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## **Policy Manual**

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**WIOA Title I Adult, Dislocated Worker, and Youth Programs  
WIOA Title III Wagner-Peyser Employment Service  
Jobs for Veterans State Grant Program  
National Dislocated Worker Grant Programs  
Senior Community Service Employment Program  
Trade Adjustment Assistance**

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**Version date: March 27, 2023**

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## Message to readers

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This manual is a compilation of policies in effect as of March 27, 2023. You can navigate within this manual using the bookmark pane. If you experience accessibility issues with this manual or have questions or comments, please email the policy mailbox at [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov).

## 1. Governance

## 1.1. Workforce Development Boards and Chief Elected Officials

## State Policy

## Workforce Innovation and Opportunity Act (WIOA)

Nebraska Department of Labor (NDOL) Division of Reemployment Services 550 South 16 <sup>th</sup> Street Lincoln, NE 68508 402.471.9000 <a href="mailto:ndol.wioa_policy@nebraska.gov">ndol.wioa_policy@nebraska.gov</a>	Policy category
	Governance
	Effective date
	June 24, 2022
	Supersedes
	Workforce Development Boards and Chief Elected Officials
	(effective date January 12, 2018)

## Workforce Development Boards and Chief Elected Officials, Change 1

### 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

WIOA establishes roles, functions, and requirements for Nebraska's state workforce development board (state board), local workforce development boards (local boards), and chief elected officials (CEOs) of local workforce development areas (local areas).

### CHANGES

This policy establishes the following material changes to the superseded policy.

- Row 2 in Table 2 in [Section II\(b\)\(4\)](#), has been revised to clarify local board responsibilities to provide assistance to NDOL upon request regarding eligible training providers and the Eligible Training Provider List and consumer choice requirements.
- [Section II\(d\)](#) now has two subsections.
  - [Section II\(d\)\(1\)](#), criteria, has been updated to clarify local board certification criteria regarding local area performance.

- b. [Section II\(d\)\(2\)](#), procedures, has been added and provides procedures and timelines for biennial local board certification.
- 3. [Section II\(e\)](#) now has two subsections.
  - a. [Section II\(e\)\(1\)](#), criteria, has been updated to clarify reasons for decertification of local boards in relation to failure to meet adjusted levels of performance for two consecutive program years.
  - b. [Section II\(e\)\(2\)](#), procedures, defines decertification procedures.
- 4. Item j. row 11 in Table 4 in [Section III\(a\)](#) has been revised to indicate notification requirements for failure to reach consensus on infrastructure-cost negotiations appear in the State's policy on memorandums of understand and funding agreements.
- 5. Row 12 in Table 4 in [Section III\(a\)](#) has been revised to clarify that requirements to carryout Rapid Response activities in conjunction with NDOL, the local board, and other stakeholders are described in the State's Rapid Response manual.
- 6. [Section III\(a\)\(2\)](#) has been revised to clarify that provisions in local board bylaws relating to phone and web-based board meetings are subject to the requirements and limitations of the Nebraska Open Meetings Act.
- 7. References to "Office of Management and Budget circulars" have been replaced with references to "Uniform Guidance (2 CFR Parts 200 and 2900)".
- 8. Revisions to [APPENDIX I](#)
  - a. A definition for community-based organization has been added.
  - b. The performance standards definition has been removed. Performance standards are now defined in the State's performance accountability policy.
  - c. The definition of personally identifiable information (PII) has been enhanced.

## **ACTION**

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This policy supersedes and cancels the State's *Workforce Development Boards and Chief Elected Officials* policy dated January 12, 2018. Questions and comments on this policy may be submitted in writing to the policy mailbox at [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov).

## POLICY

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This policy identifies the requirements for the state board, local boards, and CEOs and has three sections and one appendix.

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### Section I. State Board

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#### (a) Membership

The members of the state board are appointed by the Governor and must:<sup>1</sup>

- represent diverse geographic areas of Nebraska, including urban, suburban, and rural areas; and
- meet the requirements described in 20 CFR § 679.110 and the bylaws of the state board,<sup>2</sup> including requirements regarding the nomination process used by the Governor for appointment of members and selection of the chair of the state board.

#### (b) Functions

The state board is required to assist the Governor with the activities described in WIOA Sec. 101(d) and 20 CFR § 679.130.

##### (1) Sunshine provision requirements<sup>3</sup>

In addition to functions described in WIOA Sec. 101(d) and 20 CFR § 679.130, the state board must conduct its business in an open manner by making available to the public information about its activities. This information must be made available on a regular basis through electronic means and open meetings. These requirements are referred to as sunshine provision requirements, which are described in WIOA Sec. 101(g) and 20 CFR § 679.140 and restated below. To meet sunshine provision requirements, the state board must make the following information available to the public:<sup>4,5</sup>

- the state plan and modifications of the plan, before submission of the plan or any modification for approval;

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<sup>1</sup> 20 CFR § 679.110

<sup>2</sup> The bylaws of the Nebraska Workforce Development Board are accessible at <https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/NWDB>.

<sup>3</sup> 20 CFR § 679.140

<sup>4</sup> Nebraska's current state plan is accessible at <https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/ManualsPlansReports>.

<sup>5</sup> Information on state board membership, minutes of formal meetings of the state board, as well as state board bylaws, are accessible at <https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/NWDB>.

