

118TH CONGRESS
2D SESSION

S. 4501

To amend the Workforce Innovation and Opportunity Act to improve the performance accountability system.

IN THE SENATE OF THE UNITED STATES

JUNE 11, 2024

Mr. MULLIN introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Workforce Innovation and Opportunity Act to improve the performance accountability system.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “WIOA Performance
5 Accountability Improvement Act”.

6 **SEC. 2. PERFORMANCE ACCOUNTABILITY SYSTEM.**

7 (a) STATE PERFORMANCE ACCOUNTABILITY MEAS-
8 URES.—

9 (1) PRIMARY INDICATORS OF PERFORMANCE.—

10 Section 116(b)(2)(A) of the Workforce Innovation

1 and Opportunity Act (29 U.S.C. 3141(b)(2)(A)) is
2 amended—

3 (A) in clause (i)—

4 (i) in subclause (II)—

5 (I) by striking “fourth” and in-
6 serting “second”; and

7 (II) by inserting “and remain in
8 unsubsidized employment during the
9 fourth quarter after exit from the pro-
10 gram” after “the program”;

11 (ii) in subclause (V)—

12 (I) by striking “, during a pro-
13 gram year,”;

14 (II) by striking “are in” and in-
15 serting “enter into”; and

16 (III) by inserting before the
17 semicolon at the end the following:
18 “within 6 months after the quarter in
19 which the participant enters into the
20 education or training program”; and

21 (iii) by amending subclause (VI) to
22 read as follows:

23 “(VI) of the program partici-
24 pants who received training services
25 and who exited the program during a

1 program year, the percentage of such
2 program participants who completed,
3 prior to such exit, on-the-job training,
4 employer-directed skills development,
5 incumbent worker training, or an ap-
6 prenticeship.”;

7 (B) in clause (ii)—

8 (i) in subclause (II), by striking
9 “and” at the end;

10 (ii) in subclause (III), by striking the
11 period at the end and inserting “; and”;
12 and

13 (iii) by adding at the end the fol-
14 lowing:

15 “(IV) the percentage of program
16 participants who, during a program
17 year, participate in paid or unpaid
18 work experiences as described in sec-
19 tion 129(c)(2)(C).”; and

20 (C) by striking clause (iv).

21 (2) LEVELS OF PERFORMANCE.—Section
22 116(b)(3)(A) of the Workforce Innovation and Op-
23 portunity Act (29 U.S.C. 3141(b)(3)(A)) is amend-
24 ed—

1 (A) by amending clause (iii) to read as fol-
2 lows:

3 “(iii) IDENTIFICATION IN STATE
4 PLAN.—

5 “(I) SECRETARIES.—For each
6 State submitting a State plan, the
7 Secretaries of Labor and Education
8 shall—

9 “(aa) not later than Decem-
10 ber 1 of the calendar year prior
11 to the calendar year in which
12 such State plan is submitted, for
13 the first 2 program years covered
14 by the State plan, and not later
15 than December 1 of the year
16 prior to the third program year
17 covered by the State plan, for the
18 third and fourth program years
19 covered by the State plan, pro-
20 pose expected levels of perform-
21 ance for each of the cor-
22 responding primary indicators of
23 performance for each of the pro-
24 grams described in clause (ii) for
25 such State, which levels shall—

1 “(AA) be consistent
2 with the factors listed in
3 clause (v); and

4 “(BB) be proposed in a
5 manner that ensures suffi-
6 cient time is provided for
7 the State to evaluate and re-
8 spond to such proposals; and

9 “(bb) publish, on a public
10 website of the Department of
11 Labor, the statistical model de-
12 veloped under clause (viii) and
13 the methodology used to develop
14 each such proposed level of per-
15 formance.

