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**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 589  
HIGHER EDUCATION COORDINATING COMMISSION  
OFFICE OF COMMUNITY COLLEGES AND WORKFORCE DEVELOPMENT

**FILED**  
02/27/2018 3:57 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Repeal outdated rules; clarify existing language; update references to WIOA, HECC, and local boards.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 03/29/2018 5:00 PM

*The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.*

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Salem, OR 97311

Filed By:  
Kelly Zinck  
Rules Coordinator

HEARING(S)

*Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.*

DATE: 03/22/2018

TIME: 9:00 AM - 10:00 AM

OFFICER: Staff

ADDRESS: Oregon Employment  
Department

Conference Room 312

875 Uni

Salem, OR 97311

SPECIAL INSTRUCTIONS:

Please check in at the front desk in the  
lobby.

NEED FOR THE RULE(S):

The Workforce Innovation and Opportunity Act (WIOA), Public Law 113-128, was signed into federal law in 2014. In June 2016, the Departments of Labor, Education, and other federal partners released the WIOA Final Rules which outline the final regulations for the implementation of WIOA. The proposed rule amendments update references to the WIOA, as well as references to the Higher Education Coordinating Commission Office of Workforce Investments and references to local workforce development boards. The amendments also clarify existing rule language. The rules proposed for repeal duplicate existing administrative rules or office policies, or refer to outdated programs or procedures.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Workforce Innovation and Opportunity Act (WIOA) of 2014, Public Law 113-128. Available at  
<https://www.gpo.gov/fdsys/pkg/PLAW-113publ128/pdf/PLAW-113publ128.pdf>.

WIOA Final Rule Implementation of the Nondiscrimination and Equal Opportunity Provisions, 29 CFR Part 38. Available at <https://www.gpo.gov/fdsys/pkg/FR-2016-12-02/pdf/2016-27737.pdf>.

WIOA Joint Rule for Unified and Combined State Plans, Performance Accountability, and the One-Stop System Joint Provisions, 34 CFR Parts 361 and 463. Available at <https://www.gpo.gov/fdsys/pkg/FR-2016-08-19/pdf/2016-15977.pdf>.

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FISCAL AND ECONOMIC IMPACT:

The commission does not anticipate a fiscal or economic impact as a result of the proposed rule changes.

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COST OF COMPLIANCE:

*(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).*

The commission does not anticipate any fiscal impact on state agencies, units of local government, or the public. The commission does not anticipate that any small businesses will be affected by the proposed rule changes.

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DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The commission does not anticipate that any small businesses will be affected by the proposed rule changes.

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WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

No. The administrative rule changes are non-substantive in nature and update references, clarify existing language, and remove duplicative language.

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RULES PROPOSED:

589-020-0110, 589-020-0210, 589-020-0225, 589-020-0270, 589-020-0300, 589-020-0310, 589-020-0320, 589-020-0330, 589-020-0340, 589-020-0350

AMEND: 589-020-0110

RULE SUMMARY: Updating language and references to the Workforce Innovation and Opportunity Act (WIOA). Updating references to the Higher Education Coordinating Commission Office of Workforce Investments. Updating references to local workforce development boards. Clarifying existing rule language.

CHANGES TO RULE:

589-020-0110

Workforce Investment Act Methods of Administration ~~novation and Opportunity Act (WIOA) Nondiscrimination Plan ¶~~

(1) The Office of ~~Community Colleges and Workforce Development~~ Workforce Investments (OWI) will comply with the equal opportunity and nondiscrimination provisions of Section ~~¶~~ 188 of the federal ~~Workforce Investment Act of 1998 (P.L. 105-220)~~ novation and Opportunity Act (WIOA) of 2014, Public Law 113-128 and 29 CFR ~~part~~ Section ¶ 378 with respect to all programs and activities conducted as part of the Oregon ~~One-Stop~~

delivery system. This includes staff and employment practices of the staff responsible for implementing and administering the Act WIOA's programs and activities.¶

(2) Definitions: As used in OAR 589-020-01010, unless the context requires otherwise:¶

(a) "One-Stop delivery site" means a Workforce Investment Act IOA center designated by a Local Workforce Development Board (Local Board), and other certified centers recognized in the Memoranda of Understanding;¶

(b) "Workforce Investment Act" novation and Opportunity Act" (WIOA) means the federal Act as codified in Public Law 105-22013-128.¶

(3) In conducting both programs and activities that are part of the Oregon One-Stop delivery system, the Office will follow the Methods of Administration Higher Education Coordinating Commission (HECC) OWI will follow the Nondiscrimination Plan promulgated by the Governor in accordance with 29 CFR 37.4 Section 38.5. In particular, the Office OWI shall:¶

(a) Appoint an agency Equal Opportunity Officer to carry out the duties specified in the Methods of Administration Nondiscrimination Plan and ensure that, if employed less than full-time as the agency Equal Opportunity Officer, any other duties, responsibilities or activities do not create a conflict of interest or the appearance of a conflict of interest with the duties of the agency Equal Opportunity Officer;¶

(b) Collect data on participants as required by 29 CFR 37.37 to Sections 38.41 through 378.414 and the Methods of Administration Nondiscrimination Plan and provide aggregate data to the state Equal Opportunity Officer and the Department of Labor, as required;¶

(c) Permit the designated state Equal Opportunity Officer to monitor the Office OWI's compliance with the Workforce Investment Act, 29 CFR part WIOA, 29 CFR Section 378, and the Methods of Administration Nondiscrimination Plan by providing the state Equal Opportunity Officer access to:¶

(A) One-Stop delivery sites, including affiliate sites, from which the Office OWI operates its programs and activities;¶

(B) Equal Opportunity Notices created by the Office OWI and provided to participants; and¶

(C) Any contracts, grants, interagency agreements, or other arrangements between the Office OWI and other providers pertaining to programs and activities provided in the One-Stop system; and¶

(D) Data required to be collected pursuant to paragraph (b).¶

(d) Develop procedures and adopt administrative rules, as necessary, to comply with and monitor compliance with the Workforce Investment Act, 29 CFR part WIOA, 29 CFR Section 378, and the Methods of Administration by:¶