- information regarding state board membership;
- minutes of formal meetings of the state board; and
- state board bylaws.

In addition, meetings of the state board must comply with the requirements of the Nebraska Open Meetings Act.<sup>6</sup>

## (2) State board staff<sup>7</sup>

The state board may hire a director and other staff to assist in carrying out its required functions, using funds reserved by the state for administrative activities in accordance with WIOA Secs. 129(b)(3) or 134(a)(3)(B)(i). If the state board elects to hire staff, two requirements must be met.

1. The state board must establish and apply a set of qualifications for the position of director that ensures the individual selected has the requisite knowledge, skills, and abilities to meet identified benchmarks and assist in carrying out the functions of the state board.
2. The state board's director and other staff must be subject to limitations on payment of salary and bonuses as described in WIOA Sec. 194(15) and TEGL 29-14 Change 2.

## (c) Conflict of interest

The bylaws of the state board define specific requirements regarding conflicts of interest in relation to state board members, and the members must adhere to those requirements.

# Section II. Local Boards

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## (a) Membership

Members of a local board are appointed by the CEO for the local area. At a minimum, each local board must consist of representatives from the four categories described in Table 1. All members of the local board must:

- be individuals with optimum policymaking authority within the entities they represent;<sup>8</sup> and
- meet the criteria for the entity they represent as described in Table 1.

<sup>6</sup> Neb. Rev. Stat. §§ 84-1407 through 84-1414 (2014, Cum. Supp. 2020)

<sup>7</sup> 20 CFR § 679.160

<sup>8</sup> 20 CFR § 679.320(f)

Table 1. Required structure of a local board<sup>9</sup>

Category of representation	Mandatory membership criteria
1. Business	<p>At least 51% percent of local board members must be business representatives in the local area and each individual representing this category must:</p> <ul style="list-style-type: none"> <li>• be an owner, chief executive officer, chief operating officer, or other individual with optimum policy-making authority or hiring authority; and</li> <li>• provide employment opportunities in in-demand industry sectors or occupations.</li> </ul> <p>At least 2 individuals representing this category must represent small business.</p>
2. Workforce	<p>At least 20% percent of local board members must be workforce representatives and must include:</p> <ul style="list-style-type: none"> <li>• 2 or more representatives of labor organizations, if labor organizations exist in the local area; <i>or</i>, where labor organizations do not exist, the workforce representatives must be selected from other representatives of workers in the local area; and</li> <li>• 1 or more representatives of a joint labor-management or union-affiliated Registered Apprenticeship program in the local area; <i>or</i>, if no union-affiliated Registered Apprenticeship program exists in the local area, a representative of a Registered Apprenticeship program having no union affiliation must be appointed, if one exists.</li> </ul> <p>Workforce representatives may include:</p> <ul style="list-style-type: none"> <li>• 1 or more representatives of community-based organizations that have demonstrated experience and expertise in addressing the employment, training or education needs of individuals with barriers to employment, including organizations that serve Veterans or provide or support competitive integrated employment for individuals with disabilities; and</li> <li>• 1 or more representatives of organizations that have demonstrated experience and expertise in addressing the employment, training, or education needs of eligible youth, including representatives of organizations that serve out-of-school youth.</li> </ul>
3. Education and training	<p>Local board membership must include at least 1 representative from each of the following education and training entities:</p> <ul style="list-style-type: none"> <li>• a provider that administers adult education and literacy activities under WIOA Title II; and</li> <li>• an institution of higher education providing workforce investment activities, including community colleges.</li> </ul>
4. Government; economic and community development	<p>Local board membership must include at least 1 representative from each of the following governmental and economic and community development entities:</p> <ul style="list-style-type: none"> <li>• economic and community development entities serving the local area;</li> <li>• Wagner-Peyser Employment Service program serving the local area; and</li> <li>• vocational rehabilitation programs authorized under Title I of the Rehabilitation Act of 1973, as amended by WIOA Title IV.</li> </ul>

<sup>9</sup> 20 CFR § 679.320(b) – (d)(1) – (3)

### (1) Additional members<sup>10</sup>

In addition to the required members described in Table 1, the membership of the local board may include individuals or representatives of other appropriate entities in the local area, including:

- individuals from entities administering education and training activities who represent local educational agencies or community-based organizations that have demonstrated expertise in addressing the education or training needs for individuals with barriers to employment;
- representatives from governmental and economic and community development entities representing transportation, housing, and public assistance programs;
- individuals from philanthropic organizations serving the local area; and
- representatives of entities determined by the CEO as appropriate.

All additional members of the local board must:

- be individuals with optimum policymaking authority within the entities they represent; and
- meet the criteria for the category and entity they represent as described in this subsection.

If additional members are included in the local board's membership, requirements regarding minimum percentages for representation of the business and workforce categories still apply and must be met as described in Table 1.

### (2) Nomination

Members of the local board are nominated for appointment according to the formal process established by the CEO in the bylaws of the local board and the following requirements:<sup>11</sup>

- business representatives must be nominated by local business organizations or business trade associations;
- labor representatives must be nominated by:
  - local labor federations; or
  - other organizations or representatives of employees if employees are not represented by local labor federations in the local area;
- if there is more than one local area provider of adult education and literacy activities under WIOA Title II or multiple institutions of higher education providing workforce investment activities in the local area, education and training representatives must be nominated by those entities.

