

WIOA Guidance Notice No. 6-16, Change 2

TO: Workforce Development Boards

**FROM: Angela Fry
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Workforce Programs**

SUBJECT: Eligibility

EFFECTIVE DATE: December 1, 2016

**CHANGE 1
EFFECTIVE DATE: August 17, 2018**

**CHANGE 2
EFFECTIVE DATE: November 19, 2018**

I. REFERENCE(S):

- WIOA Section 3(2), (5), (15), (16), (36)
- WIOA Section 129(a)(1)(B) and (C)
- CFR Part 680
- TEGL 3-15

II. PURPOSE:

This guidance notice on eligibility and registration ensures that every Workforce Innovation and Opportunity Act (WIOA) participant who receives WIOA Program funded services is eligible and registered to receive those services.

III. BACKGROUND:

The WIOA authorizes a workforce investment system to provide workforce preparation and employment to eligible adults, dislocated workers and youth. WIOA provides authority to state and local governments to establish their own eligibility policies, procedures and definitions, as long as they are consistent with the WIOA and its associated regulations.

IV. ACTION:

In addition to the following requirements, all local Workforce Development Boards are required to issue local eligibility guidance notices/policies.

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Statutory and State Eligibility Requirements for Adult and Dislocated Workers

Individuals wishing to receive employment and training services funded through the adult and dislocated worker programs must meet all of the following requirements:

- Be legally authorized to work in the United States;
- Be 18 years of age or older;
- Be properly registered for selective service; and
- Be a resident of the state of West Virginia, or if not a state resident, been employed and dislocated from a West Virginia employer.

Please Note: In addition to providing career and training services to individuals who are unemployed, there remains a significant population of job seekers who are underemployed. Individuals who are underemployed may include:

- Individuals employed less than full time who are seeking full time employment;
- Individuals who are employed in a position that is inadequate with respect to their skills and training;
- Individuals who are employed who meet the definition of a low-income individual in WIOA sec. 3(36); and
- Individuals who are employed, but whose current job's earnings are not sufficient compared to their previous job's earnings from their previous employment.

Additional Eligibility Requirements for Adults

There are no additional eligibility criteria for the adult program. However, priority for career and training services funded by and provided through the adult program shall be given to recipients of public assistance, other low-income individuals, and individuals who are basic skills deficient for receipt of those career services determined appropriate to obtain or retain employment. *See WorkForce West Virginia WIOA Policy 2-16 Priority of Service Policy for Adult Title I Training.*

Individuals who are underemployed and meet the definition of a low-income individual may receive career and training services under the Adult program on a priority basis. Individuals who meet the definition of an individual with a barrier to employment (see WIOA sec. 3(24)) who are underemployed may also be served in the Adult program.

Additional Statutory Eligibility Requirements for Dislocated Workers

In addition to the requirements listed above, an individual must also fall into one or more of the following eligibility categories as outlined in section 3(15)(A-E) of WIOA:

Category A: Terminated or Laid Off, or Received a Notice of Termination or Layoff from Employment

- Has been terminated or laid off or has received a notice of termination or layoff from employment; AND
- Is eligible for or has exhausted entitlement to unemployment compensation; OR
- Has been employed for a duration sufficient to demonstrate attachment to the workforce, but is not eligible for unemployment compensation due to insufficient earnings or having performed services for an employer that were not covered under a state unemployment compensation law; AND
- Is unlikely to return to a previous industry or occupation.

Category B: Plant Closure or Substantial Layoff

- Has been terminated or laid off, or has received a notice of termination or layoff, from employment as a result of any permanent closure of or any substantial layoff at a plant, facility, or enterprise; OR
- Is employed at a facility where the employer has made a general announcement that such facility will close within 180 days; OR
- For purposes of eligibility to receive services other than training services described in section 134(c)(3) of WIOA, career services described in section 134(c)(2)(A)(xii) of WIOA, or supportive services, is employed at a facility at which the employer has made a general announcement that such facility will close.

Category C: Self-Employed Individual

- Was self-employed (including employment as a farmer, a rancher, or a fisherman) but is unemployed as a result of natural disasters; or general economic conditions in the community where the individual resides.

Category D: Displaced Homemaker

- The term 'displaced homemaker' means an individual who has been providing unpaid services to family members in the home and who-
 - Have been dependent on the income of another family member but is no longer supported by that income; OR
 - Is the dependent spouse of a member of the Armed Forces on active duty (as defined in section 101(d)(1) of title 10, United States Code) and whose family income is significantly reduced because of a deployment (as defined in section 991(b) of title 10, United States Code, or pursuant to paragraph (4) of such section), a call or order to active duty pursuant to a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code, a permanent change of station, or the service-connected (as defined in section 101(16) of title 38, United States Code) death or disability of the member; AND

- Is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

Category E: Military Spouse

- Is the spouse of a member of the Armed Forces on active duty (as defined in section 101(d)(1) of title 10, United States Code), and who has experienced a loss of employment as a direct result of relocation to accommodate a permanent change in duty state of such member; OR
- Is the spouse of a member of the Armed Forces on active duty and who meets the criteria of a displaced homemaker who is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

Additional clarification for Dislocated Workers

Terminated or Received Notice of Termination-

Within Category A, the term 'termination' is clarified to mean individuals who could have been 'fired' but are nevertheless eligible for or exhausted their Unemployment Insurance (UI) benefits. Therefore, individuals who are 'fired' and are not eligible to receive UI benefits, due to the nature of their termination, are also not eligible for WIOA Dislocated Worker.

