

## State Policy

## Workforce Innovation and Opportunity Act (WIOA)

Nebraska Department of Labor (NDOL) Office of Employment and Training 550 South 16 <sup>th</sup> Street Lincoln, NE 68508 402.471.2022 <a href="mailto:ndol.wioa_policy@nebraska.gov">ndol.wioa_policy@nebraska.gov</a>	Policy category
	WIOA Title IB Programs and Services
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	Supersedes
	Youth Program Eligibility, Change 1 (December 29, 2016)
	Interim Policy on Eligibility for Adult Programs (Rev. 08/17/2015)
	Interim Policy on Eligibility for Dislocated Workers (Rev. 08/17/2015)

## Program Eligibility for Youth, Adults, and Dislocated Workers

### REFERENCE

Federal and state laws, regulations, rules, and other guidance and documentation relied upon for the development of this policy are cited in footnotes.

### BACKGROUND

Eligibility criteria for the Workforce Innovation and Opportunity Act (WIOA) Title IB Youth, Adult, and Dislocated Worker programs are defined under the provisions of WIOA and its implementing rules and regulations.

### CHANGES

This policy supersedes and cancels the State's:<sup>1</sup>

- Youth Program Eligibility policy (effective date December 19, 2016) and establishes and implements the following material changes compared to the superseded policy:

<sup>1</sup> The term "State" refers to the Nebraska Workforce Development Board and the Nebraska Department of Labor (acting on the Governor's behalf pursuant to the Governor's Executive Order No. 15-03).

- definitions for *attending school* (e.g., secondary school) and *attending postsecondary school* have been revised based on TEGL 21-16;
- definitions for *dropout* and *subject to compulsory attendance* have been added based on TEGL 21-16;
- the definition of *individual with a disability* has been simplified and revised to include a description of permitted methods of documentation when determining eligibility based solely on disability; and
- provisions relating to the low-income exception and additional assistance limitation have been revised to provide clarification;
- Interim Policy on Eligibility for Adult Programs (Rev. 08/17/2015) and establishes and implements the following material changes compared to the superseded policy:
  - narrative relating to Adult program design is not included in this policy on program eligibility;
- Interim Policy on Eligibility for Dislocated Workers (Rev. 08/17/2015) and establishes and implements the following material changes compared to the superseded policy:
  - definitions have been added, based on applicable rules and regulations and the State's requirements, for *active duty*, *attachment to the workforce*, *call or order to active duty*, *deployment*, *general announcement*, *laid off or layoff*, *notice of termination or layoff*, *service-connected*, *temporary recall*, *terminated*, and *unemployed as a result of a natural disaster*;
  - the definition of *unlikely to return to a previous occupation or industry* has been revised; and
  - narrative relating to Dislocated Worker program design is not included in this policy on program eligibility.

## ACTION

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Each local board must:

- for the benefit of local area staff, including the one-stop operator, establish a procedure guide or operations manual that clearly defines methods and procedures for determining eligibility and the documentation required to demonstrate eligibility determinations as required for Federal reporting;
- ensure it has established a policy in its local plan that:
  - includes a definition for *basic skills deficient* that describes the quantifiable methods local area staff must use for determining an individual is unable to

compute or solve problems or read, write, or speak English at a level necessary to function on the job, in the individual's family, or in society;<sup>2</sup>

- for determining out-of-school youth (OSY) eligibility, defines *requires additional assistance to enter or complete an education program, or to secure and hold employment and* describes the documentation requirements for determining eligibility based on this *requires additional assistance* criterion;<sup>3</sup>
- for determining in-school youth (ISY) eligibility, defines *requires additional assistance to complete an education program, or to secure and hold employment and* describes the documentation requirements for determining eligibility based on this *requires additional assistance* criterion;<sup>4</sup> and
- for determining dislocated worker eligibility, defines the conditions that constitute *unemployed as a result of general economic conditions in the community in which the individual resides* (referenced in [Section IV. Category III. Conditions affecting Self-employment](#)).<sup>5</sup>

This policy is final after a thirty (30) day review period. Questions and comments must be submitted in writing to the WIOA policy mailbox at [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov).

**POLICY**

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This policy establishes eligibility requirements for the WIOA Title IB Youth, Adult, and Dislocated Worker programs.

This policy is organized in five (5) sections and two (2) appendices.

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<sup>2</sup> 20 CFR § 681.210(c)(9)  
<sup>3</sup> 20 CFR §§ 681.290(b) and 681.300  
<sup>4</sup> 20 CFR §§ 681.220(d)(8) and 681.310(a)  
<sup>5</sup> 20 CFR § 680.130(b)

## Section I. General Eligibility Requirements

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In addition to the eligibility requirements described in Sections II, III, and IV of this policy, all Youth, Adult, and Dislocated Worker program participants must be:<sup>6</sup>

- citizens or nationals of the United States; or
- lawfully admitted permanent resident aliens, refugees, asylees, parolees, or other immigrants authorized by the Secretary of Homeland Security or the Secretary's designee to work in the United States.

Further, all Youth, Adult, and Dislocated Worker program participants who are males and age eighteen (18) or older must comply with the registration requirements of the Military Selective Service Act.<sup>7</sup>

## Section II. Youth Program Eligibility

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### (a) ISY eligibility criteria

In addition to the general eligibility requirements described in [Section I](#) of this policy and for an individual to qualify as an ISY, two (2) levels of criteria must be met.

