

SOUTHWESTERN AREA WORKFORCE DEVELOPMENT BOARD

Adult and Dislocated Worker Policy 23-01

Effective Date

April 11, 2024

Applicability

This applies to Southwestern Area Workforce Development Board (SAWDB) providers of Workforce Innovation and Opportunity Act (WIOA) Adult and Dislocated Worker training and employment services.

Purpose

This Policy is to provide clarification for the Southwestern Area Workforce Development Board (SAWDB).

References

- A. Workforce Innovation and Opportunity Act of 2014, Section 1-134.
- B. Workforce Innovation and Opportunity Final Rule August 19, 2016, 20 CFR 680.120, 680.130, and 680.210-220.
- C. USDOL TEGLs 19-01 Change 1 19-16.

Background

Workforce services for eligible adults and dislocated workers are available through one of the six core programs authorized by the Workforce Innovation and Opportunity Act (WIOA). The Adult and Dislocated Worker program serves individuals and helps employers meet their workforce needs. It enables workers to obtain good jobs by providing job search assistance and training opportunities.

WIOA establishes a priority requirement for funds allocated to a local area for adult employment and training activities. American Job Center staff, when using WIOA Adult funds to provide individualized career services and training, must give priority to recipients of public assistance, other low-income individuals, and individuals who are deficient in basic skills. Under WIOA, priority must be implemented regardless of the amount of funds available to provide services in the local area. Additionally, veterans receive priority of service in all DOL-funded employment programs.

The Dislocated Worker program is designed to help workers get back to work quickly and overcome barriers to employment. When individuals become dislocated workers due to job loss, mass layoffs, global trade dynamics, or transitions in economic sectors, the Dislocated Worker program provides services to help them re-enter the workforce. Services for dislocated workers are integrated and provided through a national network of American Job Centers (AJCs). The AJCs offer significant resources to states for implementing workforce education, training, and employment programs, as well as assisting displaced workers.

Adult and Dislocated Worker Eligibility Criteria

Documentation verifying the eligibility of participants in WIOA is mandatory. Each of the following eligibility elements **must be documented for each participant before receiving individualized/career services or before receiving a staff-assisted career service with significant staff involvement**. Local boards must obtain the required documentation for each eligibility data element, as outlined in the comprehensive checklist of allowable forms of eligibility documentation. Photocopies of documentation kept on file or scanned documents stored in electronic document management systems must be legible and clear.

A. Adult Eligibility Criteria Are As Follows:

- a. **Citizenship/Alien Status/Right to Work Participation** shall be open to citizens and nationals of the United States, lawfully admitted permanent resident aliens, refugees, asylees, parolees, and other immigrants authorized by the Attorney General, to work in the United States as required in WIOA section 188 (a)(5). (Exception: Per TEGL 09-12, The Role of the Workforce Investment System in the Delivery of Services for Victims of Trafficking, operators may not deny WIOA-funded services to victims of severe forms of human trafficking based on their immigration status.) Additional types of documentation that can be used to demonstrate citizenship, alien status, or right to Work are listed in Attachment B.
NOTE: WIOA can pay for a picture ID or Driver's License as a supportive service if the client is enrolled in the program.)
- b. **Selective Service/Military Service:** All participants must comply with the Selective Service Act requirements as required by WIOA SECTION 189(H). See the Selective Service section of this policy.
- c. **Age:** The Individual must be 18 or older at the application date.
- d. **Employment:** Unemployed or employed and in need of services to obtain or retain employment.

Eligibility of Employed Workers

- a. An employed worker is an individual currently working and who has been determined to need services to obtain or retain employment that leads to self-sufficiency, in accordance with the state and local definition of that term.
- b. Staff is required to complete a WIOA application utilizing the state MIS and verify that the worker meets all program eligibility criteria, including right to work, selective service, and age.
- c. Employed workers must be given the same customer choice options as other WIOA participants (except for eligible employed workers, who are enrolled in customized or incumbent worker training with their employers).
- d. Individual Training Account trainings must be in programs that comply with the Eligible Training Provider List.
- e. WIOA-employed worker services, primarily, are provided for the benefit of the employed worker, but it is recognized that these services may also benefit the employer.