(A) The Office Nondiscrimination Plan by:¶

(A) OWI and its employees;¶

(B) Recipients of financial assistance from the agency under WIOA Title I of the Workforce Investment Act and their employees; and¶

(C) Entities operating programs or activities, or providing services, conducted as part of the Oregon One-Stop delivery system on behalf of the Office OWI, and employees thereof, including training providers; and¶

(e) Ensure that the agency OWI's Equal Opportunity Officer and other appropriate staff attend scheduled periodic training about the Methods of Administration Nondiscrimination Plan and associated duties; and¶

(f) Comply with any corrective actions imposed by the Governor for violations of the nondiscrimination and equal opportunity provisions of the Workforce Investment Act, 29 CFR part WIOA, 29 CFR Section 378, and the Methods of Administration Nondiscrimination Plan and cooperate with any investigative activities or monitoring requirements of the state Equal Opportunity Officer.¶

(4) Notwithstanding periodic monitoring by the state Equal Opportunity Officer, the Office OWI is responsible for all violations of the nondiscrimination and equal opportunity provisions of the Workforce Investment Act, 29 CFR part WIOA, 29 CFR Section 378, and the Methods of Administration Nondiscrimination Plan committed by:¶

(a) The Office OWI and its employees;¶

(b) Recipients of financial assistance from the Office OWI under WIOA Title I of the Workforce Investment Act and their employees; and¶

(c) Entities operating programs or activities, or providing services, conducted as part of the Oregon One-Stop

delivery system on behalf of the ~~Office~~ OWI, and employees thereof, including training providers.

Statutory/Other Authority: ORS 354.7550.150

Statutes/Other Implemented: ORS 660.330

REPEAL: 589-020-0210

RULE SUMMARY: Repealing outdated administrative rule.

CHANGES TO RULE:

~~589-020-0210~~

~~Distribution of WIA Title IB State Incentive Grants for Local Performance Measures~~

~~(1) Purpose: This rule establishes the requirements and methodology that the Office of Community Colleges and Workforce Development will utilize for distribution of state incentive grants and performance improvement plans pursuant to the federal Workforce Investment Act (WIA), PL 105-220, its amendments and regulations thereto.¶¶~~

~~(2) Definitions:¶¶~~

~~(a) Continuous Performance Improvement Plan: Funds made available to Local Workforce Investment Areas (LWIAs) that achieve a cumulative program area score less than 100% and at least 80% of the negotiated performance level on each performance indicator within a program area. See agency Policy 589-20.2 for application process.¶¶~~

~~(b) Cumulative Program Area Score: The aggregate amount by which a Local LWIA exceeds or falls below the negotiated performance levels in a particular program area.¶¶~~

~~(c) Exemplary Performance: Having achieved a cumulative program area score greater than 100% and at least 80% of the negotiated performance level on each performance indicator within a program area.¶¶~~

~~(d) Failure to Meet: Actual performance for any of the performance indicators that falls below the negotiated level of performance. Technical assistance is required to be provided under WIA Section 134(a)(2)(B)(iv) to Local Workforce Investment Areas (LWIAs) that fail to meet local performance measures.¶¶~~

~~(e) Grantee: Recipient of grant funds from the Department of Labor. Refers to the Office of Community Colleges and Workforce Development (the Office).¶¶~~

~~(f) Incentive Awards: Funds awarded to LWIAs that meet Exemplary Performance.¶¶~~

~~(g) Incentive Grants: A portion of the Statewide Employment and Training Activities funds under WIA Title IB Section 134(a)(2)(B)(iii) and (vi) that is required to be used to award exemplary performance by local areas on the local performance measures and to provide technical assistance for LWIAs that fail to meet local performance measures.¶¶~~

~~(h) Local Performance Measure: A performance measure established under Section 136(c) of WIA. Local performance measures consist of the core performance indicators established under Section 136(b)(2)(A) of WIA and fall into four program areas – adult, dislocated worker, youth, and customer satisfaction.¶¶~~

~~(i) Local Workforce Investment Area(s): The area(s) in the state designated by the Governor under Section 116 of WIA to which WIA Title IB funds are allocated to carry out WIA Title IB programs.¶¶~~

~~(j) Mandatory Performance Improvement Plan: LWIAs that achieve a cumulative program area score of less than 100% and less than 80% of the negotiated performance level on a performance indicator within a program area must prepare and seek funding for a plan to address failure to meet performance. See agency Policy 589-20.2 for application process.¶¶~~

~~(k) Negotiated Performance Level: The numeric performance targets agreed to by the State and the LWIA for each of the core performance indicators.¶¶~~

~~(l) Performance Measures: The performance indicators required by the Workforce Investment Act of 1998.¶¶~~

~~(m) Program Area: Four program areas used in the evaluation of performance for incentive purposes; adults, dislocated workers, youth, and customer satisfaction.¶¶~~

~~(n) Program Year (PY): The period July 1 through June 30 of each year.¶¶~~

~~(3) Available WIA funds shall be reserved for incentive awards and awarded in accordance with the following criteria:¶¶~~

~~(a) To be eligible for an incentive award for a program area, the LWIA must achieve a cumulative average score greater than 100% for the performance measures in a given program area (adult, dislocated worker, youth, or customer satisfaction); and¶¶~~

~~(b) The LWIA must achieve at least 80% of the negotiated performance level on each performance measure within~~

a given program area.¶¶

(c) Incentive funds shall be awarded annually after the end of each Program Year (PY), when data to compute actual performance becomes available.¶¶

(4) Funds available to each LWIA, which may be earned in accordance with (3)(a) and (b) shall be determined:¶¶

(a) By calculating the percent each of the adult, youth and dislocated worker program's PY allocation is of the total PY allocation;¶¶

(b) By multiplying the total funds available for incentive awards by the percentages identified in (5)(1) of this OAR to arrive at the available funds for each program (adult, dislocated worker, and youth); and finally¶¶

(c) By multiplying the amounts identified in (5)(b) of this OAR for each program by the PY allocation percentages of each LWIA for the respective program; these products are then added to arrive at the total funds that each LWIA might earn.¶¶