**Level 1.** An individual must meet all of the criteria listed in Table 1.

*Table 1. ISY Level 1 Eligibility Criteria<sup>8</sup>*

ISY Level 1 Eligibility Criteria
1. The individual must provide equal opportunity (EO) data: race, ethnicity, age, sex, and disability.
2. If male, the individual must have registered with the Selective Service.
3. The individual must be a U.S. citizen or a qualified alien.
4. The individual is not younger than age 14 or older than age 21 (Refer to <a href="#">Section II(a)(1)</a> below for information on age-based eligibility for ISY).
5. The individual is attending school, including secondary or postsecondary school.
6. The individual is a low-income individual. <sup>9</sup> (Refer to <a href="#">Section II(a)(2)</a> below for information on the low-income exception for ISY).

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<sup>6</sup> 20 CFR § 683.285(a)(5)

<sup>7</sup> 50 USC § 453(a); 20 CFR § 683.225

<sup>8</sup> WIOA Secs. 188(a)(5) and 189(h); 20 CFR §§ 680.110(c) and 681.220

<sup>9</sup> Refer to APPENDIX I for the definition of [low-income individual](#).

**Level 2.** An individual must meet at least one (1) of the eight (8) criteria listed in Table 2.

*Table 2. ISY Level 2 Eligibility Criteria<sup>10</sup>*

ISY Level 2 Eligibility Criteria
1. The individual is basic skills deficient. <sup>11</sup>
2. The individual is an English language learner. <sup>12</sup>
3. The individual is an offender. <sup>13</sup>
4. The individual is a homeless individual who: <sup>14</sup> <ul style="list-style-type: none"> <li>a. lacks a fixed, regular, and adequate nighttime residence; <b>and is</b> <ul style="list-style-type: none"> <li>i. sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason;</li> <li>ii. lives in a motel, hotel, trailer park, or campground due to the lack of alternative adequate accommodations;</li> <li>iii. lives in an emergency or transitional shelter; or</li> <li>iv. is awaiting foster care placement;</li> </ul> </li> <li>b. has a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings.</li> <li>c. is a migratory youth who is living under circumstances described in Sections 3.a. and 3.b. of this Table 2;</li> <li>d. lives in cars, parks, public spaces, abandoned buildings, substandard housing, bus or training stations, similar settings; or</li> <li>e. is a runaway.</li> </ul>
5. The individual: <ul style="list-style-type: none"> <li>a. is in foster care;</li> <li>b. has aged out of the foster care system;</li> <li>c. has attained age 16 and left foster care for kinship guardianship or adoption;</li> <li>d. is eligible for assistance under the John H. Chafee Foster Care Independence Program; or</li> <li>e. is in an out-of-home placement.</li> </ul>
6. The individual is pregnant or parenting. <sup>15</sup>
7. The individual is an individual with a disability. <sup>16</sup>
8. The individual requires additional assistance <sup>17</sup> <u>to complete</u> an educational program or to secure or hold employment. (Refer to <a href="#">Section II(a)(3)</a> for information on the additional assistance limitation for ISY.)

### (1) Age-based eligibility for ISY<sup>18</sup>

As stated above, the individual must not be younger than age fourteen (14) or older than age twenty-one (21) to be considered eligible as an ISY.

<sup>10</sup> WIOA Secs. 188(a)(5) and 189(h); 20 CFR §§ 680.110(c) and 681.220

<sup>11</sup> Refer to APPENDIX I for the definition of [basic skills deficient](#).

<sup>12</sup> Refer to APPENDIX I for the definition of [English language learner](#).

<sup>13</sup> Refer to APPENDIX I for the definition of [offender](#).

<sup>14</sup> 42 USC §§ 14043e-2(6) and 11434a(2)

<sup>15</sup> Refer to APPENDIX I for the definition of [pregnant or parenting](#).

<sup>16</sup> Refer to APPENDIX I for the definition of [individual with a disability](#) and information on permissible methods of documenting disability when determining eligibility.

<sup>17</sup> Refer to APPENDIX I for the definition of [requires additional assistance](#).

<sup>18</sup> 20 CFR § 681.220(b)

School status is determined at the time of eligibility determination and remains the same throughout the individual's participation in the WIOA Youth program. Once enrolled, an ISY may continue to receive services beyond the age of twenty-one (21).

## (2) Low-income exception

All ISY must be low-income to meet the ISY eligibility criteria (criterion 6 in Table 1), except as described in this section.<sup>19</sup>

Up to five (5) percent of all youth (ISY and OSY), who ordinarily would be required to be low-income for eligibility purposes, are not required to meet the low-income requirement for eligibility, provided they meet all other eligibility requirements.<sup>20</sup>

**Example:** A local area enrolled 200 youth:

- 100 were OSY who were not required to meet the low-income criteria;
- 50 were OSY who were required to meet the low-income criteria; and
- 50 were ISY.

In this example, the 50 OSY required to meet the low-income criteria and the 50 ISY are the only youth factored into the 5 percent low-income exception calculation.

Therefore, in this example, 5 of the 100 youth who ordinarily would be required to meet the low-income criteria are not required to meet that criteria based on this low-income exception.

## (3) Additional assistance limitation for ISY

In each local area, not more than five (5) percent of the ISY may be eligible based solely on the need for additional assistance to complete an educational program or to secure or hold employment (criterion 8 in Table 2).<sup>21</sup> This limitation applies only to ISY.<sup>22</sup>

**Example:** If a local area enrolls 100 ISY during PY 2017, only 5 of those 100 youth can be determined eligible based solely on the *requires additional assistance* criterion.

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<sup>19</sup> 20 CFR § 681.250(b)

<sup>20</sup> 20 CFR § 681.250(c); TEGL 8-15; a program must calculate the 5% based on the percent of newly enrolled youth in the local area's WIOA Youth program in a given program year who would ordinarily be required to meet the low-income criteria.

<sup>21</sup> WIOA Sec. 129(a)(3)(B); 20 CFR § 681.310(b)

<sup>22</sup> TEGL 8-15; a program must calculate the 5% based on the percent of newly enrolled youth in the local area's WIOA Youth program in a given program year who would be eligible based solely on the need for additional assistance to complete an educational program or to secure or hold employment.