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<sup>10</sup> 20 CFR § 679.320(e) – (f)

<sup>11</sup> 20 CFR §§ 679.310(g)(1) and 679.320(g)(1) – (3)

### (3) Appointment

Members of the local board are appointed by the CEO:<sup>12</sup>

- from the individuals nominated as described [Section II\(a\)\(2\)](#); and
- according to the formal process established by the CEO in the bylaws of the local board and the requirements established in [Section II\(a\)\(2\)](#).

An individual may be appointed as a representative of more than one required membership entity if the individual meets all of the criteria for representation for each entity the individual is meant to represent.<sup>13</sup>

Where governance of a local area is provided by a chief elected officials board (CEOB) and the members of the CEOB are unable to reach agreement regarding appointment of local board members after reasonable effort, the Governor may appoint the members of the local board from among individuals nominated according to the process described in [Section II\(a\)\(2\)](#).<sup>14</sup>

### (b) Functions

The local board must perform the functions described in WIOA Sec. 107(d) and 20 CFR § 679.370. In addition, the local board must:

- elect a chairperson from among the business representatives appointed to the local board;<sup>15</sup> and
- when there is a change in the position of CEO for the local area, inform the new CEO in a timely manner of the CEO's responsibilities and liabilities and the need to review and update any written agreements among CEOs in the local area.<sup>16</sup>

### (1) Sunshine provision requirements

In addition to the required functions described above and in WIOA Sec. 107(d) and 20 CFR § 679.370, each local board must conduct its business in an open manner by making available to the public information about the activities of the local board. This information must be made available on a regular basis through electronic means and open meetings. These requirements are referred to as sunshine provision requirements, which are described in WIOA Sec. 107(e) and 20 CFR § 679.390 and described below.

To meet sunshine provision requirements for local boards, each local board must make the following information available to the public:

- information about the local plan or modification of the local plan before submission of the local plan or any modification for approval;

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<sup>12</sup> 20 CFR § 679.350

<sup>13</sup> 20 CFR § 679.320(h)

<sup>14</sup> 20 CFR §§ 679.310(e) and 679.320(g)(3)

<sup>15</sup> 20 CFR § 679.330

<sup>16</sup> 20 CFR § 683.710(b)(3)

- a listing of local board members and their category of affiliation (business, workforce, etc.);
- information about the selection of a one-stop operator;
- awarding of grants or contracts to providers of workforce investment activities, including providers of youth workforce investment activities;
- minutes of meetings of the local board; and
- local board bylaws.

In addition, meetings of the local board must comply with the requirements of the Nebraska Open Meetings Act.<sup>17</sup>

### (2) Local board staff<sup>18</sup>

Each local board has the authority to hire a director and other staff to assist in carrying out the functions of the local board. If the local board elects to hire staff, the following requirements must be met.

- The local board must establish and apply a set of qualifications for the position of director that ensures the individual selected has the requisite knowledge, skills, and abilities to meet identified benchmarks and to assist in carrying out the functions of the local board.
- The local board's director and staff must be subject to limitations on payment of salary and bonuses described in WIOA Sec. 194(15) and TEGL 29-14 Change 2.
- In general, local board staff may assist the local board only in fulfillment of its required functions as described in WIOA Sec. 107(d). If the local board selects an entity that provides additional workforce functions beyond the functions described in WIOA Sec. 107(d), that entity must enter into a written agreement with the local board and CEO to clarify its roles and responsibilities.

### (3) Standing committees<sup>19</sup>

A local board may designate standing committees to assist the local board in carrying out its responsibilities. If the local board elects to designate standing committees, each standing committee:

- must be chaired by a member of the local board;
- must include other individuals appointed by the local board who are not members of the local board and have demonstrated experience and expertise as determined by the local board; and
- may include other members of the local board.

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<sup>17</sup> Neb. Rev. Stat. §§ 84-1407 through 84-1414 (2014, Cum. Supp. 2020)

<sup>18</sup> 20 CFR § 679.400

<sup>19</sup> 20 CFR § 679.360

Standing committees designated by the local board may include each of the following:

- a standing committee to provide information and assist with operational and other issues relating to the one-stop delivery system, which may include representatives of one-stop partners;
- a standing committee to provide information and assist with planning, operational, and other issues relating to the provision of services to youth, which must include community-based organizations with a demonstrated record of success in serving eligible youth and may include parents, participants, and youth;<sup>20</sup>
- a standing committee to provide information and assist with operational and other issues relating to the provision of services to individuals with disabilities, including issues relating to:
  - compliance with WIOA Sec. 188 (nondiscrimination) and 29 CFR Part 38 and the applicable provisions of the Americans with Disabilities Act of 1990 (42 USC § 12101 et seq.) regarding programmatic and physical access to the services, programs, and activities of the one-stop delivery system; and
  - appropriate training for staff on providing supports for, accommodations to, and finding employment opportunities for individuals with disabilities;
- an entity in existence as of the date of the enactment of WIOA (July 22, 2014), such as an effective youth council, to serve as a standing committee as long as the entity meets the requirements described in this subsection; and
- other standing committees.

#### (4) Consumer choice requirements

Each local board must satisfy the consumer choice requirements described in 20 CFR § 679.380 and restated below in Table 2.