(5) Funds available to be earned for each program area (adult, dislocated worker, youth and customer satisfaction) shall be calculated in the following manner:¶¶

(a) Each program area bears equal weight (25% for each of the four program areas).¶¶

(b) The total funds that each LWIA might earn ((4)(c) of this OAR) are multiplied by 25% to arrive at the amount that might be earned for each program area (adult, dislocated worker, youth, and customer satisfaction).¶¶

(6) Incentive awards will be made from funds available for that purpose out of current year funding, e.g., PY'04 incentive funds are used to reward PY'03 performance.¶¶

(7) Awarded incentive funds may be used for any activities allowed under WIA Title IB.¶¶

(8) Definitions used for performance measures shall conform to those provided by the Department of Labor in Training and Employment Guidance Letter (TEGL) 17-05.¶¶

(9) Incentive awards shall only be applied to performance in Title IB programs.¶¶

(10) Funds for Continuous Performance Improvement Plans and Mandatory Performance Improvement Plans will be made available for LWIAs whose cumulative program area scores fall below 100% of the negotiated level.¶¶

(a) LWIAs whose cumulative program area score falls below 100% of the negotiated performance level may seek funding for Continuous Performance Improvement Plans.¶¶

(b) LWIAs whose cumulative program area score falls below 80% of the negotiated performance level must develop and seek funding for Mandatory Performance Improvement Plans.¶¶

(c) Funds may be used for any allowable WIA Title IB activities in support of a Continuous Performance Improvement Plan or Mandatory Performance Improvement Plan to correct identified deficiencies that led to failure to meet agreed upon levels of performance.¶¶

(d) Continuous Performance Improvement Plan and Mandatory Performance Improvement Plan awards will not exceed the amount the LWIA would have earned had performance been met.¶¶

(e) LWIAs seeking funds to support Continuous Performance Improvement Plan or Mandatory Performance Improvement Plan must submit the plan in writing to the Office. The plan shall be submitted timely, identify the problem/issue to be remedied, and provide a budget supporting the work to be accomplished.¶¶

(11) Funds remaining after distribution of all incentive awards, and Continuous Improvement Plan and Mandatory Performance Improvement Plan awards will revert to the Office's 15% Statewide Activities Fund for allowable uses at the discretion of the Director of the Office.

Statutory/Other Authority: ORS 351.755, 660.318

Statutes/Other Implemented: 660.318

REPEAL: 589-020-0225

RULE SUMMARY: Repealing outdated administrative rule.

CHANGES TO RULE:

~~589-020-0225~~

~~Employer Workforce Training Fund~~

~~(1) Purpose: The Employer Workforce Training Account (EWTA) was established by Executive Order #03-16 to support the retention and growth of living wage jobs, a skilled workforce, and competitive businesses in Oregon. To administer the EWTA, the Office of Community Colleges and Workforce Development (Office) established the Employer Workforce Training Fund (EWTF). This workforce development strategy must ensure that public and private sector investments are leveraged for the greatest impact and that training programs are responsive to the needs of business, industry, and the workers.¶¶~~

~~(2) Definitions:¶¶~~

~~(a) Employer Workforce Training Account (EWTA): Established by Executive Order to support the Governor's economic recovery plan to ensure that a skilled workforce available to keep Oregon's industries productive and competitive.¶¶~~

~~(b) Employer Workforce Training Fund (EWTF): Includes Workforce Response Team (WRT) funds, EWTF Statewide Opportunity funds (SO) and the EWTF Governor's Strategic Training Fund (GSTF).¶¶~~

~~(3) General Provisions: Employer Workforce Training Fund (EWTF).¶¶~~

~~(a) The EWTF has three outcome goals:¶¶~~

~~(A) Create and retain living wage jobs in Oregon;¶¶~~

~~(B) Build a highly skilled workforce, especially in high-wage, high-demand industries;¶¶~~

~~(C) Enhance the global competitiveness of Oregon businesses based on the skill of their workforce.¶¶~~

~~(b) The EWTF includes Oregon's Workforce Investment Act (WIA) allocation, identified as reserve funds, under section 128(a) and 133(a) of the WIA.¶¶~~

~~(c) The OWIB Strategic Plan gives direction to the EWTF which is most advantageous economically to the state and workforce regions. The direction for EWTF funds may be updated at the direction of the OWIB and the Governor or his designee through the OWIB Strategic Plan.¶¶~~

~~(d) All employers and partner agencies participating in regional or statewide EWTF projects must meet the requirements of the Office Methods of Administration (MOA).¶¶~~

~~(e) OWIB must notify the Office annually, prior to July 1, of the funding allocation for EWTF. A minimum of 65% of the funds shall be allocated regionally for WRT purposes. The remainder will be allocated at OWIB's discretion for SO and GSTF.¶¶~~

~~(f) The Office shall allocate and distribute EWTF in accordance with the OWIB allocation. All funds must be expended on a cost reimbursement basis.¶¶~~

~~(g) EWTF projects must comply with all applicable federal, state and local laws, rules, regulations, executive orders, ordinances or orders applicable to this funding.¶¶~~

~~(h) All participants in any EWTF award decision must comply with conflict of interest requirements at 29 CFR 667.200(a)(4)(i) by neither casting a vote on, nor participating in any decision-making capacity.¶¶~~

~~(i) All EWTF projects are subject to the Office Monitoring.¶¶~~

~~(4) EWTF Workforce Response Team (WRT) Funds¶¶~~

~~(a) The EWTF WRT funds shall be used to support the training of workers at outlined in the Office policy 589-20.4.¶¶~~

~~(b) The Office shall distribute the WRT funds to the Local Workforce Investments Boards for regional distribution through the local plan.¶¶~~

~~(5) EWTF Statewide Opportunity (SO) Funds:¶¶~~

~~(a) The SO funds are awarded for the purpose of solving challenges or engaging in opportunities in Oregon with regard to its workforce development needs. SO funds will be focused in opportunity areas identified by the OWIB and the Governor or his designee.¶¶~~

(b) OWIB will:

(A) Seek, identify, and/or select proposals based on strategic plan priorities;

(B) Establish eligibility criteria and application process for SO grants;

(C) Set performance measures and reporting for SO projects;

(D) Approve SO projects;

(E) Adopt policies as needed for SO funds.

