Indian and Native American (INA) program grantees, DOL has printed the requisite Tribal summary impact statement in the DOL-specific effectiveness in serving employers NPRM published elsewhere in this issue of the **Federal Register**, which proposes related changes for effectiveness in serving employers to DOL’s INA program regulations.

#### **List of Subjects**

##### *20 CFR Part 677*

Employment, Grant programs—labor.

##### *34 CFR Part 361*

Administrative practice and procedure, Grant programs—education, Grant programs—social programs, Reporting and recordkeeping requirements, Vocational rehabilitation.

##### *34 CFR Part 463*

Adult education, Grant programs—education.

For the reasons discussed in the preamble, the Employment and Training Administration proposes to amend 20 CFR part 677 as follows:

## **PART 677—PERFORMANCE ACCOUNTABILITY UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT**

■ 1. The authority citation for part 677 continues to read as follows:

**Authority:** Secs. 116, 189, and 503 of Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

### **Subpart A—State Indicators of Performance for Core Programs**

■ 2. Amend § 677.155 by revising paragraphs (a)(1)(vi) and (c)(6) to read as follows:

#### **§ 677.155 What are the primary indicators of performance under the Workforce Innovation and Opportunity Act?**

(a) \* \* \*

(1) \* \* \*

(vi) The percentage of participants with wage records in the second quarter after exit who were employed by the same employer in the second and fourth quarters after exit. For the six core programs, this indicator is a statewide indicator reported by one core program on behalf of all six core programs in the State, as described in guidance.

\* \* \* \* \*

(c) \* \* \*

(6) The percentage of participants with wage records in the second quarter after exit who were employed by the same employer in the second and fourth quarters after exit. For the six core programs, this indicator is a statewide indicator reported by one core program on behalf of all six core programs in the State, as described in guidance.

### **Subpart B—Sanctions for State Performance and the Provision of Technical Assistance**

■ 3. Amend § 677.190 by revising paragraph (c) to read as follows:

#### **§ 677.190 When are sanctions applied for failure to achieve adjusted levels of performance?**

\* \* \* \* \*

(c) Whether a State has failed to meet adjusted levels of performance will be determined using the following criteria:

(1) The overall State program score, which is expressed as the percent achieved, compares the actual results achieved by a core program on the primary indicators of performance, except for the effectiveness in serving employers indicator described in § 677.155(a)(1)(vi), to the adjusted levels of performance for that core program. The average of the percentages achieved of the adjusted level of performance for each of the primary indicators, except for the effectiveness in serving

employers indicator described in § 677.155(a)(1)(vi), by a core program will constitute the overall State program score.

(2) However, until all indicators for the core program have at least 2 years of complete data, the overall State program score will be based on a comparison of the actual results achieved to the adjusted level of performance for each of the primary indicators that have at least 2 years of complete data for that program.

(3) The overall State indicator score, which is expressed as the percent achieved, compares the actual results achieved on a primary indicator of performance by all core programs in a State to the adjusted levels of performance for that primary indicator.

(i) The average of the percentages achieved of the adjusted level of performance by all of the core programs on that indicator will constitute the overall State indicator score, except for the effectiveness in serving employers indicator described in § 677.155(a)(1)(vi).

(ii) The overall State indicator score for effectiveness in serving employers, as reported by one core program on behalf of all six core programs in the State, as described in guidance, is a statewide indicator that reflects the performance for all core programs. It is calculated as the statewide percentage achieved of the statewide adjusted level of performance.

(4) However, until all indicators for the State have at least 2 years of complete data, the overall State indicator score will be based on a comparison of the actual results achieved to the adjusted level of performance for each of the primary indicators that have at least 2 years of complete data in a State.

(5) The individual indicator score, which is expressed as the percent achieved, compares the actual results achieved by each core program on each of the individual primary indicators to the adjusted levels of performance for each of the program's primary indicators of performance, except for the effectiveness in serving employers indicator described in § 677.155(a)(1)(vi).