Table 2. Consumer choice requirements

Services	Requirements
1. Career services	<p>The local board satisfies consumer choice requirements for career services by:<sup>21</sup></p> <ul style="list-style-type: none"> <li>• determining which career services:               <ul style="list-style-type: none"> <li>○ are best performed by the one-stop operator; and</li> <li>○ require contracting with a career services provider;</li> </ul> </li> <li>• identifying a wide array of potential career services providers and awarding contracts when appropriate, including awarding contracts to providers to ensure access to:               <ul style="list-style-type: none"> <li>○ services for individuals with disabilities, including opportunities that lead to integrated, competitive employment for individuals with disabilities; and</li> <li>○ adult education and literacy activities.</li> </ul> </li> </ul>
2. Training services	<p>The local board satisfies the consumer choice requirement for training services by:<sup>22</sup></p> <ul style="list-style-type: none"> <li>• providing adequate access to training services for individuals with disabilities;</li> </ul>

<sup>20</sup> 20 CFR § 681.110(a) and (b)

<sup>21</sup> 20 CFR § 679.380(b)

<sup>22</sup> 20 CFR § 679.380(a)

Services	Requirements
	<ul style="list-style-type: none"> <li>• working with NDOL to ensure there are sufficient numbers and types of providers of training services serving the local area, including training providers with expertise in assisting: <ul style="list-style-type: none"> <li>○ individuals with disabilities; and</li> <li>○ adults in need of adult education and literacy activities;</li> </ul> </li> <li>• assisting NDOL, as requested, regarding Nebraska's eligible training providers and Eligible Training Provider List; and</li> <li>• ensuring the dissemination and appropriate use of Nebraska's Eligible Training Provider List through the one-stop delivery system, including dissemination of program performance and cost information.<sup>23</sup></li> </ul>

### (5) Oversight and monitoring

Each local board, in partnership with the CEO for the local area, must provide oversight and monitoring as described in Table 3.

Table 3. Required oversight and monitoring activities for local boards and CEOs

Required activity
1. Conducting oversight and monitoring of adult, dislocated worker, and youth program activities and the entire one-stop delivery system in the local area <sup>24</sup>
2. Ensuring appropriate use and management of funds provided under WIOA Title IB for adult, dislocated worker, and youth activities and the one-stop delivery system in the local area; <sup>25</sup>
3. For workforce development activities, ensuring appropriate use, management, and investment of funds to maximize performance outcomes described under WIOA Sec. 116 <sup>26</sup>
4. Providing oversight and monitoring of local area operations and activities supported by WIOA Title IB funding <sup>27</sup>
5. Monitoring local board activities to: <sup>28</sup> <ul style="list-style-type: none"> <li>a. assure compliance with applicable Federal requirements; and</li> <li>b. assure performance expectations are being achieved</li> </ul>
6. Conducting monitoring of subawards to one-stop operators, service providers, and other subrecipients to ensure (1) subawards are used for authorized purposes in compliance with Federal statutes, regulations, and the terms and conditions of the subaward and (2) subaward performance goals are achieved, which must include: <sup>29</sup> <ul style="list-style-type: none"> <li>a. reviewing financial and performance reports required of the subrecipient by the local board;</li> <li>b. ensuring that subrecipients take timely and appropriate action on all deficiencies detected through audits, on-site reviews, and other means; and</li> <li>c. issuing a management decision for audit findings as required by 2 CFR § 200.521</li> </ul>
7. Ensuring contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders <sup>30</sup>
8. Evaluating and monitoring the local board's compliance with statutes, regulations and the terms and conditions of its WIOA grant agreement <sup>31</sup>

<sup>23</sup> 20 CFR § 679.380(a)

<sup>24</sup> 20 CFR § 679.370(i)(1)

<sup>25</sup> 20 CFR § 679.370(i)(2)

<sup>26</sup> 20 CFR § 679.370(i)(3)

<sup>27</sup> 2 CFR § 200.328

<sup>28</sup> 2 CFR § 200.328

<sup>29</sup> 2 CFR § 200.331(d)

<sup>30</sup> 2 CFR § 200.318(b)

<sup>31</sup> 2 CFR § 200.303(c)

Required activity
9. Taking prompt action when instances of noncompliance are identified, including noncompliance identified in audit and monitoring findings <sup>32</sup>

## (6) Internal controls

Each local board must:<sup>33</sup>

- establish and maintain effective internal controls<sup>34</sup> that provide reasonable assurance that the local board is managing Title I funds in compliance with Federal statutes, regulations, and the terms and conditions of its WIOA grant agreement; and
- take reasonable measures to safeguard protected personally identifiable information and other information the US Department of Labor or NDOL designates as sensitive or the local board considers sensitive, consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.

In addition, if the local board or CEO has selected or designated an organization to function simultaneously in two or more roles (including local fiscal agent, local board staff, one-stop operator, and direct provider of services), the local board and CEO must develop a written agreement with the organization. The agreement must clarify how the organization will carry out its responsibilities while demonstrating compliance with WIOA and corresponding regulations, the Uniform Guidance (2 CFR Parts 200 and 2900), and the State's conflict of interest provisions as described in this policy.<sup>35</sup>

## (c) Conflict of interest

A local board member and a member of a standing committee of the local board must not vote on or participate in any decision-making capacity regarding:<sup>36</sup>

- the provision of services by the member or any entity or class of officials which that member directly represents; or
- any matter that would provide any direct financial benefit to the member or that member's immediate family.