(c) The Office will administer the EWTF SO funds.

(6) EWTF Governor's Strategic Training Fund (GSTF):

(a) The GSTF supports the retention and growth of living wage jobs, a skilled workforce, and competitive businesses in Oregon. GSTF is a flexible, responsive, and time-sensitive resource for training Oregon's private sector workforce. The emphasis is to upgrade the skills of the workforce in order to increase productivity, keep Oregon businesses viable and competitive, and offer new skills and opportunities to Oregon's workers. The Governor or his designee, the Oregon Economic and Community Development Department (OECDD), the Office and OED will set the broad criteria for GSTF. Funding decisions shall be made by the Governor and/or his designee. Upon the Governor's approval, an approved application will be sent to the Office to award funds.

(b) OWIB will coordinate with the Governor and/or his designee to:

(A) Establish eligibility criteria and application process for GSTF projects;

(B) Set performance measures and reporting for GSTF projects;

(C) Coordinate approval of GSTF projects decisions with the Governor and/or his designee;

(D) Adopt policies as needed for GSTF.

(c) The Office will administer the EWTF GSTF.

Statutory/Other Authority: ORS 351.755, 660.318

Statutes/Other Implemented: 660.318, 660.340

REPEAL: 589-020-0270

RULE SUMMARY: Repealing outdated administrative rule.

CHANGES TO RULE:

~~589-020-0270~~

~~Performance Measures Improvement~~

- ~~(1) Purpose: The purpose of this rule is to establish the requirements and procedures that take effect if a Local Area fails to meet the local performance measures negotiated with the Office pursuant to the federal Workforce Investment Act (WIA), PL 105-220, its amendments and regulations thereto.¶¶~~
- ~~(2) Definitions: As used in OAR 589-020-0270, unless the context requires otherwise:¶¶~~
  - ~~(a) Failure to Meet: Actual performance for any of the 17 core performance indicators that falls below 80% of the negotiated level of performance. Technical assistance is required to be provided under WIA Section 134(a)(2)(B)(iv) to Local Workforce Investment Areas (LWAs) that fail to meet local performance measures.¶¶~~
  - ~~(b) Negotiated Levels of Performance: The numeric performance target agreed to by the Office and the LWA for each of the 17 core performance indicators.¶¶~~
  - ~~(c) Performance Measures: the 17 performance indicators required by the Workforce Investment Act of 1998, section 136; Final Rules, 20 CFR part 666, published at 65 federal Register 49419 (August 11, 2000).¶¶~~
  - ~~(d) Program Area: A cluster of measures used in the evaluation of performance for incentive or improvement purposes. There are four program areas: Adults, Dislocated Workers, Youth (both older and younger youth), and customer satisfaction (even though it is not technically a "program").¶¶~~
  - ~~(e) Unawarded Incentive Grant Funds: Those funds remaining after all incentive awards have been made.¶¶~~
- ~~(3) The LWA must achieve at least 80% of the negotiated performance level on each performance measure within a given program area to qualify as having met performance.¶¶~~
- ~~(4) Technical assistance shall be provided by the Office or upon request by the Office, the U.S. Department of Labor, Employment and Training Administration, if an LWA fails to meet negotiated levels of performance relating to a program area for any program year.¶¶~~
  - ~~(a) Technical assistance may include assistance in the development of a performance improvement plan, or the development of a modified local plan.¶¶~~
  - ~~(b) The following criteria must be considered in providing technical assistance:¶¶~~
    - ~~(A) The action taken must be remedial in nature rather than punitive; and¶¶~~
    - ~~(B) Action taken must be appropriate to remedy the problem causing the poor performance.¶¶~~
- ~~(5) When the Office determines the local area has failed to meet any negotiated performance, the Office notifies the local area. Upon such notification, the procedures described below shall be followed:¶¶~~
  - ~~(a) The local area analyzes the problem relative to the failed indicator(s);¶¶~~
  - ~~(b) The local area develops and submits a program improvement plan to the Office within 30 calendar days of notification from the Office designed to address performance not achieved. The plan shall include proposed actions and costs. The local area may request the assistance of the Office in developing the program improvement plan.¶¶~~
  - ~~(c) Within 30 calendar days following receipt of the plan, the Office reviews and may approve the program improvement plan based on the following criteria:¶¶~~
    - ~~(A) The plan adequately addresses the indicator(s) not achieved; and¶¶~~
    - ~~(B) The costs of the planned action are reasonable.¶¶~~
  - ~~(d) If the program improvement plan is not approved, the Office notifies the local area of the decision and provides assistance to address the issues resulting in the plan disapproval.¶¶~~
- ~~(6) Upon approval of the program improvement plan by the Office, Unawarded Incentive Grant funds shall be made available in accordance with OAR 589-020-0270 for technical assistance/program improvement to those local areas whose performance for any of the 17 core performance indicators falls below 80% of the negotiated performance level.¶¶~~
- ~~(7) If failure to meet performance as defined in (2)(a), (3) and (4) of this OAR continues for a second consecutive~~

year, the Office shall take corrective action which may include development of a reorganization plan through which the Office may:¶¶

(a) Require the appointment and certification of a new local board (consistent with the criteria established under WIA Section 117(b);¶¶

(b) Prohibit the use of eligible providers and one-stop partners identified as achieving a poor level of performance; or¶¶

(c) Take such other actions as the Office determines are appropriate to improve the performance of the local area including those identified in (4) through (6) of this OAR. Other actions may include the selection of an alternative entity to administer the program(s) for the local area. The alternative entity may be a newly formed workforce investment board or any agency jointly selected by the Office and the chief elected official(s) of the LWA.¶¶

(8) A local area that is subject to a reorganization plan under (7) of this OAR may, not later than 30 days after receiving notice of the reorganization plan, appeal to the Office to rescind or revise such plan. In such case, the Office shall make a final decision not later than 30 days after the receipt of the appeal.¶¶

(a) The decision of the Office shall become effective at the time the Office issues the decision pursuant to (8) of this OAR. Such decision shall remain effective unless the Secretary of the U.S. Department of Labor rescinds or revises such plan pursuant to (8)(b) of this OAR.¶¶

(b) The local area may, not later than 30 days after receiving a decision from the Office pursuant to (8) of this OAR, appeal such decision to the Secretary of the U.S. Department of Labor. In such case, the Secretary shall make a final decision not later than 30 days after the receipt of the appeal.¶¶

[Publications: Publications referenced are available from the agency.]