Individuals who have been separated for cause and/or those who voluntarily left, who are also eligible for UI, can be considered under the term 'terminated'.

Underemployed-

The WIOA definition of dislocated worker, within categories A, B, and C, does not include underemployed workers unless the worker who is considered underemployed first meets one or more of the other 'prong(s)' (categories), as applicable.

To be considered underemployed, the worker entered employment after being recently dislocated earning a salary of 80% or less of the previous employer's annual salary (from whom they are dislocated), prior to eligibility determination. Staff must obtain, at a minimum, the following information to make and support the determination:

- Current Employer Name/Location
- Current Employer Hire Date
- Current Annual Wage (Rate of pay and hours worked)
- Previous Employer Name/Location
- Previous Employer Hire Date
- Previous Employer Separation Date
- Previous Annual Wage (Rate of pay and hours worked)

By expanding the definition of Dislocated Worker, as it pertains to Categories A, B, and C, to include those who are underemployed, Workforce Development Boards will be able to serve workers who have been recently dislocated in a more equitable manner.

Within Category D, for a Displaced Homemaker to be considered underemployed, their income and family size must be collected, documented, and calculated against the 70% Lower Living Standard Income Levels (LLSIL) chart. The income cannot exceed the LLSIL to be determined eligible.

Unlikely to Return to Previous Industry or Occupation-

An individual who is unlikely to return to previous industry/occupation due to no growth or decline in job openings or employment search, or has been laid off without a recall date, or the date has passed, and is in need of additional services or training.

Examples of No Growth, Decline in Job Openings or Employment Search:

- Skill Oversupply-State or Local supply of persons with the specific skills of the applicant exceeds current demand for those skills; OR
- Obsolete Skills-Applicants can no longer meet the minimum requirements of jobs available in their occupation (e.g. clerical worker without work processing skills, etc.); OR
- Local Layoff Impact-A local plan or business closing or layoffs has had a significant negative impact on the availability of jobs in the applicant's primary occupation and accustomed wage/hour/skill level; OR
- No Job Offers Received-Applicant has been available and looking for work for a number of weeks and has not received an offer for work; "number of weeks" might range from 6-12 weeks, depending upon the occupation, economy, and/or applicant's verified job search efforts; OR
- Physical Limitations or Disabilities-Newly acquired physical limitations or injuries occurring which limit the individual's ability to perform the job from which they were dislocated may make an individual unlikely to return to the previous occupation. Such individuals could be eligible if they fit one of the categories of the WIOA Dislocated Worker program eligibility, but shall have a doctor's release to work; OR
- Other Factors-Factors that can be recorded in the customer's file from written or verbal sources, including staff judgment, indicating "unlikely of returning to the previous industry or occupation".

The following forms of documentation can be used to demonstrate "unlikely to return":

- Labor market information showing that the applicant skills are not currently in demand.
- Labor market information showing that the applicant cannot meet the skills requirements for jobs currently available in their chosen occupation.
- Labor market information showing no jobs or only stop gap jobs are available that match the applicant's skills.
- Job search logs put together by the client that demonstrate no job offers received for a period of weeks prior to WIOA enrollment.
- Documentation of acquired physical limitations or injuries that make an individual unable to perform the same work as the job of dislocation.

Statutory and State Eligibility Requirements for Youth

Youth must meet basic eligibility requirements to participate in the WIOA Youth program. Both In School and Out of School Youth must meet the following eligibility requirements:

- be a citizen or noncitizen authorized to work in the U.S.;
- meet selective service registration requirements; and
- be a resident of the state of West Virginia, or if not a state resident, been employed and dislocated from a West Virginia employer.

Additional eligibility requirements for In School Youth include:

- An individual who is between 14 and 21 years of age;
- An individual who is attending school, including secondary and post-secondary school (as defined by State law);
- A low income individual; and
- One or more of the following:
 - Basic skills deficient;
 - An English language learner;
 - An offender;
 - A homeless individual;
 - Pregnant or parenting;
 - A youth who is an individual with a disability;
 - An individual who requires additional assistance to complete an educational program or to secure or hold employment

Additional eligibility requirements for Out of School Youth include:

- An individual who is not attending any school (including secondary or post-secondary);
- An individual between the ages of 16 and 24 years of age; and
- One or more of the following:
 - A school dropout;
 - A youth who is within the age of compulsory school attendance, but has not attended school for at least the most recent complete school year calendar quarter;
 - A recipient of a secondary school diploma or its recognized equivalent who is a low-income individual and is—
 - Basic skills deficient; or
 - An English language learner.
 - An individual who is subject to the juvenile or adult justice system;
 - A homeless individual, a runaway, an individual in foster care, or an individual who has aged out of the foster care system;
 - An individual who is pregnant or parenting;
 - A youth who is an individual with a disability;
 - A low-income individual who requires additional assistance to enter or complete an educational program or to secure or hold employment.

An eligible in-school youth or an out of school youth who have their high school diploma or GED and are basic skills deficient or an English language learner must also meet low-income definition (WIOA Section 3, 36).

Up to 5% of youth registered may be classified as not low income but meet the other requirements.

V. INQUIRIES:

Please direct any questions regarding this Guidance Notice to WorkForce West Virginia/Workforce Programs Division.