## (b) OSY eligibility criteria

In addition to the general eligibility requirements described in [Section I](#) of this policy and for an individual to qualify as an OSY, two (2) levels of criteria must be met.

**Level 1.** An individual must meet all of the criteria listed in Table 3.

*Table 3. OSY Level 1 Eligibility Criteria<sup>23</sup>*

OSY Level 1 Eligibility Criteria
1. The individual must provide EO data: race, ethnicity, age, sex, and disability.
2. If male, the individual must have registered with the Selective Service.
3. The individual is a U.S. citizen or a qualified alien.
4. The individual is not younger than age 16 or older than age 24 (Refer to <a href="#">Section II(b)(1)</a> below for information on age-based eligibility for OSY).
5. The individual is not attending school <sup>24</sup> (e.g. secondary school) or attending postsecondary school. <sup>25</sup>

**Level 2.** An individual must meet at least one (1) of the nine (9) criteria listed in Table 4.

*Table 4. OSY Level 1 Eligibility Criteria<sup>26</sup>*

OSY Level 2 Eligibility Criteria
1. The individual is a school dropout. <sup>27</sup>
2. The individual is subject to compulsory school attendance <sup>28</sup> under state law <i>but</i> has not attended for at least the most recent complete school-year quarter or calendar-year quarter.
3. The individual is recipient of a secondary school diploma or its recognized equivalent <b>and</b> a low-income individual <b>and either</b> : a. basic skills deficient; or b. an English language learner.
4. The individual is an offender.
5. The individual is a homeless individual who: a. lacks a fixed, regular, and adequate nighttime residence; <b>and is</b> i. sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; ii. living in a motel, hotel, trailer park, or campground due to the lack of alternative adequate accommodations; iii. living in an emergency or transitional shelter; iv. is abandoned in a hospital; or v. is awaiting foster care placement; b. has a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings; c. is a migratory youth who is living under circumstances described in Sections 3.a. and 3.b. of this Table 4; d. lives in cars, parks, public spaces, abandoned buildings, substandard housing, bus or training stations, or similar settings; or e. is a runaway.

<sup>23</sup> WIOA Secs. 188(a)(5) and 189(h); 20 CFR §§ 680.110(c) and 681.210

<sup>24</sup> Refer to APPENDIX I for the definition of [attending school](#).

<sup>25</sup> Refer to APPENDIX I for the definition of [attending postsecondary school](#).

<sup>26</sup> WIOA Secs. 188(a)(5) and 189(h); 20 CFR §§ 680.110(c) and 681.210

<sup>27</sup> Refer to APPENDIX I for the definition of [dropout](#).

<sup>28</sup> Refer to APPENDIX I for the definition of [subject to compulsory school attendance](#).

OSY Level 2 Eligibility Criteria	
6.	The individual: a. is in foster care; b. has aged out of the foster care system; c. has attained age 16 and left foster care for kinship guardianship or adoption; d. is eligible for assistance under the John H. Chafee Foster Care Independence Program; <b>or</b> e. is in an out-of-home placement.
7.	The individual is pregnant or parenting.
8.	The individual is an individual with a disability.
9.	The individual requires additional assistance <u>to enter or complete</u> an educational program or secure or hold employment <b>and</b> is a low-income individual. (Refer to <a href="#">Section II(b)(2)</a> for information on the low-income requirement for OSY and <a href="#">Section II(b)(3)</a> for information on the low-income exception.)

### (1) Age-based eligibility for OSY<sup>29</sup>

As stated above, the individual must not be younger than age sixteen (16) or older than age twenty-four (24) to be considered eligible as an OSY.

School status is determined at the time of eligibility determination and remains the same throughout the individual's participation in the WIOA Youth program. Once enrolled, OSY may continue to receive services beyond the age of twenty-four (24).

### (2) Low-income requirement for OSY

An individual must be a low-income individual if the individual's eligibility as an OSY is based on:<sup>30</sup>

- basic skills deficiency (criterion 3 in Table 4);
- being an English language learner (criterion 3 in Table 4);
- requiring additional assistance to enter or complete an educational program (criterion 9 in Table 4); or
- requiring additional assistance to secure or hold employment (criterion 9 in Table 4).

### (3) Low-income exception

As stated in [Section II\(a\)\(2\)](#), up to five (5) percent of all youth (ISY and OSY) who ordinarily would be required to be low-income for eligibility purposes are not required to meet the low-income requirement for eligibility provided they meet all other eligibility requirements.<sup>31</sup>

Refer to Section II(a)(2) for an example of this scenario.

<sup>29</sup> 20 CFR § 681.210(b)

<sup>30</sup> 20 CFR § 681.250(a)

<sup>31</sup> 20 CFR § 681.250(c); TEGL 8-15; A program must calculate the 5% based on the percent of newly enrolled youth in the local area's WIOA Youth program in a given program year who would ordinarily be required to meet the low-income criteria.



### (c) Transition of WIA Youth Participants to WIOA Youth Program

All Workforce Investment Act (WIA) Youth program participants who were enrolled in the WIA Youth program as of July 1, 2015 are automatically enrolled into the WIOA Youth program, even if the participant would not otherwise be eligible for the WIOA Youth program.

Local WIOA Youth program operators are not required to redetermine eligibility if the participant was determined eligible and enrolled under WIA. WIA Youth program participants must be allowed to complete the WIA Youth program services specified in their individual service strategy.<sup>32</sup>

## Section III. Adult Eligibility

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In addition to the general eligibility requirements described in [Section I](#) of this policy and in order to receive career services<sup>33</sup> as an adult under the Adult program, an individual must be eight (8) years of age or older.<sup>34</sup>

## Section IV. Dislocated Worker Eligibility

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In addition to the general eligibility requirements described in [Section I](#) of this policy and in order to receive career services and training services under the Dislocated Worker program, an individual must meet the criteria for the Adult program described above in [Section III\(a\)](#) and [Section III\(b\)](#) of this policy.