B. Dislocated Worker Eligibility Criteria Are As Follows:

- a. **Citizenship/Alien Status/Right to Work Participation** shall be open to citizens and nationals of the United States, lawfully admitted permanent resident aliens, refugees,

asylees, parolees, and other immigrants authorized by the Attorney General to work in the United States as required in WIOA section 188 (a)(5). (Exception: Per TEGL 09-12, The Role of the Workforce Investment System in the Delivery of Services for Victims of Trafficking, operators may not deny WIOA-funded services to victims of severe forms of human trafficking based on their immigration status.)

- b. **Selective Service/Military Status:** All participants must comply with the Selective Service Act requirements as required by WIOA section 189(h). See the Selective Service section of this guidance letter.
- c. **Age:** The Dislocated Worker program does not have an age requirement. An individual must meet the eligibility of WIOA section 3(15), which does not include age among its criteria.
- d. **Lawful Presence** Applicants shall also prove lawful presence in the United States in accordance with 18.19.5.12 and 18.19.4.14 NMAC: Proof of Identification Number, Identity, Age, and Lawful Status for Lawful United States Residents. They shall possess one of the acceptable forms of identification (ID) listed in the Documentation Checklist. If the applicant does not possess one of the forms of ID listed and does not provide the requested information, the application to the program must be denied.
- e. **In Addition** to the basic WIOA eligibility criteria, staff making eligibility determinations must verify that the applicant qualifies under **one** of the following categories:

Category 1.

- i. Has been terminated or laid off, or has received a notice of termination or layoff, from employment, including separation notice from active military service (under other than dishonorable conditions); or
- ii. Is eligible for, or has exhausted entitlement to, unemployment compensation; or
- iii. has been employed for a duration sufficient to demonstrate, to the appropriate entity at a one-stop center referred to in section 121(e), 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 State unemployment compensation law; and,
- iv. Is unlikely to return to a previous industry or occupation

Category 2.

- i. 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, military installation, or enterprise.
 - ii. Is employed at a facility where the employer has made a general announcement that such facility will close within 180 days; or
 - iii. For purposes of eligibility to receive services other than training services, career services described in section 134(c)(3), career services described in section 134(c)(2)(A)(xii), or supportive services, is employed at a facility at which the employer has made a general announcement that such facility will close.
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Category 3.

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

Category 4.

- i. Is a displaced homemaker or

Category 5.

- i. Is the spouse of a member of the Armed Forces on active duty, and who has experienced a loss of employment as a direct result of relocation to accommodate a permanent change in duty station of such member; or
- ii. Is the spouse of a member of the Armed Forces on active duty and who meets the criteria described in paragraph Serving Separating Members and Military Spouses with Dislocated Worker Funds.

Serving Separating Members and Military Spouses with Dislocated Worker Funds

Under 20 CFR 608.660, service members exiting the military, including, but not limited to, those who receive or are eligible for Unemployment Compensation for Ex-service members (UCX), generally qualify as dislocated workers. Dislocated Worker funds under Title I can help separating service members to enter or reenter the civilian labor force. Typically, a separating service member needs a notice of separation, such as a DD-214 from the Department of Defense or other appropriate documentation that shows a separation or imminent separation from the Armed Forces, for reasons other than dishonorable discharge. These documents meet the requirement that the individual has received a notice of termination or layoff, which is necessary to meet the required definition of a dislocated worker. In the case of separating service members, who may be on a stopgap leave from the military, it may make sense to begin providing career services. In contrast, the service member is still part of the Active-Duty military but has an imminent separation date. It is appropriate to offer career services to separating veteran service members who will be separating from the military, provided that their discharge will be anything other than dishonorable. Lastly, the ETA policy generally dictates that a separating service member meets the dislocated worker requirement, which is that an individual is unlikely to return to their previous industry or occupation in the military.