In addition, the local board, as a non-Federal entity, must maintain written standards of conduct covering conflicts of interest and governing the actions of its members and local area staff engaged in the selection, award and administration of contracts as described in 2 CFR § 200.318(c)(1), the requirements of which are restated below.

<sup>32</sup> 2 CFR § 200.303(d)

<sup>33</sup> 2 CFR § 200.303(a) and (e)

<sup>34</sup> Internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government,” issued by the Comptroller General of the United States, *or* the “Internal Control Integrated Framework,” issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) [20 CFR § 683.220(b)].

<sup>35</sup> 20 CFR § 679.430

<sup>36</sup> 20 CFR § 683.200(c)(5)(i)

1. No employee, officer, or agent of a non-Federal entity may participate in the selection, award, or administration of a contract supported by a Federal award if the individual has a real or apparent conflict of interest.
  - a. A conflict of interest arises when the employee, officer, or agent, any member of the individual's immediate family, the individual's partner, or an organization which employs or is about to employ any of the parties described in this subsection (c), has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.
2. If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest.
  - a. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.
3. Officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value.
4. The non-Federal entity's standards of conduct must provide for disciplinary actions to be applied for violations of the standards by officers, employees, or agents of the non-Federal entity.

#### (d) Certification procedures and criteria

##### (1) Criteria

The local board must be certified every two years.<sup>37</sup> Certification of local boards is based on the following criteria.<sup>38</sup>

1. The composition of the local board must comply with the membership requirements described in [Section II\(a\)](#).
2. The chair of the local board must be a representative of business in the local area as described in [Section II\(b\)](#).
3. If the local board has established standing committees, the committees must comply with the requirements described in [Section II\(b\)\(3\)](#).

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<sup>37</sup> 20 CFR § 679.350

<sup>38</sup> WIOA Secs. 107(b)(1) – (4) and (c)(2).

4. The local board must have ensured that workforce investment activities carried out in the local area enabled the local area to meet adjusted levels of performance during the preceding two full program years.<sup>39</sup>
5. The local board must have sustained fiscal integrity during the preceding two full program years.

If a local board fails to achieve certification, a new local board must be nominated and appointed according to the processes described in [Sections II\(a\)\(2\)](#) and [II\(a\)\(3\)](#).

## (2) Procedures

Every other year beginning on January 1, 2023, CEOs and local boards must submit certification documentation to the policy mailbox ([ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov)). The following certification documentation must be submitted no later than June 1 of the applicable year:

- current membership roster for the local board and its standing committees using the State's template;<sup>40</sup>
- nomination and appointment documentation for all current board members; and
- signed written assurances regarding local board and standing committee composition, performance accountability and fiscal integrity, and records retention.<sup>41</sup>

## (e) Decertification criteria and procedures

### (1) Criteria

The Governor has the authority to decertify a local board at any time for any of the following reasons:<sup>42</sup>

- fraud or abuse;
- failure to carry out the functions specified for the local board in 20 CFR § 679.370 and [Section II\(b\)](#); or
- failure to meet adjusted levels of performance for two consecutive program years, as described in the State's performance accountability policy.<sup>43</sup>

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<sup>39</sup> Refer to the State's performance accountability policy for detailed information on failure to meet adjusted levels of performance. The State's policy manual is accessible at <https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies>.

<sup>40</sup> NDOL will separately provide local board representatives with the template for board and standing committee rosters and the written assurances form that must be signed by their respective CEO and local board chair.

<sup>41</sup> Ibid.

<sup>42</sup> WIOA Sec. 107(c)(3)

<sup>43</sup> The State's policy manual is accessible at <https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies>.

## (2) Procedures

Prior to decertification, the Governor must provide the local board written notice of decertification and provide an opportunity for comment by the local board.

If the Governor decertifies a local board, the Governor may require that a new local board be nominated, appointed, and certified for the local area pursuant to a reorganization plan developed by the Governor in consultation with the CEO of the local area and in accordance with the criteria established in [Section II\(a\)](#).

### (f) High-performing local boards

Criteria for high-performing local boards are under development and will be provided at a later date through a change to this policy.

## Section III. CEOs

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### (a) Functions

The CEO must perform the functions described in Table 4.

Table 4. Required functions of the CEO

Description
1. Serve as subrecipient of Title I (adult, dislocated worker, and youth) funds or designate an alternative entity as subrecipient or fiscal agent <sup>44</sup>
2. Designate the entity responsible for the disbursement of Title I (adult, dislocated worker, and youth programs) funds to the local area <sup>45</sup>
3. Bear financial liability for misuse of grant funds, even if an alternate grant subrecipient or fiscal agent has been designated, unless an agreement has been reached with the Governor to bear the liability <sup>46</sup>
4. If the local area is composed of more than 1 unit of general local government, the liability of the individual jurisdictions with regard to misused funds must be specified in a written agreement among the CEOs in the local area <sup>47</sup>
5. Establish the bylaws for the local board <sup>48</sup>
6. Select and appoint members of the local board <sup>49</sup>
7. Request designation for the local area in collaboration with the local board <sup>50</sup>
8. Approve the following actions of the local board: a. local board's competitive selection of a one-stop operator; <sup>51</sup> b. local board's intent to serve as the one-stop-operator or provide career services, prior to requesting approval from NDOL, <sup>52</sup> according to the requirements of 20 CFR § 679.410

