

standing established under section 121(c) of the Workforce Innovation and Opportunity Act” for “be signatories of the memorandum of understanding established under section 121(c) of the Workforce Investment Act of 1998 (29 U.S.C. 2841(c))”.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-128 effective on the first day of the first full program year after July 22, 2014 (July 1, 2015), see section 506 of Pub. L. 113-128, set out as an Effective Date note under section 3101 of Title 29, Labor.

§ 3056j. Treatment of assistance

Assistance provided under this subchapter shall not be considered to be financial assistance described in section 1255a(h)(1)(A) of title 8.

(Pub. L. 89-73, title V, §512, as added Pub. L. 109-365, title V, §501, Oct. 17, 2006, 120 Stat. 2580.)

PRIOR PROVISIONS

A prior section 3056j, Pub. L. 89-73, title V, §512, as added Pub. L. 106-501, title V, §501, Nov. 13, 2000, 114 Stat. 2280, related to coordination with the Workforce Investment Act of 1998, prior to the general amendment of this subchapter by Pub. L. 109-365. See section 3056i of this title.

§ 3056k. Performance

(a) Measures

(1) Establishment and implementation of measures

The Secretary shall establish and implement, after consultation with grantees, subgrantees, and host agencies under this subchapter, States, older individuals, area agencies on aging, and other organizations serving older individuals, core measures of performance for each grantee for projects and services carried out under this subchapter. The core measures of performance shall be applicable to each grantee under this subchapter without regard to whether such grantee operates the program directly or through subcontracts, subgrants, or agreements with other entities.

(2) Content

(A) Composition of measures

The core measures of performance established by the Secretary in accordance with paragraph (1) shall consist of core indicators of performance specified in subsection (b)(1) and the expected levels of performance applicable to each core indicator of performance.

(B) Expected levels of performance

The Secretary and each grantee shall reach agreement on the expected levels of performance for each program year for each of the core indicators of performance specified in subparagraph (A). Funds may not be awarded under the grant until such agreement is reached. At the conclusion of negotiations concerning the levels with all grantees, the Secretary shall make available for public review the final negotiated expected levels of performance for each grantee, including any comments submitted by the grantee regarding the grantee’s satisfaction with the negotiated levels.

(C) Agreement on expected levels of performance

(i) First 2 years

Each grantee shall reach agreement with the Secretary on levels of performance for each measure described in subparagraph (A)(i),¹ for each of the first 2 program years covered by the grant agreement. In reaching the agreement, the grantee and the Secretary shall take into account the expected levels proposed by the grantee and the factors described in subparagraph (D). The levels agreed to shall be considered to be the expected levels of performance for the grantee for such program years.

(ii) Third and fourth year

Each grantee shall reach agreement with the Secretary, prior to the third program year covered by the grant agreement, on levels of performance for each measure described in subparagraph (A), for each of the third and fourth program years so covered. In reaching the agreement, the grantee and the Secretary shall take into account the expected levels proposed by the grantee and the factors described in subparagraph (D). The levels agreed to shall be considered to be the expected levels of performance for the grantee for such program years.

(D) Factors

In reaching the agreements described in subparagraph (B), each grantee and the Secretary shall—

(i) take into account how the levels involved compare with the expected levels of performance established for other grantees;

(ii) ensure that the levels involved are adjusted, using an objective statistical model based on the model established by the Secretary in accordance with section 3141(a)(3)(A)(viii)² of title 29;³ and

(iii) take into account the extent to which the levels involved promote continuous improvement in performance accountability on the core measures and ensure optimal return on the investment of Federal funds.

(E) Adjustments based on economic conditions and individuals served during the program year

The Secretary shall, in accordance with the objective statistical model developed pursuant to subparagraph (D)(ii), adjust the expected levels of performance for a program year for grantees, to reflect the actual economic conditions and characteristics of participants in the corresponding projects during such program year.

(3) Limitation

An agreement to be evaluated on the core measures of performance shall be a require-

¹ So in original. Subparagraph (A) does not contain clauses.

² So in original. Probably should be “3141(b)(3)(A)(viii)”.

³ See References in Text note below.

ment for application for, and a condition of, all grants authorized by this subchapter.

(b) Indicators of performance

(1) Core indicators

The core indicators of performance described in subsection (a)(2)(A) shall consist of—

(A) hours (in the aggregate) of community service employment;

(B) the percentage of project participants who are in unsubsidized employment during the second quarter after exit from the project;

(C) the percentage of project participants who are in unsubsidized employment during the fourth quarter after exit from the project;

(D) the median earnings of project participants who are in unsubsidized employment during the second quarter after exit from the project;

(E) indicators of effectiveness in serving employers, host agencies, and project participants; and

(F) the number of eligible individuals served, including the number of participating individuals described in subsection (a)(3)(B)(ii) or (b)(2) of section 3056p of this title.