16 “(II) STATES.—Each State
17 shall—

18 “(aa) evaluate each of the
19 expected levels of performance
20 proposed under subclause (I)
21 with respect to such State;

22 “(bb) based on such evalua-
23 tion of each such proposed level
24 of performance—

1 “(AA) accept the ex-
2 pected level of performance
3 as so proposed; or

4 “(BB) provide a coun-
5 terproposal for such pro-
6 posed expected level of per-
7 formance, including an anal-
8 ysis of how the counter-
9 proposal addresses factors or
10 circumstances unique to the
11 State that may not have
12 been accounted for in the
13 proposed expected level of
14 performance; and

15 “(cc) include in the State
16 plan, with respect to each of the
17 corresponding primary indicators
18 of performance for each of the
19 programs described in clause (ii)
20 for such State—

21 “(AA) the expected
22 level of performance pro-
23 posed under subclause (I);

1 “(BB) the counter-
 2 proposal for such proposed
 3 level, if any; and

4 “(CC) the expected
 5 level of performance that is
 6 agreed to under clause
 7 (iv).”; and

8 (B) in clause (v)(II)—

9 (i) in the matter preceding item (aa),
 10 by striking “based on” and inserting
 11 “based on (for each of the following factors
 12 that is found to be predictive of perform-
 13 ance on an indicator for a program)”; and

14 (ii) in item (bb), by inserting “, foster
 15 care status, school status, education level,
 16 highest grade level completed, low-income
 17 status” after “ex-offender status”.

18 (b) PERFORMANCE REPORTS.—Section 116(d) of the
 19 Workforce Innovation and Opportunity Act (29 U.S.C.
 20 3141(d)) is amended—

21 (1) by amending paragraph (1) to read as fol-
 22 lows:

23 “(1) IN GENERAL.—

24 “(A) TEMPLATE FOR PERFORMANCE RE-
 25 PORTS.—Not later than 12 months after the

1 date of enactment of the WIOA Performance
2 Accountability Improvement Act, the Secretary
3 of Labor, in conjunction with the Secretary of
4 Education, shall develop, or review and modify,
5 as appropriate, to comply with the requirements
6 of this subsection, the template for performance
7 reports that shall be used by States (including
8 by States on behalf of eligible providers of
9 training services under section 122) and local
10 boards to produce a report on outcomes
11 achieved by the core programs. In developing,
12 or reviewing and modifying, such templates, the
13 Secretary of Labor, in conjunction with the Sec-
14 retary of Education, shall take into account the
15 need to maximize the value of the templates for
16 workers, jobseekers, employers, local elected of-
17 ficials, State officials, Federal policymakers,
18 and other key stakeholders.

19 “(B) STANDARDIZED REPORTING.—In de-
20 veloping, or reviewing and modifying, the tem-
21 plate under subparagraph (A), the Secretary of
22 Labor, in conjunction with the Secretary of
23 Education, shall ensure that States and local
24 areas, in producing performance reports for
25 core programs and eligible training providers,

1 collect and report, in a comparable and uniform
2 format, information on common data elements,
3 which use terms that are assigned identical
4 meanings across all such reports.

5 “(C) ADDITIONAL REPORTING.—The Sec-
6 retary of Labor, in conjunction with the Sec-
7 retary of Education—

8 “(i) in addition to information on the
9 common data elements described in sub-
10 paragraph (B), may require a core pro-
11 gram to provide additional information as
12 necessary for effective reporting; and

13 “(ii) shall periodically review any re-
14 quirement for additional information to en-
15 sure the requirement is necessary and does
16 not impose an undue reporting burden.”;

17 (2) in paragraph (2)—

18 (A) by redesignating subparagraphs (J)
19 through (L) as subparagraphs (K) through (M),
20 respectively and inserting after subparagraph
21 (I) the following:

22 “(J) the median earnings gain of partici-
23 pants who received training services, calculated
24 as the difference between—

1 “(i) median participant earnings in
2 unsubsidized employment during the sec-
3 ond quarter after program exit; and

4 “(ii) median participant earnings in
5 unsubsidized employment in the second
6 quarter prior to entering the program;”;
7 and

8 (B) in subparagraph (L), as so redesign-
9 ated, by striking clause (ii); and

10 (C) by striking “strategies for programs”
11 and all that follows through “the performance”,
12 and inserting “strategies for programs, the per-
13 formance”;

14 (3) in paragraph (3)—

15 (A) in subparagraph (B), by striking
16 “and” at the end;

17 (B) by redesignating subparagraph (C) as
18 subparagraph (E); and

19 (C) by inserting after subparagraph (B)
20 the following:

21 “(C) the percentage of the local area’s allo-
22 cation under section 133(b) that the local area
23 spent on services paid for through an individual
24 training account described in section