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<sup>44</sup> 20 CFR § 679.420(a)

<sup>45</sup> 20 CFR § 679.560(b)(14)

<sup>46</sup> 20 CFR §§ 679.420(a) and 679.710(b)(1) and (4)

<sup>47</sup> 20 CFR § 683.710(b)(2)

<sup>48</sup> 20 CFR § 679.310(g)

<sup>49</sup> 20 CFR §§ 679.310(a), 679.320(a), and 679.350

<sup>50</sup> 20 CFR § 679.250

<sup>51</sup> WIOA Sec. 107(d)(10)

<sup>52</sup> 20 CFR § 679.410(a) – (b)

Description
<p>9. Consult with the state board and NDOL, as appropriate, regarding significant structural, planning, operational, and performance matters pertaining to the delivery of workforce services, including consultation related to:</p> <ul style="list-style-type: none"> <li>a. designation of local areas;<sup>53</sup></li> <li>b. identification of planning regions;<sup>54</sup></li> <li>c. allocation of Title I funds;<sup>55</sup> and</li> <li>d. policies regarding certification of American Job Centers (AJCs) and funding of AJC infrastructure costs<sup>56</sup></li> </ul>
<p>10. Consult with NDOL, as requested, regarding a reorganization plan developed in relation to decertification of the local board<sup>57</sup></p>
<p>11. Work in partnership with the local board to:</p> <ul style="list-style-type: none"> <li>a. establish a written agreement among CEOs and local boards in the planning region on how the planning region will collectively negotiate and reach agreement with NDOL on levels of performance;<sup>58</sup></li> <li>b. establish a written agreement between the CEO and local board when a single entity has been selected to operate in more than 1 of the following roles in or for the local area:<sup>59</sup> <ul style="list-style-type: none"> <li>i. fiscal agent;</li> <li>ii. local board staff;</li> <li>iii. one-stop operator; or</li> <li>iv. direct provider of career services or training services;</li> </ul> </li> <li>c. develop and submit a comprehensive 4-year local plan for the local area to the Governor;<sup>60</sup></li> <li>d. develop a budget for the activities of the local board;<sup>61</sup></li> <li>e. set policy for the local area, consistent with applicable Federal and state laws, rules, regulations and the State's policies;<sup>62</sup></li> <li>f. conduct oversight of youth workforce investment activities authorized under WIOA Sec. 129(c), adult and dislocated worker employment and training activities under WIOA Secs. 134(c) and (d), and the entire one-stop delivery system in the local area as described in <a href="#">Section II(b)(5)</a>;<sup>63</sup></li> <li>g. ensure appropriate use and management of funds provided for WIOA Title IB (adult, dislocated worker, and youth) program activities and the one-stop delivery system in the local area;<sup>64</sup></li> <li>h. ensure the appropriate use, management, and investment of funds to maximize performance outcomes under WIOA Sec. 116;<sup>65</sup></li> <li>i. negotiate and reach agreement on local levels of performance with NDOL;<sup>66</sup></li> <li>j. negotiate with required one-stop partners on methods for funding infrastructure costs for one-stop centers in the local area and notify NDOL if consensus is not reached as required under the State's policy on memorandums of understanding and funding agreements;<sup>67</sup></li> <li>k. participate in a regional planning process that results in a regional plan;<sup>68</sup></li> </ul>

<sup>53</sup> 20 CFR §§ 679.230(b) and 679.250

<sup>54</sup> 20 CFR §§ 679.130(c)(5) and 679.210(b)(1)

<sup>55</sup> 20 CFR § 683.120(a)(2)(ii)

<sup>56</sup> 20 CFR §§ 678.705(a), 678.730(b), and 678.800(a)

<sup>57</sup> WIOA Sec. 107(c)(3)(C)

<sup>58</sup> 20 CFR § 679.510(a)(1)(viii)

<sup>59</sup> 20 CFR §§ 679.400(e), 679.420(a), and 679.430

<sup>60</sup> 20 CFR §§ 679.310(d), 679.370(a), and 679.550(a)

<sup>61</sup> 20 CFR § 679.370(o)

<sup>62</sup> 20 CFR § 679.310(b)

<sup>63</sup> 20 CFR § 679.370(i)(1)

<sup>64</sup> 20 CFR § 679.370(i)(2)

<sup>65</sup> 20 CFR § 679.370(i)(3)

<sup>66</sup> 20 CFR § 679.370(j)

<sup>67</sup> 20 CFR § 679.370(k). The State's policy manual is accessible at <https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies>.