(2) Definitions of indicators

The Secretary, after consultation with national and State grantees, representatives of business and labor organizations, and providers of services, shall, by regulation, issue definitions of the indicators of performance described in paragraph (1).

(c) Evaluation

The Secretary shall annually evaluate, and publish and make available for public review information on, the actual performance of each grantee with respect to the levels achieved for each of the core indicators of performance, compared to the expected levels of performance established under subsection (a)(2)(B) (including any adjustments to such levels made in accordance with subsection (a)(2)(E)).

(d) Technical assistance and corrective efforts

(1) Initial determinations

(A) In general

As soon as practicable after July 1, 2016, the Secretary shall determine if a grantee under this subchapter has, for program year 2016, met the expected levels of performance established under subsection (a)(2)(B) (including any adjustments to such levels made in accordance with subsection (a)(2)(E)) for the core indicators of performance.

(B) Technical assistance

If the Secretary determines that the grantee, for program year 2016, failed to meet the expected levels of performance described in subparagraph (A), the Secretary shall provide technical assistance to assist the grantee to meet the expected levels of performance.

(2) National grantees

(A) In general

Not later than 120 days after the end of each program year, the Secretary shall de-

termine if a national grantee awarded a grant under section 3056(b) of this title in accordance with section 3056l of this title has met the expected levels of performance established under subsection (a)(2)(B) (including any adjustments to such levels made in accordance with subsection (a)(2)(E)) for the core indicators of performance described in subsection (b)(1).

(B) Technical assistance and corrective action plan

(i) In general

If the Secretary determines that a national grantee fails to meet the expected levels of performance described in subparagraph (A), the Secretary after each year of such failure, shall provide technical assistance and require such grantee to submit a corrective action plan not later than 160 days after the end of the program year.

(ii) Content

The plan submitted under clause (i) shall detail the steps the grantee will take to meet the expected levels of performance in the next program year.

(iii) Recompensation

Any grantee who has failed to meet the expected levels of performance for 4 consecutive years shall not be allowed to compete in the subsequent grant competition under section 3056l of this title following the fourth consecutive year of failure but may compete in the next such grant competition after that subsequent competition.

(iv) Use of core indicators

For purposes of assessing grantee performance under this subparagraph before program year 2017, the Secretary shall use the core indicators of performance in effect at the time of the award and the most recent corresponding expected levels of performance.

(3) State grantees

(A) In general

Not later than 120 days after the end of each program year, the Secretary shall determine if a State grantee allotted funds under section 3056d(e) of this title has met the expected levels of performance established under subsection (a)(2)(B) (including any adjustments to such levels made in accordance with subsection (a)(2)(E)) for the core indicators of performance described in subsection (b)(1).

(B) Technical assistance and corrective action plan

(i) In general

If the Secretary determines that a State fails to meet the expected levels of performance described in subparagraph (A), the Secretary, after each year of such failure, shall provide technical assistance and require the State to submit a corrective action plan not later than 160 days after the end of the program year.

(ii) Content

The plan submitted under clause (i) shall detail the steps the State will take to meet the expected levels of performance in the next program year.

(iii) Competition

If the Secretary determines that the State fails to meet the expected levels of performance described in subparagraph (A) for 3 consecutive program years, the Secretary shall provide for the conduct by the State of a competition to award the funds allotted to the State under section 3056d(e) of this title for the first full program year following the Secretary's determination.

(4) Special rule for implementation

The Secretary shall implement the core measures of performance described in this section not later than December 31, 2017.

(e) Impact on grant competition

Effective on January 1, 2018, the Secretary may not publish a notice announcing a grant competition under this subchapter, or solicit proposals for grants, until the day on which the Secretary implements the core measures of performance.

(Pub. L. 89-73, title V, §513, as added Pub. L. 109-365, title V, §501, Oct. 17, 2006, 120 Stat. 2580; amended Pub. L. 114-144, §6(d), Apr. 19, 2016, 130 Stat. 343.)

REFERENCES IN TEXT

Section 3141 of title 29, referred to in subsec. (a)(2)(D)(ii), was in the original a reference to section 116 of the Workforce Investment and Opportunity Act and was translated as meaning section 116 of the Workforce Innovation and Opportunity Act, to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 3056k, Pub. L. 89-73, title V, §513, as added Pub. L. 106-501, title V, §501, Nov. 13, 2000, 114 Stat. 2281, related to performance measures, prior to the general amendment of this subchapter by Pub. L. 109-365.

AMENDMENTS

2016—Subsec. (a). Pub. L. 114-144, §6(d)(1)(A), struck out “and indicators” after “Measures” in heading.

Subsec. (a)(1). Pub. L. 114-144, §6(d)(1)(B), struck out “and indicators” after “measures” in heading and “and additional indicators of performance” after “measures of performance” in two places in text.