1 134(c)(3)(F)(iii) or a training contract de-
 2 scribed in section 134(c)(3)(G)(ii);

3 “(D) the percentage of the local area’s al-
 4 location under section 133(b) that the local
 5 area spent on supportive services; and”;

6 (4) by amending paragraph (4) to read as fol-
 7 lows:

8 “(4) CONTENTS OF ELIGIBLE TRAINING PRO-
 9 VIDERS PERFORMANCE REPORT.—

10 “(A) IN GENERAL.—The State shall use
 11 the information submitted by the eligible pro-
 12 viders of training services under section 122
 13 and administrative records, including quarterly
 14 wage records, of the participants of the pro-
 15 grams offered by the providers to produce a
 16 performance report on the eligible providers of
 17 training services in the State, which shall in-
 18 clude, subject to paragraph (6)(C)—

19 “(i) with respect to each program of
 20 study (or the equivalent) of such a pro-
 21 vider—

22 “(I) information specifying the
 23 levels of performance achieved with
 24 respect to the primary indicators of
 25 performance described in subclauses

1 (I) through (IV) of subsection
2 (b)(2)(A)(i) with respect to all individ-
3 uals engaging in the program of study
4 (or the equivalent); and

5 “(II) the total number of individ-
6 uals exiting from the program of
7 study (or the equivalent);

8 “(ii) with respect to all such pro-
9 viders—

10 “(I) the total number of partici-
11 pants who received training services
12 through each of the adult program,
13 and the dislocated worker program,
14 authorized under chapter 3 of subtitle
15 B, disaggregated by the type of entity
16 that provided the training, during the
17 most recent program year and the 3
18 preceding program years;

19 “(II) the total number of partici-
20 pants who exited from training serv-
21 ices, disaggregated by the type of en-
22 tity that provided the training, during
23 the most recent program year and the
24 3 preceding program years;

1 “(III) the average cost for the
2 participants who received training
3 services, divided by the average earn-
4 ings received by such participants
5 during the second quarter after exit
6 from the program, disaggregated by
7 the type of entity that provided the
8 training, during the most recent pro-
9 gram year and the 3 preceding pro-
10 gram years; and

11 “(IV) the number of individuals
12 with barriers to employment served by
13 each of the adult program, and the
14 dislocated worker program, authorized
15 under chapter 3 of subtitle B,
16 disaggregated by each subpopulation
17 of such individuals, and by race, eth-
18 nicity, sex, and age; and

19 “(iii) with respect to each recognized
20 postsecondary credential on the list of cre-
21 dentials awarded by eligible providers in
22 the State described in section 122(d)—

23 “(I) information specifying the
24 levels of performance achieved with
25 respect to the primary indicators of

1 performance described in subclauses
2 (I) through (IV) of subsection
3 (b)(2)(A)(i) for all participants in the
4 State receiving such credential; and

5 “(II) information specifying the
6 levels of performance achieved with
7 respect to the primary indicators of
8 performance described in subclauses
9 (I) through (IV) of subsection
10 (b)(2)(A)(i) for participants in the
11 State receiving such credential with
12 respect to individuals with barriers to
13 employment, disaggregated by each
14 subpopulation of such individuals, and
15 by race, ethnicity, sex, and age.”; and

16 (5) in paragraph (6)—

17 (A) by amending subparagraph (A) to read
18 as follows:

19 “(A) STATE PERFORMANCE REPORTS.—
20 The Secretary of Labor and the Secretary of
21 Education shall annually make available the
22 performance reports for States containing the
23 information described in paragraph (2), which
24 shall include making such reports available—

1 “(i) digitally using transparent,
2 linked, open, and interoperable data for-
3 mats that are human readable and ma-
4 chine actionable such that the data from
5 these reports—

6 “(I) is easily understandable; and

7 “(II) can be easily included in
8 web-based tools and services sup-
9 porting search, discovery, comparison,
10 analysis, navigation, and guidance;
11 and

12 “(ii) in a printable format.”; and

13 (B) in subparagraph (B)—

14 (i) by striking “(including by elec-
15 tronic means), in an easily understandable
16 format,”; and

17 (ii) by adding at the end the fol-
18 lowing: “The Secretary of Labor and the
19 Secretary of Education shall include, on
20 the website where the State performance
21 reports required under subparagraph (A)
22 are made available, a link to local area per-
23 formance reports and the eligible training
24 provider report for each State. Such re-

1 ports shall be made available in each of the
2 formats described in subparagraph (A).”.

