

WIOA Pay-for-Performance Highlights

On June 30, 2016, the Department of Labor (DOL) released the [Final Rule](#) on the [Workforce Innovation and Opportunity Act](#) (WIOA). Third Sector reviewed the more than 1,500 pages of guidance in the Final Rule and created this document to highlight guidance specifically related to the Pay-for-Performance (P4P) provisions of WIOA.

The innovations provided through the P4P provisions, allow local workforce boards to focus on longer term strategies for improving the lives of young people who are not connected to school or work. With this objective driving our work, Third Sector is partnering with the [five workforce boards](#) in our second cohort of Social Innovation Fund subrecipients to explore options for leveraging the P4P provisions.

WHAT IS DIFFERENT ABOUT WIOA P4P?

Four Main Differences Between WIOA P4P and Performance-Based Contracting

Though WIOA P4P is part of a [larger trend in performance-based contracting](#), DOL's guidance reveals its key differences. WIOA P4P differs from other performance-based efforts in 4 ways:

1. [Focus on long-term outcomes](#): WIOA performance measures are tracking participant outcomes farther out than the Workforce Investment Act did, assessing outcomes at four quarters after program exit in addition to the previously required two quarters. With WIOA P4P, local areas can structure contracts in new ways that allow for longer timelines for interventions and payments based on even longer-term outcomes.
2. [10% set-aside "no-year" funds](#): The emphasis on long-term outcomes is supported by the flexibility of no-year funding, where payment points can occur well beyond the normal two-year WIOA funding cycle. Local areas can now link payment to long-term success for young people, incentivizing providers to address the needs of participants holistically with comprehensive services, in addition to linking to other resources and programs such as [TANF](#), [SNAP](#), and [career and technical education](#).
3. [Option to include bonus payments](#): the use of bonus payments is allowable under P4P, though they must be used to expand the contractor's capacity, not as payment for profits.
4. [Requirement of a P4P contracting strategy](#): WIOA P4P contracts require a specific contracting strategy, including a feasibility study, which has been loosely defined by DOL. It is important to note that, even if states did not include P4P language in their state plan, they can still engage in P4P.

Performance-based contracting is already in use by the workforce system and has its own definitions and guidance in the [Federal Acquisition Regulation](#) (FAR). WIOA P4P contracting strategy is just one type of a performance-based contract, and local areas should continue to pursue traditional performance-based contracts. However, DOL encourages a refocus of these contracts to emphasize the achievement of outcomes, such as participants obtaining and retaining good jobs, versus outputs, such as the number of people served.

Emphasis on Local Flexibility

DOL will be releasing more details on P4P guidance in Fall 2016, but for now the emphasis is on local area flexibility and innovation. As we hold for more detailed guidance on this innovative legislation, the encouraging

news is that DOL repeatedly states that it “intends to provide local areas with the flexibility needed to implement a WIOA P4P contract strategy that meets the needs and challenges in each local area.” DOL specifically encourages innovation at the state and local level. Unless specifically prohibited, localities should take advantage of this opportunity to try out new performance-based contracting strategies.

WIOA also provides additional flexibility in which service providers can be contracted. Namely, service providers not previously authorized can apply to the governor and the local workforce board for eligibility. It is up to states to determine what this application process requires, and thus can encourage more participation by eliminating barriers.

The 15% Governor’s Reserve provides flexibility and additional requirements related to P4P. Where P4P is being used, the state must collect and report data differently and monitor local areas’ use of P4P, including the 10% set-aside, among other requirements, and can use the Reserve to fund these activities. The Governor’s Reserve can also be used to provide technical assistance to local areas implementing P4P strategies. For states with additional non-federal funds outside of the Reserve, governors may establish incentives for local boards to implement WIOA P4P contract strategies.

WIOA P4P CONTRACTING STRATEGY

Requirements

WIOA P4P contracts are only allowed within a larger WIOA P4P “contract strategy.” Third Sector will be working with our subrecipients on the various components of these strategies. The contract strategy must:

- Identify the problem space and target populations where P4P will be used, including:
 - outcomes the local area would hope to achieve through P4P relative to baseline performance;
 - acceptable cost to government associated with implementing P4P.
- Include a feasibility study to determine whether the proposed intervention is suitable for P4P;
 - The contract strategy may make use of previously conducted feasibility studies, and the study does not have to be funded with the 10% set-aside. DOL intends to release additional guidance on what is included in the scope of a feasibility study.
- Specify a fixed amount that will be paid to the service provider based on the achievement of specified levels of performance on the WIOA performance measures for target populations within a defined timetable.
- Include a strategy for independently validating the performance measures achieved prior to payment. The use of supplemental data sources, in addition to Unemployment Insurance (UI) wage records, for performance reporting is permitted. This flexibility is critical when WIOA participants cannot be found in wage records, such as those who do not provide Social Security Numbers or are self-employed.
- Include a plan for reallocating funds to other activities under the contract strategy if a service provider does not achieve the expected performance on the selected measures.
- Comply with guidance issued by the Secretary of DOL.

Prohibitions

Specific prohibitions on the use of WIOA P4P funding include cost-plus percentage contracts¹ and direct payments from DOL to outside investors. There are ways to involve outside funders, however, and given the flexibilities within WIOA P4P, including payments related to outcomes achieved and bonus payments for capacity building, these prohibitions do not present significant limitations in designing a P4P contract strategy.

¹ A contract where the contractor is paid for all of its allowed expenses plus additional payment to allow for a profit.