- A. WIOA expands the definition of dislocated workers to allow military spouses who meet any of the following criteria to be eligible for WIOA-funded dislocated worker services. Military spouses are eligible who:
 - a. Lost their job as a direct result of moving with their spouses to a new permanent duty location; or
 - b. Area dependent spouse of a member of the Armed Forces on active duty whose family income is significantly reduced, as determined by the state or local area, because of a deployment, a call or order to active duty, a permanent change of station, or the service-connected death or disability of the service member; or
 - c. Are unemployed or underemployed and are experiencing difficulties in obtaining or upgrading employment.
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Eligibility of Employed Workers

- a. Dislocated workers who have become re-employed in "income maintenance" jobs (a job with a lower rate of pay than the job of dislocation; Reference Stop-Gap Employment) may also be served as long as the wage earned does not exceed the local criteria for self-sufficiency.
- b. Employed workers may be enrolled in the Dislocated Worker Program for career or supportive services (not training services) up to 180 days before the date of layoff if the worker can provide a copy (or the workforce region can obtain a copy) of the notice of layoff or the announcement of plant closure made by the employer that contains the date of the layoff or closure.

Dislocated Worker Grant Eligibility Criteria

Guidance provided by DOLETA indicates that states are responsible for setting appropriate policies and procedures for determining participant eligibility. All DWGs (Dislocated Worker Grants) are awarded to NMDWS to operate and provide guidance to staff through various means. The DWG specifically allows New Mexico and its Workforce Development Boards to serve long-term unemployed individuals as dislocated workers. NMDWS has committed to using a single standard definition for all Disaster Recovery DWGs, unless specific grant terms and conditions require different eligibility criteria.

A. Long-Term Unemployed Definition

- a. The NMDWS definition of long-term unemployment seeks to include individuals who have a significant history of unemployment, as defined by long-term unemployment and/or underemployment, even if they are employed at the time of eligibility. This definition also requires NMDWS to define underemployed for its DWGs.
- b. The definition of long-term unemployed is a person who is:
 - c. Unemployed at the time of eligibility determination; or
 - d. Has been unemployed for 15 or more consecutive weeks over the last 26 weeks; and
 - e. Has made an effort to find a job; or
 - f. Is an incarcerated individual within six months of release OR
 - g. Is underemployed at the time of eligibility determination; and
 - h. Has been unemployed for 15 or more nonconsecutive weeks over the last 26 weeks; and
 - i. Has made an effort to find a job with self-sustaining wages/hours.

B. Thirty hours or more constitutes a week and does not include individuals who have held part-time jobs regularly during the last 26 weeks. An individual being determined as significantly underemployed must meet one of the following categories:

- a. Individual employed less than full-time; or
 - b. An individual who is employed in a position that is inadequate with respect to their skills and training; or
 - c. An individual who is employed but meets the definition of a low-income individual in WIOA sec. 3 (36); and
 - d. An individual who is employed but whose current job earnings are below self-sufficiency. An individual who is employed but whose current earnings are less than
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90% of previous job earnings. Eligibility documentation must be collected at the time of enrollment and must be maintained in the participant's file.

Priority of Service

A. Adult Priority

With respect to funds allocated to a local area for adult employment and training activities under paragraph (2)(A) or (3) of WIOA section 133(b), priority shall be given to recipients of public assistance, other low-income individuals, and individuals who are basic skills deficient for receipt of career services described in WIOA Section 134(b)(2)(A)(xii) and training services.