Statutory/Other Authority: ORS 351.755

Statutes/Other Implemented: ORS 351.755

AMEND: 589-020-0300

RULE SUMMARY: Updating language and references to the Workforce Innovation and Opportunity Act (WIOA). Updating references to the Higher Education Coordinating Commission Office of Workforce Investments. Updating references to local workforce development boards. Clarifying existing rule language.

CHANGES TO RULE:

589-020-0300

~~Procedure for Resolving a Non-Criminal Allegation of a Violation of the Workforce Innovation and Opportunity Act, Regulations, Grant, or Other Agreement Under the Workforce Investment Act filed Directly Against the Department of Community Colleges and Workforce Development~~ filed Directly Against the Higher Education Coordinating Commission

(1) If there is a complaint against the ~~Office~~ Higher Education Coordinating Commission (HECC) and the complainant is a Local Workforce ~~Area~~ Development Board subrecipient, another grant recipient, or other entity receiving ~~WIA funds directly from the Office~~ workforce Innovation and Opportunity Act (WIOA) funds directly from the Office of Workforce Investments (OWI), the initial complaint must be filed ~~at the State level with the Office~~ WI. Complainants are entitled to an opportunity for informal resolution of the complaint and a contested case hearing.¶

(2) Both the informal resolution process and the contested case hearing must be completed within 60 days of receipt of a complaint.¶

(3) These procedures shall be used for the resolution of complaints arising from actions, such as audit disallowance or the imposition of sanctions, taken by the governor with respect to audit findings, investigations, or monitoring reports.

Statutory/Other Authority: ~~ORS 354.755, 0.150,~~ ORS 660.318

Statutes/Other Implemented: ORS 660.318

REPEAL: 589-020-0310

RULE SUMMARY: Repealing outdated administrative rule. Consolidating language into 589-020-0330.

CHANGES TO RULE:

#### 589-020-0310

##### ~~Confidentiality- Definitions~~

- ~~(1) "Exiter" means a participant who has a date of case closure, completion or known exit from WIA-funded or non-WIA funded partner services within the quarter (hard exit); or a participant who does not receive any WIA-funded or non-WIA funded partner service for 90 days and is not scheduled for future services except follow-up services (soft exit).¶¶~~
  - ~~(2) "Participant" means a person applying for or receiving training in programs conducted under Title IB of the Act.¶¶~~
  - ~~(3) "Participant behavioral records" are records which include, but are not limited to, psychometric testing, personality evaluations, written transcripts of incidents relating to participant behavior, grades, conduct, personal and academic evaluations, counseling, alcohol or substance abuse evaluation and/or treatment, disciplinary actions, if any, and other personal evaluations.¶¶~~
  - ~~(4) "Participant records" include all participant records, participant behavioral records and documents which contain personally identifiable information maintained by the recipient and its subrecipients.¶¶~~
  - ~~(5) "Personally identifiable" means that the participant records include:¶¶~~
    - ~~(a) The name of the participant, the participant's parents;¶¶~~
    - ~~(b) Other family members;¶¶~~
    - ~~(c) The address of the participant;¶¶~~
    - ~~(d) A personal identifier, such as the participant's Social Security number or phone number;¶¶~~
    - ~~(e) A list of personal or physical characteristics which would make the participant's identity easily traceable; or¶¶~~
    - ~~(f) Other information which would make the participant's identity easily traceable.¶¶~~
  - ~~(6) "Program staff" means Recipient and Subrecipient staff.¶¶~~
  - ~~(7) "Recipient" means the Governor and the Office.¶¶~~
  - ~~(8) "Release" means to make participant records available to individuals, agencies or businesses for inspection in original or duplicate form.¶¶~~
  - ~~(9) "Surrogate" means an individual who acts in the place of a parent or guardian in safeguarding a participant's rights when the parent or guardian is unknown (the parent cannot be identified or ascertained by diligent inquiry), unavailable (after reasonable effort, the whereabouts of the parents cannot be ascertained) or the participant is a ward of the State. "Surrogate" may also apply to disabled adults who have a designated legal guardian or advocate.~~
- ~~Statutory/Other Authority: ORS 351.755, 660.318~~
- ~~Statutes/Other Implemented: ORS 660.312~~

AMEND: 589-020-0320

RULE SUMMARY: Updating language and references to the Workforce Innovation and Opportunity Act (WIOA). Updating references to the Higher Education Coordinating Commission Office of Workforce Investments. Updating references to local workforce development boards. Clarifying existing rule language.

CHANGES TO RULE:

589-020-0320

#### Authority to Request Social Security Numbers ¶

(1) The purpose of this rule is to establish legal authority, policy, and procedures for obtaining and using Social Security numbers from participants to comply with record-keeping and performance measurement requirements for services provided under Title IB of the federal Workforce Investment Act of 1998 (P.L. 105-220) (~~WIA~~) novation and Opportunity Act (WIOA) of 2014, Public Law 113-128. ¶

(2) It is the policy of ~~the Office of Community Colleges and Workforce Development~~ Investments (OfficeWI) and providers of WIOA Title IB services to request participants registering for or participating in services provided in relation to WIOA Title IB services or activities to voluntarily provide and authorize the use of their Social Security numbers. Participants are requested to release their Social Security numbers for purposes of record keeping related to referral and service delivery, and for performance measurement, research, planning, and program evaluation. The request shall notify the participant that ~~of:~~ ¶