The individual must also meet the criteria described in one (1) of the following five (5) categories of Dislocated Workers.

### Category I. Ordinary Layoff<sup>35</sup>

This category of Dislocated Worker covers an individual who has been terminated<sup>36</sup> or laid off,<sup>37</sup> or who has received a notice of termination or layoff from employment,<sup>38</sup> but not because of a permanent closure or mass layoff, and is either:

- eligible for or has exhausted entitlement to unemployment compensation; or

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<sup>32</sup> TEGL 23-14

<sup>33</sup> For the definitions of career services (basic, individualized, and follow-up), refer to WIOA Secs. 134(c)(2)(A)(i) – (xiii) and 20 CFR § 678.430(a) – (c). Refer also to NDOL’s current policy on program design.

<sup>34</sup> 20 CFR § 680.120

<sup>35</sup> WIOA Sec. 3(15)(A)

<sup>36</sup> Refer to APPENDIX I for the definition of [terminated](#).

<sup>37</sup> Refer to APPENDIX I for the definition of [laid off](#).

<sup>38</sup> Refer to APPENDIX I for the definition of [notice of termination or layoff from employment](#).

- has been employed for a duration of time sufficient to demonstrate, to the appropriate entity at an American Job Center, the individual's attachment to the workforce<sup>39</sup> even though not eligible for unemployment compensation due to:
  - insufficient earnings; or
  - having performed services for an employer that are not covered under state unemployment compensation laws.

In addition, the individual must also be unlikely to return to a previous industry or occupation.<sup>40</sup>

#### Category II. Permanent Closure or Mass Layoff<sup>41</sup>

This category of Dislocated Worker covers an individual dislocated because of a permanent closure or mass layoff, meaning an individual who:

- has been terminated or laid off, or has received a notice of termination or layoff, from employment because of any permanent closure of, or any substantial layoff at, a plant, facility, or enterprise; or
- is employed at a facility at which the employer has made a general announcement<sup>42</sup> that the facility will close within one-hundred eighty (180) calendar days; or
- for purposes of eligibility to receive services other than training services, career services, or supportive services,<sup>43</sup> is employed at a facility at which the employer has made a general announcement that the facility will close.

#### Category III. Conditions affecting Self-employment<sup>44</sup>

This category of Dislocated Worker covers a self-employed individual (including self-employment in farming, ranching, or fishing industries) who is unemployed as a result of:

- general economic conditions in the community in which the individual resides; or
- a natural disaster.<sup>45</sup>

#### Category IV. Displaced Homemaker<sup>46</sup>

This category of Dislocated Worker covers an individual who is dislocated as a displaced homemaker, meaning the individual has been providing unpaid services to family members in the home and:

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<sup>39</sup> Refer to APPENDIX I for the definition of [attachment to the workforce](#).

<sup>40</sup> Refer to APPENDIX I for the definition of [unlikely to return to a previous industry or occupation](#).

<sup>41</sup> WIOA Sec. 3(15)(B)

<sup>42</sup> Refer to APPENDIX I for the definition of [general announcement](#).

<sup>43</sup> Supportive services for dislocated workers are described in 20 CFR § 680.900.

<sup>44</sup> WIOA Sec. 3(15)(C)

<sup>45</sup> Refer to APPENDIX I for the definition of [unemployed as a result of a natural disaster](#).

<sup>46</sup> WIOA Secs. 3(15)(D) and 3(16)(A) – (B); 20 CFR § 680.630(d)

- has 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 US Armed Forces on active duty<sup>47</sup> and whose family income is significantly reduced because of:
  - a deployment;<sup>48</sup> or
  - a call or order to active duty;<sup>49</sup> or
  - a permanent change of station, or the service-connected<sup>50</sup> death or disability of the member.

In addition, the individual must also be unemployed or underemployed and experiencing difficulty in obtaining or upgrading employment.

## Category V. Service Member or Military Spouse

### Service Member<sup>51</sup>

This category of Dislocated Worker covers a service member who has separated or is separating from the US Armed Forces with a discharge that is anything other than dishonorable and:

- has received a notice of separation, a Form DD-214 from the Department of Defense, or other documentation showing a separation or imminent separation from the US Armed Forces; and
- is eligible for or has exhausted unemployment compensation; and
- is unlikely to return to a previous industry or occupation.<sup>52</sup>

### Military Spouse

An individual who is the spouse of a member of the US Armed Forces on active duty is a dislocated worker if that individual:

- has experienced a loss of employment as a direct result of relocation to accommodate a permanent change in the duty station of the service member;<sup>53</sup> or
- is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.<sup>54</sup>

<sup>47</sup> Refer to APPENDIX I for the definition of [active duty](#).

<sup>48</sup> Refer to APPENDIX I for the definition of [deployment](#).

<sup>49</sup> Refer to APPENDIX I for the definition of [call or order to active duty](#).

<sup>50</sup> Refer to APPENDIX I for the definition of [service-connected](#).

<sup>51</sup> WIOA Sec. 3(15)(E); 20 CFR § 680.660

<sup>52</sup> TEGL 3-15 states that ETA policy generally dictates that a separating service member meets the dislocated worker requirement of that an individual is unlikely to return to a previous industry or occupation.