\* \* \* \* \*

For the reasons stated in the preamble, the Department of Education proposes to amend 34 CFR parts 361 and 463 as follows:

## **PART 361—STATE VOCATIONAL REHABILITATION SERVICES PROGRAM**

### **Subpart E—Performance Accountability Under Title I of the Workforce Innovation and Opportunity Act**

■ 4. The authority citation for part 361, subpart E continues to read as follows:

**Authority:** Secs. 116, 189, and 503 of Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

■ 5. Amend § 361.155 by revising paragraphs (a)(1)(vi) and (c)(6) to read as follows:

#### **§ 361.155 What are the primary indicators of performance under the Workforce Innovation and Opportunity Act?**

(a) \* \* \*

(1) \* \* \*

(vi) The percentage of participants with wage records in the second quarter after exit who were employed by the same employer in the second and fourth quarters after exit. For the six core programs, this indicator is a statewide indicator reported by one core program on behalf of all six core programs in the State, as described in guidance.

\* \* \* \* \*

(c) \* \* \*

(6) The percentage of participants with wage records in the second quarter after exit who were employed by the same employer in the second and fourth quarters after exit. For the six core programs, this indicator is a statewide indicator reported by one core program on behalf of all six core programs in the State, as described in guidance.

■ 6. Amend § 361.190 by revising paragraph (c) to read as follows:

#### **§ 361.190 When are sanctions applied for failure to achieve adjusted levels of performance?**

\* \* \* \* \*

(c) Whether a State has failed to meet adjusted levels of performance will be determined using the following criteria:

(1) The overall State program score, which is expressed as the percent achieved, compares the actual results achieved by a core program on the primary indicators of performance, except for the effectiveness in serving employers indicator described in § 361.155(a)(1)(vi), to the adjusted levels of performance for that core program. The average of the percentages achieved of the adjusted level of performance for each of the primary indicators, except for the effectiveness in serving employers indicator described in § 361.155(a)(1)(vi), by a core program will constitute the overall State program score.

(2) However, until all indicators for the core program have at least 2 years of complete data, the overall State program score will be based on a comparison of the actual results achieved to the adjusted level of performance for each of the primary indicators that have at least 2 years of complete data for that program.

(3) The overall State indicator score, which is expressed as the percent achieved, compares the actual results achieved on a primary indicator of performance by all core programs in a State to the adjusted levels of performance for that primary indicator.

(i) The average of the percentages achieved of the adjusted level of performance by all of the core programs on that indicator will constitute the overall State indicator score, except for the effectiveness in serving employers indicator described in § 361.155(a)(1)(vi).

(ii) The overall State indicator score for effectiveness in serving employers, as reported by one core program on behalf of all six core programs in the State, as described in guidance, is a statewide indicator that reflects the performance for all core programs. It is calculated as the statewide percentage achieved of the statewide adjusted level of performance.

(4) However, until all indicators for the State have at least 2 years of complete data, the overall State indicator score will be based on a comparison of the actual results achieved to the adjusted level of performance for each of the primary indicators that have at least 2 years of complete data in a State.

(5) The individual indicator score, which is expressed as the percent achieved, compares the actual results achieved by each core program on each of the individual primary indicators to the adjusted levels of performance for each of the program's primary indicators of performance, except for the effectiveness in serving employers indicator described in § 361.155(a)(1)(vi).

\* \* \* \* \*

## **PART 463—ADULT EDUCATION AND FAMILY LITERACY ACT**

### **Subpart I—Performance Accountability Under Title I of the Workforce Innovation and Opportunity Act**

■ 7. The authority citation for part 463, subpart I continues to read as follows:

**Authority:** Secs. 116, 189, and 503 of Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).



■ 8. Amend § 463.155 by revising paragraphs (a)(1)(vi) and (c)(6) to read as follows:

**§ 463.155 What are the primary indicators of performance under the Workforce Innovation and Opportunity Act?**

(a) \* \* \*

(1) \* \* \*

(vi) The percentage of participants with wage records in the second quarter after exit who were employed by the same employer in the second and fourth quarters after exit. For the six core programs, this indicator is a statewide indicator reported by one core program on behalf of all six core programs in the State, as described in guidance.

\* \* \* \* \*

(c) \* \* \*

(6) The percentage of participants with wage records in the second quarter after exit who were employed by the same employer in the second and fourth quarters after exit. For the six core programs, this indicator is a statewide indicator reported by one core program on behalf of all six core programs in the State, as described in guidance.