<sup>68</sup> 20 CFR § 679.510(a)(1)

Description
I. at the end of the first two-year period of the regional and local plan, review the plan and prepare and submit a modification to the plan as described in 20 CFR §§ 679.530 and 679.580 and the State's policy on regional and local plans
12. Carry out Rapid Response activities in conjunction with NDOL, the local board, and other stakeholders <sup>69</sup> as described in the State's Rapid Response manual <sup>70</sup>

In addition to the required functions described in Table 4, CEOs may:

- enter into an agreement with the local board that describes the respective roles and responsibilities of the parties;<sup>71</sup>
- serve on the state board at the discretion of the Governor;<sup>72</sup> and
- convey voting privileges to non-required members of the local board.<sup>73</sup>

#### (1) Delegation of authority and financial liability<sup>74</sup>

The CEO within each local must serve as the subrecipient for Title I funds unless the CEO designates an alternative entity to serve as subrecipient or fiscal agent. CEOs in local areas having multiple units of general local government may designate a single CEO as the subrecipient or designate another entity to serve as subrecipient or fiscal agent pursuant to an agreement among the CEOs in the local area. When an alternate entity is designated as fiscal agent by the CEO, the CEO must ensure the fiscal agent has clearly defined roles and responsibilities regarding:

- receipt of funds from the entity functioning as subrecipient;
- ensuring sustained fiscal integrity and accountability for expenditures of funds in accordance with the Uniform Guidance (2 CFR Parts 200 and 2900), WIOA, corresponding Federal and state laws, rules, and regulations, and the State's policies;
- responding to audit financial findings;
- maintaining proper accounting records and adequate documentation;
- preparing financial reports;
- providing technical assistance to subrecipients regarding fiscal issues;
- procuring contracts or obtaining written agreements;

<sup>69</sup> 20 CFR § 682.310(a) and 682.330(e)

<sup>70</sup> The State's Rapid Response manual is accessible at <https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/ManualsPlansReports>.

<sup>71</sup> 20 CFR § 679.310(c)

<sup>72</sup> 20 CFR § 679.110(b)(iii)(A)(2)

<sup>73</sup> 20 CFR § 679.320(i)

<sup>74</sup> 20 CFR § 679.310(e) and 679.420

- conducting financial monitoring of service providers; and
- ensuring independent audit of all WIOA Title IB (adult, dislocated worker, and youth programs) employment and training programs.

Designation of a fiscal agent does not relieve the CEO of liability for misuse of grant funds.

## (2) Local board bylaws

The CEO must establish bylaws for the local board that address, at a minimum:<sup>75</sup>

- the nomination and appointment process used by the CEO to select the local board members;
- the process for election of the local board chair;
- the term limitations and how the term appointments will be staggered to ensure only a portion of membership expire in a given year;
- the process for notifying the CEO of a member vacancy to ensure prompt replacement;
- the proxy and alternative designee process that will be used when a local board member is unable to attend a meeting and assigns a designee according to the following requirements:
  - if the alternative designee is a business representative, the designee must have optimum policymaking or hiring authority; and
  - if the alternative designee is not a business representative, the designee must have demonstrated experience and expertise and optimum policymaking authority;
- the use of technology, such as phone and web-based meetings, to be used to promote local board member participation, subject to the requirements and limitations of the Nebraska Open Meetings Act;<sup>76</sup>
- the process for ensuring local board members actively participate in convening the one-stop delivery system stakeholders, brokering relationships with a diverse range of employers, and leveraging support for workforce development activities; and
- a description of any other conditions governing appointment or membership on the local board, as deemed appropriate by the CEO.

## (3) CEO agreement

Local areas having more than one unit of general local government must establish a written agreement among the CEOs in the local area to define the liability of individual jurisdictions with

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<sup>75</sup> 20 CFR §§ 679.110(d)(4), 679.310(g), 679.330

<sup>76</sup> Neb. Rev. Stat. §§ 84-1407 through 84-1414 (2014, Cum. Supp. 2020)

regard to misuse of Title I funds.<sup>77</sup> The CEO agreement may also describe the roles and responsibilities of CEOs in the local area.<sup>78</sup>

#### (b) Conflict of interest

Each CEO must disclose to NDOL in writing any potential conflict of interest regarding the CEO's role as a subrecipient of Federally awarded grant funds. The disclosure must be submitted by email to Bradley Pierce, Director, Reemployment Services Division, Nebraska Department of Labor at [bradley.pierce@nebraska.gov](mailto:bradley.pierce@nebraska.gov).

#### 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>77</sup> 20 CFR § 683.710(b)(2)

<sup>78</sup> 20 CFR § 679.310(e)

## APPENDIX I. Definitions

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**PURPOSE.** Definitions in this appendix are provided as supplemental information that supports the provisions of the policy. The terms and phrases defined in this appendix should be read and understood in the context in which they are used in the policy and not as stand-alone information independent of that context.

### 1. chief elected official (CEO)

The term *chief elected official* means:<sup>79</sup>

- the chief elected executive officer of a unit of general local government in a local area; and
- in the case of a local area that includes multiple units of general local government, the individuals designated under the agreement executed among the chief elected officials of the local area in accordance with WIOA Sec. 107(c)(1)(B).

For purposes of this policy, the term chief elected official also refers to a chief elected officials board (CEOB) established in accordance with WIOA Sec. 107(c)(1)(B).

### 2. community-based organization

*Community-based organization*<sup>80</sup> means a private nonprofit organization (which may include a faith-based organization) that is representative of a community or a significant segment of a community and that has demonstrated expertise and effectiveness in the field of workforce development.

### 3. demonstrated experience and expertise

For purposes of selecting representatives as members of the state board, a representative with *demonstrated experience and expertise* means an individual who has documented leadership in developing or implementing workforce development, human resources, training and development, or a core program function.<sup>81</sup> Individuals with *demonstrated experience and expertise* may include an individual with experience and expertise in:

- education or training of job seekers with barriers to employment, such as Veterans and individuals with disabilities;
- providing or supporting competitive, integrated employment for individuals with disabilities; or
- addressing employment, training, or education needs of eligible youth, including representatives of organizations that serve out-of-school youth.