WIOA emphasizes providing services to individuals with barriers to employment, as defined in WIOA sec. 3(24), including some of the same populations that are to receive priority in the WIOA Adult program. Recipients of public assistance, individuals who are basic skills deficient, or those identified as being low-income, represent some of the workforce system's most in need participants, and are the three priority groups that WIOA specifically mandates, are entitled to receive priority of service (in addition to veterans and eligible spouses) for individualized career or training services under the WIOA Adult program.

At least 75 percent of WIOA participants receiving individualized career and training services in the adult program are from at least one of the priority groups mentioned above, and expect this rate to be no lower than 50.1 percent in any region. See the 23-01 Priority of Service policy for more guidance.

Priority of Service must always be given to covered persons (i.e., veterans and eligible spouses, including widows and widowers) regardless of whether or not the priority of service is in place. A priority of service is required for the provision of career services and training services, including individual training accounts, as well as veterans' priority and priority for public assistance recipients and low-income individuals, as mandated in WIOA regulations.

Will be established as follows:

- a. First priority will be provided to recipients of public assistance, low-income individuals, or individuals who are basic skills deficient who are also veterans or eligible spouses of veterans.
- b. Second priority will be provided to recipients of public assistance, low-income, or individuals who are basic skills deficient, who are not veterans, or spouses of veterans.
- c. Third priority will be provided to veterans or eligible spouses of veterans who are not recipients of public assistance, low-income, or basic skills deficient.
- d. Last priority will be provided to adults in need of service who are not recipients of public assistance, not low-income, or basic skills deficient.

B. Veteran Priority

Veterans and eligible spouses covered by Public Law 107-288, who otherwise meet the eligibility requirements for enrollment and for whom WIOA services are deemed appropriate, are to be given priority over non-veterans for the receipt of employment, training, and placement services provided under the program.

Veterans' priority of service for enrollment should be implemented in the following order:

- a. Veterans, and other non-veterans eligible for Veterans' Preference, who qualify for the program and meet the adult priority of service requirements
- b. Non-veterans who are eligible for the program and meet the adult priority of service requirements
- c. Veterans, and other non-veterans eligible for Veterans' Preference, who qualify for the program, but do NOT meet the adult priority of service requirements
- d. Non-veterans who are eligible for the program, but do NOT meet the adult priority of service requirements

A veteran, or the qualifying spouse of a veteran, is entitled to, and must be given priority over, a non-veteran when the veteran or qualifying spouse meets WIOA eligibility requirements. Priority extends from selection to enrollment, and then to funding decisions after enrollment. This means that a veteran or an eligible spouse either receives access to a service earlier in time than a non-covered person or, if the resource is limited, the veteran or eligible spouse receives access to the service instead of, or before, the non-covered person. Although veteran priority should not be confused with eligibility, case managers must verify veteran status when enrolling a veteran or a qualifying spouse. Verification documents will be submitted as part of the applicant's enrollment packet.

A veteran is defined as a person who served at least one day in the active military, naval, or air service and was discharged or released under conditions other than dishonorable. Active service includes full-time Federal service in the National Guard or a Reserve component. This definition of "active service" does not include full-time duty performed strictly for training purposes, which is often referred to as "weekend" or "annual" training. Nor does it include full-time active duty performed by National Guard personnel mobilized by State rather than Federal authorities.

A qualifying spouse is the spouse of any of the following:

- a. Any veteran who died of a service-connected disability; or,
- b. Any member of the Armed Forces who is listed in one of the following categories for at least 90 days: missing in action, captured in the line of duty, forcibly detained by a foreign government; or,
- c. Any veteran who has a total disability resulting from a service-connected disability; or,
- d. Any veteran who died while a disability was in existence.

Self-Sufficiency

An employed individual may receive Individualized Career Services and/or Training Services if it is determined that such service is needed "to obtain or retain employment that leads to economic self-sufficiency" USDOL TEGLs 19-01 Change 1, 19-16.