(a) Release of the Social Security number is voluntary; ¶

(b) ~~Request for release is made under authority of this rule; ORS 660.339; and WIA sections 136, 185 and 188, 29 USC 2871, 2935 and 2938~~ The authority through which the request for release is made; and ¶

(c) ~~The specific~~ uses that will be made of the Social Security number. Those specific uses must be described in the notification. ¶

(3) ~~Procedures:~~ The request ~~of~~ a participant to release ~~his or her~~ their Social Security number shall conform to forms and/or procedures developed by ~~the OfficeOWI~~. Any alteration in the wording or procedure must be approved by ~~the OfficeOWI~~. When an individual registers or applies for WIOA Title IB services, the individual will be provided with a notice about the request to obtain and use the Social Security number. Individuals will be requested to voluntarily agree to the use of Social Security numbers for the uses described in that notice. ¶

(a) Refusal to voluntarily disclose or permit the use of ~~his/her~~ a Social Security number by the individual will not be used as a basis to deny the individual any right, benefit, or privilege provided solely under WIOA Title IB ~~of the Workforce Investment Act.~~ ¶

(b) Any specific program that requests or requires disclosure of a Social Security number in relation to or as a condition of eligibility to participate in that specific program (such as unemployment insurance compensation, Temporary Assistance for Needy Families, ~~food stamps~~ Supplemental Nutrition Assistance Program, or Oregon Health Plan) will separately advise applicants about those specific eligibility requirements. If an individual refuses to voluntarily consent to disclosure of ~~his or their~~ Social Security number for WIOA Title IB purposes, but releases the Social Security number as a mandatory condition for participating in a specific program, the mandatory program will mask the Social Security number or take any other appropriate action to ensure it is used only for purposes allowed under the mandatory disclosure requirement. ¶

(c) A completed form that authorizes the use of Social Security numbers and related records for WIOA Title IB purposes will remain valid unless or until revoked, and ~~the OfficeOWI~~ and providers in the WIOA Title IB service delivery system may utilize ~~the~~ Social Security numbers for authorized purposes. ¶

(d) If an individual refuses to authorize the use or disclosure of ~~his or her~~ their Social Security number, ~~the OfficeOWI~~ or WIOA Title IB providers may assign an alternative individual identification number. Such number is personally identifiable information and is governed by disclosure requirements under the Public Records Law, ORS 192.410 to 192.505. ¶

(e) Participants receiving services funded by WIOA Title IB who enter work-based programs such as on-the-job training or work experience activities will be required to disclose their Social Security numbers for employment or

payroll purposes. All other provisions of this rule will apply to the use of the Social Security number.¶

(f) Social Security numbers will not be disclosed to the general public.

Statutory/Other Authority: ~~ORS 354.755, 0.150~~, ORS 660.339

Statutes/Other Implemented: ORS 660.339

AMEND: 589-020-0330

RULE SUMMARY: Updating language and references to the Workforce Innovation and Opportunity Act (WIOA). Updating references to the Higher Education Coordinating Commission Office of Workforce Investments. Updating references to local workforce development boards. Clarifying existing rule language and consolidating language from 589-020-0310.

CHANGES TO RULE:

589-020-0330

Confidentiality ¶¶

~~(1) This Oregon Administrative Rule (OAR) purpose of this rule is to:~~¶

~~(a) Provides information to the recipient and subrecipients when making decisions concerning the disclosure of information from applicant and participant records. The purpose of the OAR is:~~¶

~~(a) To protect applicants and participants from unreasonable invasions into their privacy;~~¶

~~(b) To give applicants and participants access to their records; and~~¶

~~(c) To inform applicants and participants about the reasonable uses of their records for purposes of administering the Workforce Innovation and Opportunity Act (WIOA).~~¶

(2) As used in OAR 589-020-0330 the following definitions apply:¶

(a) "Applicant" means a person applying or registering for services in programs conducted under WIOA Title I of the Act.¶

(b) "Exit" means a participant who has a date of case closure, completion or known exit from Workforce Innovation and Opportunity Act (WIOA)-funded or non-WIOA funded partner services within the quarter; or a participant who does not receive any WIOA-funded or non-WIOA funded partner service for 90 days and is not scheduled for future services except follow-up services.¶

(c) "Participant" means a person applying for or receiving services in programs conducted under WIOA Title I of the Act.¶

(d) ¶

(d) "Participant behavioral records" are records which include, but are not limited to, psychometric testing, personality evaluations, written transcripts of incidents relating to participant behavior, grades, conduct, personal and academic evaluations, counseling, alcohol or substance abuse evaluation and/or treatment, disciplinary actions, if any, and other personal evaluations.¶

(e) "Participant records" include all participant records, participant behavioral records and documents which contain personally identifiable information maintained by the recipient and its subrecipients.¶

(f) "Personally identifiable" means that the applicant or participant records include:¶

(A) The name of the applicant or participant, ¶

(B) The name(s) of the applicant's or participant's their parents; or (s); ¶

(C) The name(s) of the applicant's or participant's other family members; ¶

(D) The address of the applicant or participant; ¶

(E) A personal identifier, such as the applicant's or participant's Social Security number or phone number; ¶

(F) A list of personal or physical characteristics which would make the applicant's or participant's identity easily traceable, or ¶

(G) Other information which would make the applicant's or participant's identity easily traceable. ¶

(g) "Program staff" means recipient and subrecipient staff. ¶

(h) "Recipient" means the governor and the Office of Workforce Investments. ¶

(i) "Release" means to make participant records available to individuals, agencies, or businesses for inspection in original or duplicate form. ¶

(j) "Surrogate" means an individual who acts in the place of a parent or guardian in safeguarding an applicant's or participant's rights when the parent or guardian is unknown (the parent cannot be identified or ascertained by diligent inquiry), unavailable (after reasonable effort, the whereabouts of the parents cannot be ascertained) or

the applicant or participant is a ward of the State. "Surrogate" may also apply to disabled adults who have a designated legal guardian or advocate.¶

(3) No applicant or participant records shall be released without the express consent of the applicant or participant, their parent or legal guardian or surrogate, except as noted in this rule.¶