<sup>53</sup> WIOA Sec. 3(15)(E); TEGL 3-15

<sup>54</sup> WIOA Sec. 3(16)(B); TEGL 3-15

## Section V. Nondiscrimination

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All programs and activities funded or financially assisted in whole or in part under WIOA must comply with all laws on the prohibition against discrimination based on age, disability, or sex, or based on race, color, national origin, or political affiliation or belief.<sup>55</sup>

Participation in programs and activities funded under WIOA must be available to eligible:<sup>56</sup>

- citizens and nationals of the United States; and
- lawfully admitted permanent resident aliens, refugees, asylees, and parolees, and other immigrants authorized by the Attorney General to work in the United States.

## DISCLAIMER

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This policy is based on NDOL's reading of the applicable statutes, regulations, rules, and guidance released by the U.S. Government and the State of Nebraska. This policy is subject to change as revised or additional statutes, regulations, rules and guidance are issued.

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<sup>55</sup> WIOA Sec. 188 *et seq.*; refer also to NDOL's current policy on equal opportunity.

<sup>56</sup> 20 CFR § 683.285(a)(5)

## APPENDIX I. Definitions

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### 1. active duty<sup>57</sup>

The term *active duty* means full-time duty in the active military service of the United States. The term includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned.

The term does not include full-time National Guard duty.

### 2. attachment to the workforce<sup>58</sup>

The phrase *attachment to the workforce* means having been employed at least twenty (20) or more hours per week for at least six (6) of the most recent thirty-six (36) month in a single occupation. The six (6) months need not be consecutive.

An employee of a temporary employment agency, in order to demonstrate *attachment to the workforce*, must have worked on the same assignment for the number of weekly hours and duration noted above.

### 3. attending postsecondary school<sup>59</sup>

School status is determined at the time of eligibility determination and remains the same throughout the individual's participation in the WIOA Youth program.

*Attending postsecondary school* means enrollment in credit-bearing postsecondary education classes, including credit-bearing:

- community college classes; and
- continuing education classes.

If the youth is enrolled in non-credit-bearing postsecondary classes only, then the individual is not considered to be attending postsecondary school.

If a youth is enrolled in the Youth program between high school graduation and postsecondary education, the youth is considered an ISY if they are registered for postsecondary education, even if they have not yet begun postsecondary classes at the time of Youth program enrollment.

### 4. attending school (e.g., secondary school)

School status is determined at the time of eligibility determination and remains the same throughout the individual's participation in the WIOA Youth program.

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<sup>57</sup> 10 USC § 101(d)(1)

<sup>58</sup> This is the State's definition.

<sup>59</sup> TEGL 21-16; refer also to the definition of [school](#).

The phrase *attending school* is defined by state law.<sup>60</sup> Nebraska State Law defines *attending school* as:

- enrollment in a school approved by the Nebraska State Board of Education,<sup>61</sup> including:
  - accredited public and private schools;
  - accredited denominational and parochial schools; and
  - schools that elect not to meet accreditation requirements, including home schools;<sup>62</sup>
- regular attendance each day the school is open unless:
  - the individual is excused from attendance by school authorities;
  - illness makes attendance impossible; or
  - severe weather makes attendance impossible.

In Nebraska, individuals ages six (6) to eighteen (18) are required to attend school,<sup>63</sup> with three (3) exceptions:<sup>64</sup>

- the individual has obtained a high school diploma;
- the individual has completed a program of instruction offered by an unaccredited school that is approved by the Nebraska State Board of Education; or
- has reached sixteen (16) years of age and has been legally withdrawn from school.

If a youth is enrolled in the WIOA youth program during the summer and is in between school years, the youth is considered an ISY if they are enrolled to continue school in the fall.<sup>65</sup>

## 5. basic skills deficient

An individual who is *basic skills deficient* is an individual that:<sup>66</sup>

- as English reading or writing skills or computing skills at or below the 8<sup>th</sup> grade level on a generally accepted standardized test; or
- is unable to compute or solve problems, or read, write, or speak English at a level necessary to function on the job, in the individual's family, or in society.

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<sup>60</sup> 20 CFR § 681.550(a); refer also to the definition of [school](#).

<sup>61</sup> Neb. Rev. Stat. §§ 79-201, 79-202, 79-319, and 79-1601

<sup>62</sup> TEGL 21-16

<sup>63</sup> Neb. Rev. Stat. 79-201

<sup>64</sup> Neb. Rev. Stat. 79-202

<sup>65</sup> TEGL 21-16

<sup>66</sup> WIOA Sec. 3(5)

## 6. call or order to active duty<sup>67</sup>

The phrase *call or order to active duty* refers to a call or order to, or retention on, active duty of members of the uniformed services under 10 USC §§ 688, 12301(a), 12302, 12304, 12304a, 12305, or 12406 or 10 USC Subtitle A Part I Chapter 15, or any other provision of law during a war or during a national emergency declared by the President or Congress.

## 7. deployment<sup>68</sup>

- a. A member of the US Armed Forces is considered to be deployed or in a deployment on any day on which, pursuant to orders, the member is performing service in a training exercise or operation at a location or under circumstances that make it impossible or infeasible for the member to spend off-duty time in the housing in which the member resides when on duty at the member's permanent duty station or homeport. If the individual is member of a reserve component of the US Armed Forces and is performing active service pursuant to orders that do not establish a permanent change of station, the housing referred to above is any housing (including the member's residence) that the member usually occupies for use during off-duty time when on duty at the member's permanent duty station or homeport.
- b. The Secretary of Defense may prescribe an alternative definition of deployment other than that described above.
- c. A member of the US Armed Forces is not deployed or in a deployment when the member is:
  - i. performing service as a student or trainee at a school (including any Government school);
  - ii. performing administrative, guard, or detail duties in garrison at the member's permanent duty station; or
  - iii. unavailable solely because of:
    - (1) a hospitalization of the member at the member's permanent duty station or homeport or in the immediate vicinity of the member's permanent residence; or
    - (2) a disciplinary action taken against the member.