Subsec. (a)(2)(A). Pub. L. 114-144, §6(d)(1)(C)(i), substituted “Composition of measures” for “Composition of measures and indicators” in heading, struck out cl. (i) designation and heading, and struck out cl. (ii). Prior to amendment, text of cl. (ii) read as follows: “The additional indicators of performance established by the Secretary in accordance with paragraph (1) shall be the additional indicators of performance specified in subsection (b)(2).”

Subsec. (a)(2)(B). Pub. L. 114-144, §6(d)(1)(C)(iii), redesignated subpar. (C) as (B), substituted “subparagraph (A)” for “subparagraph (A)(i)”, and struck out “The agreement shall take into account the requirement of subparagraph (B) and the factors described in subparagraph (D), and other appropriate factors as determined by the Secretary, and shall be consistent with the requirements of subparagraph (E).” before “Funds may”. Former subpar. (B) struck out.

Pub. L. 114-144, §6(d)(1)(C)(ii), struck out subpar. (B). Text read as follows: “The measures described in sub-

paragraph (A)(i) shall be designed to promote continuous improvement in performance.”

Subsec. (a)(2)(C) to (E). Pub. L. 114-144, §6(d)(1)(C)(iv), added subpars. (C) to (E) and struck out former subpars. (D) and (E) which related to adjustment of expected levels of performance and placement into unsubsidized employment, respectively. Former subpar. (C) redesignated (B).

Subsec. (a)(3). Pub. L. 114-144, §6(d)(1)(D), struck out “and to report information on the additional indicators of performance” after “measures of performance”.

Subsec. (b)(1). Pub. L. 114-144, §6(d)(2)(A)(i), substituted “subsection (a)(2)(A)” for “subsection (a)(2)(A)(i)” in introductory provisions.

Subsec. (b)(1)(B) to (F). Pub. L. 114-144, §6(d)(2)(A)(ii), added subpars. (B) to (F) and struck out former subpars. (B) to (E) which read as follows:

“(B) entry into unsubsidized employment;
“(C) retention in unsubsidized employment for 6 months;

“(D) earnings; and

“(E) the number of eligible individuals served, including the number of participating individuals described in subsection (a)(3)(B)(ii) or (b)(2) of section 3056p of the title.”

Subsec. (b)(2), (3). Pub. L. 114-144, §6(d)(2)(B)–(D), redesignated par. (3) as (2), substituted “paragraph (1)” for “paragraphs (1) and (2)”, and struck out former par. (2) which related to additional indicators of performance.

Subsec. (c). Pub. L. 114-144, §6(d)(3), substituted “shall” for “shall—”, struck out par. (1) designation before “annually evaluate”, substituted “subsection (a)(2)(B)” for “subsection (a)(2)(C)” and “subsection (a)(2)(E).” for “subsection (a)(2)(D); and”, and struck out par. (2) which read as follows: “annually publish and make available for public review information on the actual performance of each grantee with respect to the levels achieved for each of the additional indicators of performance.”

Subsec. (d)(1)(A). Pub. L. 114-144, §6(d)(4)(A)(i), substituted “July 1, 2016” for “July 1, 2007” and “year 2016,” for “year 2006—”; struck out cl. (i) designation before “met”; substituted “subsection (a)(2)(B)” for “subsection (a)(2)(C)”, “subsection (a)(2)(E)” for “subsection (a)(2)(D)”, and “indicators of performance.” for “indicators of performance described in subparagraphs (A), (C), (D), and (E) of subsection (b)(1); and”; and struck out cl. (ii) which read as follows: “achieved the applicable percentage specified in subsection (a)(2)(E)(ii) for the core indicator of performance described in subsection (b)(1)(B).”

Subsec. (d)(1)(B). Pub. L. 114-144, §6(d)(4)(A)(ii), substituted “year 2016,” for “year 2006—” and “subparagraph (A),” for “subparagraph (A)(i); or” and struck out cl. (i) designation before “failed”, “and achieve the applicable percentage” before period at end, and “(ii) failed to achieve the applicable percentage described in subparagraph (A)(ii),” before “the Secretary shall provide”.

Subsec. (d)(2)(A). Pub. L. 114-144, §6(d)(4)(B)(i), substituted “(a)(2)(B)” for “(a)(2)(C)” and “(a)(2)(E)” for “(a)(2)(D)”.

Subsec. (d)(2)(B)(iii). Pub. L. 114-144, §6(d)(4)(B)(ii)(I), struck out “(beginning with program year 2007)” after “4 consecutive years”.

Subsec. (d)(2)(B)(iv). Pub. L. 114-144, §6(d)(4)(B)(ii)(II), added cl. (iv).

Subsec. (d)(3)(A). Pub. L. 114-144, §6(d)(4)(C)(i), substituted “(a)(2)(B)” for “(a)(2)(C)” and “(a)(2)(E)” for “(a)(2)(D)”.