(a) An applicant or participant may provide written consent for the examination or release of ~~his/het~~their records;¶

(b) An applicant or participant who is under the age of 18 and is not legally emancipated shall not authorize the release of any records pertaining to ~~him/herself~~himself/es without the written consent of their parent, legal guardian, or surrogate unless otherwise provided for herein;¶

(c) Custodial and non-custodial parents share equal access to applicant or participant records unless a court order is presented to the contrary.¶

(4) Records of applicants or participants, who are at least 18 years of age, shall not be released to anyone, including their parent, legal guardian or surrogate, without the written consent of the applicant or participant unless otherwise provided pursuant to applicable state or federal law.¶

(5) To the extent otherwise authorized by applicable state or federal law, release of applicant or participant records is authorized for purposes of:¶

(a) As required to meet emergency medical or other unusual circumstances, but only if the release of such information is necessary to protect the health and safety of the applicant or participant or other individuals;¶

(b) Among subrecipient staff, and subrecipients and their contractors when necessary, for the provision of effective and efficient services or as necessary with other one-stop programs for which the clients may be eligible and only with a properly executed release of information form;¶

(c) Pursuant to a court order or lawfully issued subpoena;¶

(d) To authorized federal, state, or local staff, or designee, to determine compliance with nondiscrimination and equal employment opportunity requirements under 29 CFR ~~Part~~Section 378;¶

(e) To public agencies when the applicant or participant has applied to the agency for assistance or service or is receiving such assistance or service only with a properly executed release of information form;¶

(f) To private auditing firms employed by the subrecipient to carry out monitoring of its programs for internal purposes only with a properly executed release of information form;¶

(g) To organizations who provide test scoring and/or data analysis provided that the organization has established written policies to preserve the confidentiality of the records, will not send reports containing applicant or participant personally identifiable information to anyone other than the organization requesting the service; and applicant or participant record information will not be disclosed when disclosure would constitute a clearly unwarranted invasion of personal privacy only with a properly executed release of information form;¶

(h) To organizations, including state and federal workforce development, educational agencies and community colleges and their local boards, conducting studies for or on behalf of employment and training agencies, educational agencies, the State of Oregon ~~Workforce Invest~~Workforce and Talent Development Board for purposes which may include developing, validating, or administering predictive tests, program enhancement or in order to develop statistical and demographic data to facilitate the creation of strategies to improve the education, training and quality of Oregon's workforce provided that:¶

(A) The information shall be used only for the purposes for which it is made available; and¶

(B) Personally identifiable information contained in the applicant or participant records has been transformed or otherwise encoded by a staff member from the agency releasing the records to a form usable by the organization conducting the study or, if applicable, to those standards required by the ~~S~~shared Information ~~S~~system, in order to safeguard the identity of the applicant or participant.¶

(6) The subrecipients shall establish policies for protecting the confidentiality of applicant or participant records and procedures for releasing or examining such records which will include all of the following:¶

(a) Hours during which record release or examination may occur;¶

(b) That a written request for such release or examination must be made;¶

(c) That the request specifically identify the applicant or participant record to be examined;¶

(d) That the requestor provide ~~his or her~~their name and address;¶

- (e) The person to whom such requests should be directed (normally the custodian of records);¶
- (f) That the fee schedule for record production not exceed the actual cost of production, including staff time, in locating, reviewing and copying the records; and¶
- (g) A record of each release, for which an applicant or participant, parent, legal guardian or surrogate's written consent is required, shall be maintained. Such record shall include the name of the party seeking access, the date access was granted, and the purpose for which the party requested or was authorized to use the records. The records of disclosure should be kept with, but not released or examined as a part of, the applicant's or participant's records. If participant behavioral records are released, the record of disclosure shall include the name of the individual who explained the behavioral portion of the records.

Statutory/Other Authority: ~~ORS 354.755, 0.150~~, ORS 660.339

Statutes/Other Implemented: ORS 660.339

REPEAL: 589-020-0340

RULE SUMMARY: Repealing outdated administrative rule.

CHANGES TO RULE:

589-020-0340

Eligible Training Provider – Definitions

- (1) "Adult Education" Services or instruction below the postsecondary level for individuals who:
  - (a) Have attained 16 years of age;
  - (b) Are enrolled or required to be enrolled in secondary school under State law; and
  - (A) Lack sufficient mastery of basic educational skills to enable the individuals to function effectively in society;
  - (B) Do not have a secondary school diploma or its recognized equivalent, and have not achieved an equivalent level of education; or
  - (C) Are unable to speak, read, or write the English language.
- (2) In order for Adult Education and literacy activities to be considered a training activity, it must be in combination with any of the following:
  - (a) Occupational training;
  - (b) On-the-Job training;
  - (c) Programs that combine workplace training with related training;
  - (d) Occupational skills training programs;
  - (e) Skill upgrading and training;
  - (f) Entrepreneurial training; and
  - (g) Job readiness training.
- (3) "Apprenticeship Training" One to six year programs that are structured, paid on-the-job training directly supervised by journey persons in a trade. Programs include related technical instruction of at least 144 hours per year. Apprenticeship programs are based on agreements between employers and apprentices and are approved and registered with the registration agency (state or federal).
- (4) "Contracted Training" is designated to prepare specifically identified individuals for entrance into the workforce in a particular occupation or group of occupations. Training is generally offered through a contract between an agency, business, or other entity and a training provider. Performance outcomes are a key component of the agreement and are the responsibility of the sponsoring organization.
- (5) "Customized Training" Training that is:
  - (a) Designed to meet the special requirements of an employer (including a group of employers);
  - (b) Conducted with a commitment by the employer to employ an individual on successful completion of the training; and
  - (c) For which the employer pays for not less than 50% of the cost of the training.
- (6) "Entrepreneurial Training" Training that provides an individual with the knowledge and skills to start and grow a business.
- (7) "Occupational Skills Training" Programs designed to prepare persons with the skill and knowledge to enter employment in a specific occupation or group of occupations. Programs vary in length depending on the current knowledge of the participant and the skills necessary for employment in the particular field.
- (8) "On-the-Job Training" Training by an employer that is provided to a paid participant while engaged in productive work in a job:
  - (a) Provides knowledge or skills essential to the full and adequate performance of the job;
  - (b) Provides reimbursement to the employer of up to 50% of the wage rate of the participant, for the extraordinary costs of providing the training and additional supervision related to the training; and
  - (c) Is limited in duration as appropriate to the occupation for which the participant is being trained, taking into account the content of the training, the prior work experience of the participant, and the service strategy of the participant, as appropriate.
- (9) "State List of Eligible Training Providers and Programs" The sanctioned state list of training programs that are

certified for use by WIA Participants, WorkSource Oregon Centers and others to provide training services under the Workforce Investment Act under Title IIB for Adult and Dislocated Workers.¶

(10) "Workplace Training and Related Instruction" A program of study that combines occupational skills training, related instruction and work experience to provide persons with the skills, knowledge and abilities to enter employment in a specific occupation or group of occupations.