■ 9. Amend § 463.190 by revising paragraph (c) to read as follows:

**§ 463.190 When are sanctions applied for failure to achieve adjusted levels of performance?**

\* \* \* \* \*

(c) Whether a State has failed to meet adjusted levels of performance will be determined using the following criteria:

(1) The overall State program score, which is expressed as the percent achieved, compares the actual results achieved by a core program on the primary indicators of performance, except for the effectiveness in serving employers indicator described in § 463.155(a)(1)(vi), to the adjusted levels of performance for that core program. The average of the percentages achieved of the adjusted level of performance for each of the primary indicators, except for the effectiveness in serving employers indicator described in § 463.155(a)(1)(vi), by a core program will constitute the overall State program score.

(2) However, until all indicators for the core program have at least 2 years of complete data, the overall State program score will be based on a comparison of the actual results achieved to the adjusted level of performance for each of the primary indicators that have at least 2 years of complete data for that program.

(3) The overall State indicator score, which is expressed as the percent achieved, compares the actual results achieved on a primary indicator of

performance by all core programs in a State to the adjusted levels of performance for that primary indicator.

(i) The average of the percentages achieved of the adjusted level of performance by all of the core programs on that indicator will constitute the overall State indicator score, except for the effectiveness in serving employers indicator described in § 463.155(a)(1)(vi).

(ii) The overall State indicator score for effectiveness in serving employers, as reported by one core program on behalf of all six core programs in the State, as described in guidance, is a statewide indicator that reflects the performance for all core programs. It is calculated as the statewide percentage achieved of the statewide adjusted level of performance.

(4) However, until all indicators for the State have at least 2 years of complete data, the overall State indicator score will be based on a comparison of the actual results achieved to the adjusted level of performance for each of the primary indicators that have at least 2 years of complete data in a State.

(5) The individual indicator score, which is expressed as the percent achieved, compares the actual results achieved by each core program on each of the individual primary indicators to the adjusted levels of performance for each of the program's primary indicators of performance, except for the effectiveness in serving employers indicator described in § 463.155(a)(1)(vi).

\* \* \* \* \*

**Martin J. Walsh,**

*Secretary of Labor.*

**Miguel A. Cardona,**

*Secretary of Education.*

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## DEPARTMENT OF LABOR

### Employment and Training Administration

#### 20 CFR Parts 684, 686, and 688

[Docket No. ETA-2022-0005]

**RIN 1205-AC08**

#### Workforce Innovation and Opportunity Act Title I Non-Core Programs Effectiveness in Serving Employers Performance Indicator

**AGENCY:** Employment and Training Administration (ETA), Labor.

**ACTION:** Proposed rule.

**SUMMARY:** The Workforce Innovation and Opportunity Act (WIOA) established six primary indicators of performance for certain WIOA-authorized programs. Currently, the regulations contain definitions for five of the six performance indicators. In the final rule implementing WIOA, the U.S. Departments of Labor and Education (the Departments) indicated that they would initially implement the sixth indicator of performance—effectiveness in serving employers—in the form of a pilot program to test the feasibility and rigor of three proposed approaches. With the pilot completed, the Departments are engaging in a rulemaking under RIN 1205-AC01 to incorporate a standard definition of the performance indicator for effectiveness in serving employers into the implementing regulations for the six WIOA core programs. In this related rulemaking, the Department of Labor (DOL or the Department) is proposing to incorporate the same definition of the effectiveness in serving employers performance indicator into regulations for title I non-core programs: the Indian and Native American (INA) programs, the Job Corps program, the YouthBuild programs, and the National Farmworker Jobs Program (NFJP).

**DATES:** Interested persons are invited to submit written comments on the proposed rule on or before November 14, 2022.

**ADDRESSES:** You may submit comments, identified by Docket No. ETA-2022-0005 and Regulatory Identification Number (RIN) 1205-AC08, through the Federal eRulemaking Portal: <https://www.regulations.gov>. Search for the above-referenced RIN, open the proposed rule, and follow the on-screen instructions for submitting comments.

**Instructions:** All submissions received must include the agency name and docket number for this rulemaking or “1205-AC08.” Because of the narrow scope of this proposed regulation, the Department encourages commenters to submit, and the Department will consider only comments, regarding the definition of the effectiveness in serving employers performance indicator for WIOA title I non-core programs as set forth herein. The proposed amendments are limited to the sections of the regulations detailed in this rulemaking.

Please be advised that the Department will post all comments received that relate to this notice of proposed rulemaking (NPRM) without changes to <https://www.regulations.gov>, including any personal information provided. The <https://www.regulations.gov> website is the Federal e-Rulemaking Portal and all