## 8. dropout

A school *dropout* is an individual who is no longer attending any school and who has not received a secondary school diploma or its recognized equivalent.<sup>69</sup>

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<sup>67</sup> 10 USC § 101(a)(13)(B)

<sup>68</sup> 10 USC § 991(b)

<sup>69</sup> WIOA Sec. 3(54)

An individual who has dropped out of postsecondary education is not a dropout for purposes of youth program eligibility.<sup>70</sup>

*Dropout* refers only an individual who is currently a secondary school dropout and does not include a youth who previously dropped out of secondary school but subsequently returned. For example, a youth who dropped out of high school in 2015 and returned to high school in 2016 prior to enrollment in WIOA is not considered a dropout.<sup>71</sup>

A youth's eligibility status is determined at the time of enrollment. Therefore, a youth who has not received a high school diploma or its recognized equivalent and is not attending any school is considered a dropout and is an OSY.<sup>72</sup>

## 9. English language learner

*English language learner* means an individual:<sup>73</sup>

- who has limited ability in reading, writing, speaking, or comprehending the English language and:
  - whose native language is a language other than English; or
  - who lives in a family or community environment where a language other than English is the dominant language.

## 10. general announcement<sup>74</sup>

The term *general announcement* means an announcement to the public by the employer or employer's representative.

The *general announcement* does not need to be in written form, but it must be made to the public, not just the employees of the employer.

## 11. high-poverty area

*High-poverty area* means a census tract where thirty (30) percent or more of the households in the census tract fall below the current Federally-established poverty level.

High-poverty areas are determined by the US Census Bureau's most recent American Community Survey.<sup>75</sup> [APPENDIX II](#) provides the current list of Nebraska's census tracts meeting this definition.<sup>76</sup>

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<sup>70</sup> TEGL 8-15

<sup>71</sup> TEGL 21-16

<sup>72</sup> TEGL 21-16

<sup>73</sup> WIOA Secs. 3(20) and 203(7); TEGL 21-16

<sup>74</sup> This is the State's definition as permitted under 20 CFR § 680.130(b)(1).

<sup>75</sup> 20 CFR § 681.260

<sup>76</sup> Taken from the 2014 American Community Survey, Table number B17017, as provided by NDOL's Office of Labor Market Information. The boundaries of census tracts may change with each ten-year census. The most recent census tracts were designated in 2010.



To determine the census tract in which an individual resides, use this address search tool: <http://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?ref=addr&refresh=t>.

## 12. individual with a disability<sup>77</sup>

The phrase *individual with a disability* means an individual with a disability as defined in section 3 of the Americans with Disabilities Act of 1990.<sup>78</sup>

**IMPORTANT.** DO NOT request documentation of a disability unless it is the only means of determining eligibility for an individual for a WIOA Title IB program, in which case permitted forms of documentation include, but are not limited to:

- a written statement from a medical professional, including a psychiatrist or psychologist;
- rehabilitation evaluation records;
- school records or Individualized Education Program (IEP);
- Social Security Administration disability records;
- Veterans Administration Disability Determination Letter or records;
- Workers Compensation records;
- Vocational Rehabilitation records; or
- written self-certification by the individual.

Under no circumstances should medical records be requested as evidence of a disability.

## 13. laid off or layoff<sup>79</sup>

For purposes of determining eligibility as a Dislocated Worker, the term *laid off* or *layoff* means an individual's employment relationship is or will be suspended by the employer, without cause,<sup>80</sup> for more than one-hundred eighty (180) calendar days.

## 14. low-income individual

A *low-income individual* is an individual who meets one (1) or more of the eight (8) criteria described in Table 5.

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<sup>77</sup> 29 CFR § 37.4

<sup>78</sup> 42 USC § 12102

<sup>79</sup> This is the State's definition.

<sup>80</sup> Cause, with or without, is a determination made by the state's unemployment compensation determinations unit regarding the circumstances surrounding a separation from employment.

*Table 5. Low-income eligibility criteria<sup>81</sup>*

Low-income Eligibility Criteria	
1. The individual currently receives or is a member of a family currently receiving assistance through:	<ul style="list-style-type: none"> <li>a. Supplemental Nutrition Assistance Program;</li> <li>b. Temporary Assistance for Needy Families Program;</li> <li>c. Supplemental Security Income through the Social Security Administration; or</li> <li>d. state or local income-based public assistance.</li> </ul>
2. In the past six (6) months, the individual has received or is a member of a family that has received assistance through:	<ul style="list-style-type: none"> <li>a. Supplemental Nutrition Assistance Program;</li> <li>b. Temporary Assistance for Needy Families Program;</li> <li>c. Supplemental Security Income through the Social Security Administration; or</li> <li>d. state or local income-based public assistance.</li> </ul>
3. The individual is in a family whose total family income does not exceed the higher of: <sup>82</sup>	<ul style="list-style-type: none"> <li>a. the current Federally-established poverty line; or</li> <li>b. seventy (70) percent of the Federally-established lower living standard income level (LLSIL).</li> </ul>
4. The individual is a homeless individual who: <sup>83</sup>	<ul style="list-style-type: none"> <li>a. lacks a fixed, regular, and adequate nighttime residence; <b>and is</b> <ul style="list-style-type: none"> <li>i. sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason;</li> <li>ii. living in a motel, hotel, trailer park, or campground due to the lack of alternative adequate accommodations;</li> <li>iii. living in an emergency or transitional shelter; or</li> <li>iv. awaiting foster care placement;</li> </ul> </li> <li>b. has a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;</li> <li>c. is a migratory youth who is living in circumstances described in subsections 4.a. and 4.b. above;</li> <li>d. lives in cars, parks, public spaces, abandoned buildings, substandard housing, bus or training stations, or similar settings; or</li> <li>e. is a runaway.</li> </ul>
5. The individual receives or is eligible to receive a free or reduced-price lunch under the Richard B. Russell National School Lunch Act, unless the individual is a recipient of a secondary school diploma or its recognized equivalent.	
6. The individual is a foster child on behalf of whom state or local government payments are made.	
7. The individual is an individual with a disability whose income meets the income requirement of Sections 3.a. or 3.b. of this Table 5.	
8. The individual lives in a high-poverty area. (refer to <a href="#">APPENDIX II</a> )	

<sup>81</sup> WIOA Sec. 3(36)

<sup>82</sup> The term “lower living standard income level” (LLSIL) means the income level determined annually by the Secretary of Labor based on the most recent lower living family budget issued by the Secretary. Refer to NDOL’s current issuance on the LLSIL.