3 (c) EVALUATION OF STATE PROGRAMS.—Section
4 116(e) of the Workforce Innovation and Opportunity Act
5 (29 U.S.C. 3141(e)) is amended—

6 (1) in paragraph (1)—

7 (A) in the first sentence, by striking “shall
8 conduct ongoing” and inserting “shall use data
9 to conduct analyses and ongoing”; and

10 (B) in the second sentence, by striking
11 “conduct the” and inserting “conduct such
12 analyses and”; and

13 (2) in paragraph (2), by adding “A State may
14 use other forms of analysis, such as machine learn-
15 ing or other advanced analytics, to improve program
16 operations and outcomes and to identify areas for
17 further evaluation.” at the end.

18 (d) SANCTIONS FOR STATE FAILURE TO MEET
19 STATE PERFORMANCE ACCOUNTABILITY MEASURES.—
20 Section 116(f) of the Workforce Innovation and Oppor-
21 tunity Act (29 U.S.C. 3141(f)) is amended to read as fol-
22 lows:

23 “(f) SANCTIONS FOR STATE FAILURE TO MEET
24 STATE PERFORMANCE ACCOUNTABILITY MEASURES.—

25 “(1) TARGETED SUPPORT AND ASSISTANCE.—

1 “(A) IN GENERAL.—If a State fails to
2 meet 80 percent of the State adjusted level of
3 performance for an indicator described in sub-
4 section (b)(2)(A) for a program for any pro-
5 gram year, the Secretary of Labor and the Sec-
6 retary of Education shall provide technical as-
7 sistance.

8 “(B) SANCTIONS.—

9 “(i) IN GENERAL.—If the State fails
10 in the manner described in subclause (I) or
11 (II) of clause (ii) with respect to a pro-
12 gram year, the percentage of each amount
13 that would (in the absence of this para-
14 graph) be reserved by the Governor under
15 section 128(a)(1) for the immediately suc-
16 ceeding program year shall be reduced by
17 5 percentage points.

18 “(ii) FAILURES.—A State shall be
19 subject to clause (i)—

20 “(I) if (except in the case of ex-
21 ceptional circumstances as determined
22 by the Secretary of Labor or the Sec-
23 retary of Education, as appropriate),
24 such State fails to submit a report

1 under subsection (d) for the appro-
2 priate program year; or

3 “(II) for a failure under subpara-
4 graph (A) that continues for a second
5 consecutive year.

6 “(2) COMPREHENSIVE SUPPORT AND ASSIST-
7 ANCE.—

8 “(A) IN GENERAL.—If a State fails to
9 meet an average of 90 percent of the State ad-
10 justed levels of performance for a single pro-
11 gram across all corresponding performance indi-
12 cators for any program year, or if a State fails
13 to meet an average of 90 percent of the State
14 adjusted levels of performance for a single cor-
15 responding performance indicator across all
16 programs for any program year, the Secretary
17 of Labor and the Secretary of Education shall
18 provide technical assistance, as described and
19 authorized under section 168(b), including as-
20 sistance in the development of a comprehensive
21 performance improvement plan.

22 “(B) SECOND CONSECUTIVE YEAR FAIL-
23 URE.—If such failure under subparagraph (A)
24 continues for a second consecutive year, the
25 percentage of each amount that would (in the

1 absence of this subsection) be reserved by the
2 Governor under section 128(a)(1) for the imme-
3 diately succeeding program year shall be re-
4 duced by 10 percentage points.

5 “(3) REALLOTMENT OF REDUCTIONS.—Any
6 amounts not reserved under section 128(a)(1) for a
7 State for a program year pursuant to paragraph
8 (1)(B) or (2)(B) of this subsection shall be reallocated
9 to other States in a manner consistent with para-
10 graph (1)(B) or (2)(B) of section 132(b).”.