Subsec. (d)(3)(B)(iii). Pub. L. 114-144, §6(d)(4)(C)(ii), struck out “(beginning with program year 2007)” after “3 consecutive program years”.

Subsec. (d)(4). Pub. L. 114-144, §6(d)(4)(D), amended par. (4) generally. Prior to amendment, text read as follows: “The Secretary shall establish and implement the core measures of performance and additional indicators of performance described in this section, including all required indicators described in subsection (b), not later than July 1, 2007.”

Subsec. (e). Pub. L. 114-144, §6(d)(5), amended subsec. (e) generally. Prior to amendment, text read as follows: “The Secretary may not publish a notice announcing a grant competition under this subchapter, and solicit proposals for grants, until the day that is the later of—

- “(1) the date on which the Secretary implements the core measures of performance and additional indicators of performance described in this section; and
- “(2) January 1, 2010.”

§ 3056I. Competitive requirements relating to grant awards

(a) Program authorized

(1) Initial approval of grant applications

From the funds available for national grants under section 3056d(d) of this title, the Secretary shall award grants under section 3056(b) of this title to eligible applicants, through a competitive process that emphasizes meeting performance requirements, to carry out projects under this subchapter for a period of 4 years, except as provided in paragraph (2). The Secretary may not conduct a grant competition under this subchapter until the day described in section 3056k(e) of this title.

(2) Continuation of approval based on performance

If the recipient of a grant made under paragraph (1) meets the expected levels of performance described in section 3056k(d)(2)(A) of this title for each year of such 4-year period with respect to a project, the Secretary may award a grant under section 3056(b) of this title to such recipient to continue such project beyond such 4-year period for 1 additional year without regard to such process.

(b) Eligible applicants

An applicant shall be eligible to receive a grant under section 3056(b) of this title in accordance with subsections (a), (c), and (d).

(c) Criteria

For purposes of subsection (a)(1), the Secretary shall select the eligible applicants to receive grants based on the following:

- (1) The applicant’s ability to administer a project that serves the greatest number of eligible individuals, giving particular consideration to individuals with greatest economic need, individuals with greatest social need, and individuals described in subsection (a)(3)(B)(ii) or (b)(2) of section 3056p of this title.
- (2) The applicant’s ability to administer a project that provides employment for eligible individuals in the communities in which such individuals reside, or in nearby communities, that will contribute to the general welfare of the communities involved.
- (3) The applicant’s ability to administer a project that moves eligible individuals into unsubsidized employment.
- (4) The applicant’s prior performance, if any, in meeting core measures of performance under this subchapter and the applicant’s ability to address core indicators of performance under this subchapter and under other Federal or State programs in the case of an applicant that has not previously received a grant under this subchapter.

(5) The applicant’s ability to move individuals with multiple barriers to employment, including individuals described in subsection (a)(3)(B)(ii) or (b)(2) of section 3056p of this title, into unsubsidized employment.

(6) The applicant’s ability to coordinate activities with other organizations at the State and local level.

(7) The applicant’s plan for fiscal management of the project to be administered with funds received in accordance with this section.

(8) The applicant’s ability to administer a project that provides community service.

(9) The applicant’s ability to minimize disruption in services for participants and in community services provided.

(10) Any additional criteria that the Secretary considers to be appropriate in order to minimize disruption in services for participants.

(d) Responsibility tests

(1) In general

Before final selection of a grantee, the Secretary shall conduct a review of available records to assess the applicant’s overall responsibility to administer Federal funds.

(2) Review

As part of the review described in paragraph (1), the Secretary may consider any information, including the applicant’s history with regard to the management of other grants.

(3) Failure to satisfy test

The failure to satisfy a responsibility test with respect to any 1 factor that is listed in paragraph (4), excluding those listed in subparagraphs (A) and (B) of such paragraph, does not establish that the applicant is not responsible unless such failure is substantial or persists for 2 or more consecutive years.

(4) Test

The responsibility tests include review of the following factors:

- (A) Unsuccessful efforts by the applicant to recover debts, after 3 demand letters have been sent, that are established by final agency action, or a failure to comply with an approved repayment plan.
- (B) Established fraud or criminal activity of a significant nature within the organization or agency involved.
- (C) Serious administrative deficiencies identified by the Secretary, such as failure to maintain a financial management system as required by Federal rules or regulations.
- (D) Willful obstruction of the audit process.
- (E) Failure to provide services to participants for a current or recent grant or to meet applicable core measures of performance or address applicable indicators of performance.
- (F) Failure to correct deficiencies brought to the grantee’s attention in writing as a result of monitoring activities, reviews, assessments, or other activities.
- (G) Failure to return a grant closeout package or outstanding advances within 90 days of the grant expiration date or receipt