<sup>83</sup> 42 USC §§ 14043e-2(6) and 11434a(2)

#### a. Income considered when determining low-income status<sup>84</sup>

The following types of payments made or in-kind aid to individuals are not considered income when determining low-income eligibility for the WIOA Youth program:

- TANF payments;
- reduced price lunches under the Richard B. Russell National School Lunch Act;
- payments made on behalf of a foster child by state or local government payments; or
- payments made to individuals participating programs authorized under WIOA Title I.

There are no other income exclusions.

For the avoidance of doubt, all other types of payments made to individuals are considered income when determining low-income eligibility for the WIOA Youth program, including:

- unemployment insurance benefits;
- child support payments; and
- payments made by state-administered plans for old-age assistance.

When determining low-income status of an individual with a disability, the income of the individual's family must not be considered.

#### 15. notice of termination or layoff from employment<sup>85</sup>

*A notice of termination or layoff from employment* means a written notification from the employer, naming one (1) or more individuals and indicating that employment will cease or has ceased for the individual(s) on a specific date.

#### 16. offender

*Offender* means an adult or juvenile who:<sup>86</sup>

- is or has been subject to any stage of the criminal justice process, and for whom services under this WIOA may be beneficial; or
- requires assistance in overcoming artificial barriers to employment resulting from a record of arrest or conviction.

#### 17. pregnant or parenting<sup>87</sup>

*A pregnant individual* can be only the expectant mother.

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<sup>84</sup> WIOA Secs. 3(36) and 181(a)(2)

<sup>85</sup> This is the State's definition.

<sup>86</sup> WIOA Sec. 3(38); 20 CFR §§ 681.210 and 681.220; TEGL 21-16

<sup>87</sup> TEGL 21-16

An individual who is *parenting* can be a mother or father, custodial or non-custodial.

As long as the youth is within the applicable age range for Youth program eligibility, the age when the individual became a parent does not factor in to the definition of parenting.

#### 18. requires additional assistance

The phrase *requires additional assistance*, with regard to Youth program eligibility, must be defined in policy by the local board and must be included in the local plan.<sup>88</sup> Local area policy on *requires additional assistance* must be reasonable, quantifiable, and based on evidence that the characteristic of the youth identified in the policy objectively requires additional assistance.<sup>89</sup>

**Example:** "Reading below grade level" is an example of an evidence-based, quantifiable characteristic. On the other hand, "low GPA" is a vague characteristic. Using an individual's GPA as the basis for *requires additional assistance* would be specific and quantifiable if a specific threshold for the GPA identified such as a "GPA lower than 1.5 on a 4.0 scale."

#### 19. school

Under WIOA, the term *school* is defined by state law.<sup>90</sup> Nebraska State Law defines *school* as a school approved by the Nebraska State Board of Education,<sup>91</sup> including:

- accredited public and private secondary schools;
- accredited denominational and parochial secondary schools; and
- schools that elect not to meet accreditation requirements, including home schools.

Nebraska State Law does not include postsecondary institutions in its definition of school. For purposes of this policy, the following providers or programs are considered schools:

- all postsecondary institutions that are accredited according to the requirements of the U.S. Department of Education;
- all private postsecondary career schools that are licensed or authorized to operate by the Nebraska Department of Education; and
- all private postsecondary career schools that are licensed or authorized to operate in other states according to the requirements of the states in which they operate.

Providers of WIOA Title IC (Job Corps), Title ID (YouthBuild), Title II (Adult Education and Family Literacy Act) programs, high school equivalency programs, and dropout re-

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<sup>88</sup> 20 CFR § 681.300

<sup>89</sup> TEGL 8-15

<sup>90</sup> 20 CFR § 681.230; TEGL 21-16

<sup>91</sup> Neb. Rev. Stats. §§ 79-201, 79-202, 79-319, and 79-1601

engagement programs are not considered schools for the purposes of determining school status, with one (1) exception.<sup>92</sup>

Youth attending high school equivalency (HSE) programs, including programs considered to be dropout re-engagement programs, are considered ISY when the HSE program:<sup>93</sup>

- is funded by the public K- 12 school system; and
- classifies the HSE student as still enrolled in school.

## 20. service-connected

The term *service-connected* means, with respect to disability or death, that such disability was incurred or aggravated, or that the death resulted from a disability incurred or aggravated, in line of duty in the active military, naval, or air service.<sup>94</sup>

## 21. subject to compulsory school attendance

For 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, the school year calendar quarter is based on how the individual's local school district defines its school year quarters. In cases where local school district does not use quarters, the local WIOA youth program must use calendar year quarters.<sup>95</sup>

## 22. temporary recall<sup>96</sup>

The term *temporary recall* refers to a request from an employer for the former worker who has either received a notice of termination or been terminated from employment to return to work for one-hundred eighty (180) calendar days or less. In a *temporary recall*, the employer still clearly intends to terminate the worker.