Statutory/Other Authority: ~~ORS 351.755, 660.318~~

Statutes/Other Implemented: ~~ORS 660.318~~

REPEAL: 589-020-0350

RULE SUMMARY: Repealing outdated administrative rule.

CHANGES TO RULE:

~~589-020-0350~~

~~Eligible Training Provider Process~~

~~(1) The workforce investment system established under WIA emphasizes informed customer choice, system performance, and continuous improvement. The eligible provider process is part of the strategy for achieving these goals. This rule sets forth the procedures that Local Boards, in partnership with the State, shall follow to identify providers whose performance qualifies them to receive WIA funds to provide training services to adults and dislocated workers.~~

~~(2) A provider is initially eligible to receive WIA Title IB funds to provide training services to eligible adult and dislocated worker participants through an individual training account if they are placed on the statewide list of eligible providers pursuant to this section.~~

~~(3) Training services to be provided under the Act using training providers on the Statewide List of Eligible Training Providers shall include the following:~~

~~(a) Apprenticeship;~~

~~(b) Entrepreneurial Training;~~

~~(c) Occupational Training Programs (Occupational Skills Training);~~

~~(d) Occupational Course(s) of Study;~~

~~(e) Workplace Training Programs;~~

~~(f) Adult Education, if in combination with any one of a-e, above; and~~

~~(g) Local Boards, if they meet the conditions of WIA section 117(f)(1).~~

~~(4) On-the-job training and customized training providers need not be on the Statewide List of Eligible Training Providers and Programs to receive Title IB funds.~~

~~(5) Community-based organizations and other private organizations serving participant groups that face multiple barriers to employment need not be on the Statewide List of Eligible Training Providers and Programs to receive Title IB funds.~~

~~(6) Training providers may submit an application to any of the Local or Regional Workforce Investment Boards in the State to be approved for inclusion on the Statewide List of Eligible Training Providers and Programs.~~

~~(7) To be eligible to be a training provider on the Statewide List of Eligible Training Provider and Programs, the provider shall meet:~~

~~(a) All applicable state and federal licensure requirements.~~

~~(b) The requirements of 20 CFR 663 subpart E, WIA section 122, and any local criteria adopted by Local Boards.~~

~~(8) The Office is responsible for:~~

~~(a) Establishing the procedure for use by the local boards to determine initial and subsequent eligibility of a provider who seeks to receive WIA funds to deliver a program of training services.~~

~~(A) The procedure shall specify that institutions and organizations that are Higher Education Act Title IV or National Apprenticeship Act eligible shall be considered automatically eligible to be on the Statewide List of Eligible Training Providers and Programs through June 30, 2001 once they have submitted a complete and accurate application with information on the school, institution or organization and on the program or course of study for which they seek ETP certification.~~

~~(B) For those institutions and organizations not listed in subsection (7)(a)(A), the procedure shall require them to submit additional information relating to performance criteria including:~~

~~(i) Organizational Capacity;~~

~~(ii) Training Services Capacity;~~

~~(iii) Focus on Employment and Training Needs;~~

~~(iv) Facilities, Equipment and Safety;~~

~~(v) Employment Opportunities;~~

- (vi) Student Evaluation and Monitoring;¶¶
- (vii) Special Population Services;¶¶
- (viii) Demonstrated Performance;¶¶
- (b) Developing and maintaining the State List of Eligible Providers and Programs, which is comprised of approved providers, submitted by Local Boards;¶¶
- (c) Having on file a signed statement from each Eligible Training Provider that the provider assures the accuracy and truthfulness of applications prior to certification and inclusion on the State List of Eligible Training Providers and Programs.¶¶
- (d) Verifying the accuracy of the information submitted by the provider as required by the Act, in consultation with the Local Board;¶¶
- (e) Removing providers who do not meet the requirements of this section or who do not meet program performance levels;¶¶
- (f) Taking appropriate enforcement actions, against providers in the case of the intentional provision of inaccurate information, as described in WIA section 122(f)(1), and in the case of a substantial violation of the requirements of WIA, as described in WIA section 122(f)(2);¶¶
- (g) Disseminating the State list, accompanied by cost information relating to each provider, to One-Stop operators throughout the State; and¶¶
- (h) Adopting a grievance procedure for training providers whose application was removed from the statewide list.¶¶
- (9) The Local Board shall:¶¶
  - (a) Develop an application or use the state approved application seeking the information required by the state pursuant to this section as well as any additional application components and criteria identified by the local board;¶¶
  - (b) Accept applications from those interested in becoming an eligible training provider;¶¶
  - (c) Develop a process for reviewing and approving all completed applications;¶¶
  - (d) Forward all approved applications to the Office;¶¶
  - (e) Adopt a grievance procedure for training providers whose application is not approved; and¶¶
  - (f) Make the complete Statewide List of Eligible Training Providers and Programs available to participants and customers through the WorkSource Oregon Centers.¶¶
- (10) The Office shall administer the criteria and application procedures and provide guidance to Local Boards to be used in administering the eligible training provider process at the local level.¶¶

[Publications: Publications referenced are available from the agency.]

Statutory/Other Authority: ORS 351.755, 660.318

Statutes/Other Implemented: ORS 660.318