The State will annually calculate a self-sufficiency standard for each local area using a living wage model that draws upon geographically specific expenditure data, incorporating the income needs of individuals, families, and sub-state geographical considerations. The NMDWS Workforce Guidance Letter, Updated to Reflect the New State WIOA Self-Sufficiency Wage Standard, will include the self-sufficiency wage.

For additional information and guidance on Self-Sufficiency, please refer to SAWDB's Self-Sufficiency Policy 17-16.1.

Selective Service

Males born on or after January 1, 1960, are required to register with Selective Service within 30 days of their 18th birthday (i.e., 30 days before or 30 days after their birthday). This includes males who are:

- A. Citizens of the U.S.
- B. Non-citizens, including illegal aliens, legal permanent residents, seasonal agricultural workers, and refugees, who take up residency in the U.S. before their 26th birthday; and/or
- C. Dual nationals of the U.S. and another country, regardless of whether they live in the U.S.

For U.S. citizens, Selective Service registration is not required if the man falls within one of the following categories:

- A. Men who are serving in the military on full-time active duty; or
- B. Men attending the service academies; or
- C. Disabled men who were continually confined to a residence, hospital, or institution; and/or
- D. Men who are/were hospitalized, institutionalized, or incarcerated are not required to register during their confinement; however, they must register within 30 days after being released if they have not yet reached their 26th birthday.

For non-U.S. citizens, Selective Service registration is not required if the man falls within one of the following categories:

- A. Non-U.S. male who came into this country for the first time after his 26th birthday.
Acceptable forms of supporting documentation include:
 - a. Date of entry stamp in his passport; or
 - b. I-94 with date of entry stamp on it; or
 - c. Letter from the U.S. Citizenship and Immigration Services (USCIS) indicating the date the man entered the United States, presented in conjunction with documentation establishing the individual's age.
 - d. non-U.S. male who entered the U.S. illegally after his 26th birthday. He must provide proof that he was not living in the U.S. from age 18 through 25.
 - e. non-U.S. male on a valid non-immigrant visa.

This list is not intended to be exhaustive. Please visit the Selective Service website for more information about the registration requirements at www.sss.gov. The Selective Service System also provides a quick reference chart showing who must register, located at <https://www.sss.gov/register/who-needs-to-register/>

Registration Requirements for Males Under 26

Before enrolling in WIOA Title I-funded services, all males not registered with the Selective Service and who have not reached their 26th birthday must register through the Selective Service website at www.sss.gov. If a male turns 18 while participating in any applicable services, registration with the Selective Service must be completed no later than 30 days after he becomes 18 to continue to receive WIOA Title I-funded services. If a man under the age of 26 refuses to register with the Selective Service, WIOA Title I-funded services must be suspended until he registers.

Registration Requirements for Males 26 Years and Over

Before enrolling in WIOA Title I-funded services, all males, 26 years of age or older, must provide documentation of compliance with the Selective Service registration requirement. Individuals who did not register for the Selective Service or cannot provide any documentation listed in Section 3 must obtain a Status Information Letter from Selective Service indicating whether he was required to register. The Request for Status Information Letter form can be accessed at <http://www.sss.gov/PDFs/infoform.pdf>, and the instructions can be accessed at <http://www.sss.gov/PDFs/instructions.pdf>. The individual will need to describe, in detail, the circumstances that prevented him from registering (e.g., hospitalization, institutionalization, incarceration, military service) and provide documentation of those circumstances. The documentation should specify the exact dates of the circumstances.

If the Status Information Letter indicates that an individual was not required to register for the Selective Service, then he is eligible to enroll in services authorized or funded by Title I of WIOA. If the Status Information Letter indicates that the individual was required to register and now cannot because they are 26 or older, they are presumed to be disqualified from participation in WIOA Title I-funded activities and services until it can be determined that their failure to register was not knowing and willful. All costs associated with grant-funded services provided to non-eligible individuals may be disallowed.