## 23. terminated<sup>97</sup>

For purposes of determining eligibility as a Dislocated Worker, *terminated* employment is a permanent situation in which the employer lays off, without cause,<sup>98</sup> and does not plan to rehire the individual. Any documented non-seasonal layoff projected to last one-hundred eighty (180) or more calendar days is a termination of employment.

The intent of this definition is to include only those terminated workers who intend to return to permanent, full-time work.

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<sup>92</sup> 20 CFR § 681.230; TEGL 21-16

<sup>93</sup> 20 CFR § 681.230; TEGL 21-16

<sup>94</sup> 38 USC § 101(16)

<sup>95</sup> 20 CFR § 681.210(c)(2); TEGL 21-16

<sup>96</sup> This is the State's definition.

<sup>97</sup> This is the State's definition.

<sup>98</sup> Cause, with or without, is a determination made by the state's unemployment compensation determinations unit regarding the circumstances surrounding a separation from employment.

For purposes of this policy, the following circumstances are not considered terminations of employment:

- seasonal unemployment;
- an end to an assignment through a temporary employment agency;
- a notice of termination that includes a certain or tentative recall date within one-hundred eighty (180) calendar days of the initial layoff date; or
- retirement or other voluntary separation from the workforce.

#### 24. unemployed as a result of a natural disaster<sup>99</sup>

The phrase *unemployed as a result of a natural disaster* means unemployment caused by a major adverse event(s) resulting from natural processes of the Earth, including environmental conditions, such as:

- floods;
- tornadoes;
- earthquakes; and
- other natural events beyond an individual's control.

The list provided above is not all inclusive of major adverse events that may be considered natural disasters.

#### 25. unlikely to return to a previous occupation or industry<sup>100</sup>

For purposes of determining eligibility as a Dislocated Worker, an individual is *unlikely to return to a previous occupation or industry* if job opportunities in that occupation or industry are significantly diminished for that individual based on one (1) or more of the following criteria:

- official assessments of market demand for the products or services in that occupation or industry;
- local labor market conditions for that industry or occupation;
- the evolution of skill requirements in that occupation or industry and whether the individual's skills have kept pace over time based on a current skills assessment; and
- the impact of technology or trade on the industry or occupation.

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<sup>99</sup> This is the State's definition as permitted under 20 CFR § 680.130(b)(3).

<sup>100</sup> This is the State's definition as permitted under 20 CFR § 680.130(b)(2).

## APPENDIX II. Nebraska Census Tracts meeting “High Poverty” Definition

(30% or more of households in the census tract are at or below the poverty line)

*Table 6. Greater Lincoln Workforce Development Area high poverty census tracts*

Census Tract	Estimated Number	Estimated Number Below Poverty	Percent Below Poverty
Census Tract 2.02, Lancaster County, Nebraska	1,630	631	38.71%
Census Tract 4, Lancaster County, Nebraska	1,947	753	38.67%
Census Tract 5, Lancaster County, Nebraska	680	253	37.21%
Census Tract 6, Lancaster County, Nebraska	34	34	100.00%
Census Tract 7, Lancaster County, Nebraska	1,086	407	37.48%
Census Tract 10.02, Lancaster County, Nebraska	942	284	30.15%
Census Tract 17, Lancaster County, Nebraska	2,804	1,028	36.66%
Census Tract 18, Lancaster County, Nebraska	832	315	37.86%
Census Tract 19, Lancaster County, Nebraska	467	174	37.26%
Census Tract 20.01, Lancaster County, Nebraska	1,536	602	39.19%
Census Tract 20.02, Lancaster County, Nebraska	1,614	600	37.17%
Census Tract 33.01, Lancaster County, Nebraska	1,892	594	31.40%

*Table 7. Greater Nebraska Workforce Development Area high poverty census tracts*

Census Tract	Estimated Number	Estimated Number Below Poverty	Percent Below Poverty
Census Tract 101, Dakota County, Nebraska	2,238	863	38.56%
Census Tract 9696, Buffalo County, Nebraska	1,644	517	31.45%

*Table 8. Greater Omaha Workforce Development Area high poverty census tracts*

Census Tract	Estimated Number	Estimated Number Below Poverty	Percent Below Poverty
Census Tract 3, Douglas County, Nebraska	779	245	31.45%
Census Tract 4, Douglas County, Nebraska	825	330	40.00%
Census Tract 6, Douglas County, Nebraska	427	160	37.47%
Census Tract 7, Douglas County, Nebraska	550	250	45.45%
Census Tract 8, Douglas County, Nebraska	596	264	44.30%
Census Tract 11, Douglas County, Nebraska	1,015	486	47.88%
Census Tract 12, Douglas County, Nebraska	966	290	30.02%
Census Tract 16, Douglas County, Nebraska	120	65	54.17%
Census Tract 19, Douglas County, Nebraska	811	313	38.59%
Census Tract 21, Douglas County, Nebraska	868	332	38.25%
Census Tract 29, Douglas County, Nebraska	1,487	508	34.16%
Census Tract 32, Douglas County, Nebraska	1,000	402	40.20%
Census Tract 33, Douglas County, Nebraska	754	273	36.21%
Census Tract 38, Douglas County, Nebraska	1,626	611	37.58%
Census Tract 39, Douglas County, Nebraska	920	332	36.09%
Census Tract 40, Douglas County, Nebraska	1,582	672	42.48%
Census Tract 51, Douglas County, Nebraska	1,003	380	37.89%
Census Tract 52, Douglas County, Nebraska	543	245	45.12%
Census Tract 59.01, Douglas County, Nebraska	901	284	31.52%
Census Tract 59.02, Douglas County, Nebraska	797	304	38.14%
Census Tract 60, Douglas County, Nebraska	1,368	541	39.55%
Census Tract 61.02, Douglas County, Nebraska	1,331	453	34.03%
Census Tract 66.03, Douglas County, Nebraska	1,308	415	31.73%