11 (e) SANCTIONS FOR LOCAL AREA FAILURE TO MEET
12 LOCAL PERFORMANCE ACCOUNTABILITY MEASURES.—
13 Section 116(g) of the Workforce Innovation and Oppor-
14 tunity Act (29 U.S.C. 3141(g)) is amended—

15 (1) in paragraph (1)—

16 (A) by inserting “80 percent of the” before
17 “local performance”; and

18 (B) by striking “local performance ac-
19 countability measures” and inserting “local
20 level of performance for a single corresponding
21 performance indicator for a single program, an
22 average of 90 percent of the local levels of per-
23 formance across all corresponding performance
24 indicators for a single program, or an average
25 of 90 percent of the local levels of performance

1 for a single corresponding performance indi-
2 cator across all programs,”; and

3 (2) in paragraph (2)—

4 (A) by amending subparagraph (A) to read
5 as follows:

6 “(A) IN GENERAL.—If such failure con-
7 tinues, the Governor shall take corrective ac-
8 tions, which shall include—

9 “(i) in the case of a failure, as de-
10 scribed in paragraph (1), for a second con-
11 secutive year, on any individual indicator,
12 across indicators for a single program, or
13 on a single indicator across programs, a 5-
14 percent reduction in the amount that
15 would have otherwise been provided (in the
16 absence of this clause) to the local area for
17 the immediately succeeding program year
18 under chapter 2 or 3 of subtitle B for the
19 program subject to the performance fail-
20 ure;

21 “(ii) in the case of a failure, as de-
22 scribed in paragraph (1), for a third con-
23 secutive year, the development of a reorga-
24 nization plan through which the Governor
25 shall—

1 “(I) require the appointment and
2 certification of a new local board, con-
3 sistent with the criteria established
4 under section 107(b);

5 “(II) prohibit the use of one-stop
6 partners identified as achieving a poor
7 level of performance; and

8 “(III) revise or redesignate a
9 local area, which may include merging
10 a local area with another local area if
11 the Governor determines that the like-
12 ly cause of such continued perform-
13 ance failure of a local area is due to
14 such local area’s designation being
15 granted without the appropriate con-
16 sideration of parameters described
17 under section 106(b)(1)(B); or

18 “(iii) other significant actions deter-
19 mined appropriate by the Governor.”;

20 (B) in subparagraph (B)(i), by inserting
21 “(ii)” after “subparagraph (A)”; and

22 (C) by adding at the end the following:

23 “(D) REALLOCATION OF REDUCTIONS.—

24 Any amounts not allocated under chapter 2 or
25 3 of subtitle B to a local area for a program

1 year pursuant to subparagraph (A)(i) retained
2 by the Governor and added to the funds re-
3 served under section 128(a)(1) or 133(a)(1), as
4 applicable.”.

5 (f) ESTABLISHING PAY-FOR-PERFORMANCE CON-
6 TRACT STRATEGY INCENTIVES.—Section 116(h) of the
7 Workforce Innovation and Opportunity Act (29 U.S.C.
8 3141(h)) is amended by striking “non-Federal funds” and
9 inserting “the funds reserved under section 128(a)(1)”.

10 (g) FISCAL AND MANAGEMENT ACCOUNTABILITY IN-
11 FORMATION SYSTEMS.—Section 116(i) of the Workforce
12 Innovation and Opportunity Act (29 U.S.C. 3141(i)) is
13 amended—

14 (1) in paragraph (2), by inserting “, and may
15 use information provided from the National Direc-
16 tory of New Hires in accordance with section
17 453(j)(8) of the Social Security Act (42 U.S.C.
18 653(j)(8))” after “State law”;

19 (2) by redesignating paragraph (3) as para-
20 graph (4); and

21 (3) by inserting after paragraph (2) the fol-
22 lowing:

23 “(3) DESIGNATED ENTITY.—The Governor
24 shall designate a State agency (or appropriate State
25 entity) to assist in carrying out the performance re-

1 porting requirements for core programs and eligible
2 providers of training services. The designated State
3 agency (or appropriate State entity) shall be respon-
4 sible for—

5 “(A) facilitating data matches using quar-
6 terly wage record information, including wage
7 record information made available by other
8 States, to measure employment and earnings
9 outcomes;

10 “(B) data validation and reliability, as de-
11 scribed in subsection (d)(5); and

12 “(C) protection against disaggregation that
13 would violate applicable privacy standards, as
14 described in subsection (d)(6)(C).”.

○