Determining Knowing and Willful Failure to Register

If the individual was required but failed to register with the Selective Service, they may only receive services if they establish, by a preponderance of the evidence, that the failure to register was not knowing and willful. The local board, sub-grantee, or contractor that enrolls individuals in WIOA Title I-funded activities and is thereby authorized to approve the use of WIOA Title I grant funds is the entity responsible for evaluating the evidence presented by the individual and determining whether the failure to register was knowing and willful.

Evidence presented may include the individual's written explanation and supporting documentation of his circumstances at the time of the required registration and the reasons for failure to register. The individual should be encouraged to provide as much evidence and as much detail as possible to support their case. The following are examples of documentation that may be of assistance in determining these cases:

- A. Service in the Armed Forces. Evidence that a man has served honorably in the U.S. Armed Forces, such as a DD Form 214 or his Honorable Discharge Certificate. Such documents may be considered sufficient evidence that his failure to register was not willful or knowing.
- B. Third Party Affidavits. Affidavits from parents, teachers, employers, doctors, and other relevant individuals concerning the reasons for not registering may also be helpful to local boards in making determinations in cases involving willful and knowing failure to register.

To establish consistency in the implementation of this requirement, local boards should consider the following questions when determining whether a failure to register is knowing and willful.

In determining whether the failure was “knowing,” the authorized organization should consider:

- A. Was the individual aware of the requirement to register?
- B. If the individual knew about the requirement to register, was he misinformed about the applicability of the requirement to him (e.g., veterans who were discharged before their 26th birthday were occasionally told that they did not need to register)
- C. On which date did the individual first learn that he was required to register?
- D. Where did the individual live between the ages of 18 and 26?
- E. Does the status information letter indicate that Selective Service sent letters to the individual at that address and did not receive a response?

In determining whether the failure was “willful”, the authorized organization should consider:

- A. Was the failure to register done deliberately and intentionally?
- B. Did the individual have the mental capacity to choose whether or not to register and decide not to register?
- C. What actions, if any, did the individual take when he learned of the requirement to register?

If an authorized organization determines it was not a knowing and willful failure and the individual is otherwise eligible, services may be provided. If the authorized organization determines that evidence shows that the individual’s failure to register was knowing and willful, WIOA services must be denied. Individuals denied services must be advised of available WIOA grievance procedures. Authorized organizations must keep documentation related to evidence presented in determinations associated with the Selective Service.

Eligibility Documentation Requirements

Physical evidence must be obtained during the verification process and maintained in participant files. Such evidence would be copies of documents, completed telephone verification/document inspection forms, and signed self-attestation forms. Eligibility documents and case notes must be stored electronically in the NMDWS Workforce Connection Online System (WCOS).

A. Documentation with Self-Attestation

Self-attestation occurs when a participant confirms their status for a particular data element and signs and dates a form acknowledging this status.

The key elements for self-attestation are:

- a. The participant identifies their status for permitted elements.
- b. And signing and dating a form attesting to this self-identification. The form and signature can be on paper or in the state management information system, with an online signature. Self-attestation cannot be used to document the basic WIOA eligibility data elements of the right to work, selective service, and age for services provided beyond staff-assisted service with significant staff assistance. Documenting eligibility with self-attestation is a last resort method when no other documentation source can be found or accessed. Self-attestation can also be used to clarify documentation that is considered insufficient on its own. Please review the most current or relevant Data Validation TEGL 7-18 to assist in determining when it is appropriate to use self-attestation or consult with your local Management Information System (MIS) coordinator if the data element in question is not addressed in this guidance letter. SAWDB may create its own self-attestation form;

however, it must include all elements of the self-attestation form included in this guidance letter.

Inquiries

Questions related to this policy should be directed to the Administrative Entity or Fiscal Agent at (575) 744-4857.

Attested

This policy was reviewed and approved by the SAWDB on April 11, 2024.

Alisa Estrada

SAWDB Chair