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<sup>79</sup> WOA Sec. 3(9)

<sup>80</sup> WIOA Sec. 3(10)

<sup>81</sup> 20 CFR §§ 679.110(b)(3)(ii)(C) – (D) and 679.120(b)

For purposes of selecting representatives as members of local boards, a representative with *demonstrated experience and expertise* means an individual who:<sup>82</sup>

- is a workplace learning advisor;
- contributes to the field of workforce development, human resources, training and development, or a core program function; or
- the local board recognizes for valuable contributions in education or workforce development related fields.

#### 4. in-demand industry sector or occupation

The term *in-demand industry sector or occupation*<sup>83</sup> means an:

- industry sector that has a substantial current or potential impact (including through jobs that lead to economic self-sufficiency and opportunities for advancement) on the state, regional, or local economy, as appropriate, and that contributes to the growth or stability of other supporting businesses, or the growth of other industry sectors; or
- occupation that currently has or is projected to have a number of positions (including positions that lead to economic self-sufficiency and opportunities for advancement) in an industry sector so as to have a significant impact on the state, regional, or local economy, as appropriate.

#### 5. optimum policy-making authority

For purposes of selecting representatives as members of the state board and local boards, a representative with *optimum policymaking authority*<sup>84</sup> is an individual who can reasonably be expected to:

- speak affirmatively on behalf of the entity the individual represents; and
- commit that entity to a chosen course of action.

#### 6. personally identifiable information (PII)

*Personally identifiable information*<sup>85</sup> (*PII*) means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. Some information that is considered to be *PII* is available in public sources such as telephone books, public websites, and university listings. This type of information is considered to be public *PII* and includes, for example, first and last name, address, work telephone number, email address, home telephone number, or general educational credentials. The definition of *PII* is not anchored to any single category of information or technology. Rather, it requires a case-by-case assessment of the specific risk that an individual can be identified. Non-*PII* can become *PII* whenever additional information is made publicly

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<sup>82</sup> 20 CFR § 679.340(b)

<sup>83</sup> WIOA Sec. 3(23)

<sup>84</sup> 20 CFR §§ 679.120(a) and 679.340(a)

<sup>85</sup> 20 CFR §§ 679.120(a) and 679.340(a)

available, in any medium and from any source, that could be used to identify an individual when combined with other available information.

## 7. subrecipient

*Subrecipient* means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.<sup>86</sup>

## 8. sustained fiscal integrity

The term *sustained fiscal integrity*<sup>87</sup> means that the Secretary of USDOL has not made a formal determination that during the two preceding program years that neither the local area grant recipient nor administrative entity misexpended funds provided under Title I due to:

- willful disregard of the requirements of the WIOA provision involved;
- gross negligence; or
- failure to comply with accepted standards of administration.

## 9. unit of general local government

The term *unit of general local government* means any general-purpose political subdivision of a state that has the power to levy taxes and spend funds and has general corporate and police powers.<sup>88</sup>

## 10. workplace learning advisor<sup>89</sup>

The term *workplace learning advisor* means an individual employed by an organization who has the knowledge and skills necessary to advise other employees of that organization about education, skill development, job training, career counseling services, and credentials that are required to progress toward the career goals of the employees in order to meet employer requirements related to job openings and career advancements that support economic self-sufficiency. The *workplace learning advisor* must also have the knowledge and skills necessary to advise other employees on the services provided through the workforce development system.

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<sup>86</sup> 2 CFR § 200.93

<sup>87</sup> 20 CFR § 679.260(c)

<sup>88</sup> WIOA Sec. 3(62)

<sup>89</sup> WIOA Sec. 3(70)

## 1.2. Local Workforce Development Areas and Statewide Planning Region

## State Policy

## Workforce Innovation and Opportunity Act (WIOA)

Nebraska Department of Labor (NDOL) Division of Reemployment Services 550 South 16 <sup>th</sup> Street Lincoln, NE 68508 402.471.9000 <a href="mailto:ndol.wioa_policy@nebraska.gov">ndol.wioa_policy@nebraska.gov</a>	Policy category
	Governance
	Effective date
	June 17, 2022
	Supersedes
	Local Workforce Development Areas and Statewide Planning Region (effective December 2, 2020)

## Local Workforce Development Areas and Statewide Planning Region, Change 1

### 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

To receive WIOA Title I funding, a Governor must designate local areas.<sup>1</sup> In addition, in order for a state to receive Title I funding, a state must identify regions in the state before the second full program year after enactment of WIOA.<sup>2</sup> A region comprising two or more local areas is considered a planning region, which must then be designated by the Governor.<sup>3</sup>

### CHANGES

This policy establishes the following material changes to the superseded policy.

1. Provisions regarding designation of new local areas have been added.

<sup>1</sup> WIOA Sec. 106(b)(1)(A)

<sup>2</sup> WIOA Sec. 106(a)(1)

<sup>3</sup> WIOA Sec. 106(a)(2)(B)

2. Revisions have been made regarding procedural requirements for designation, redesignation, and subsequent designation of local areas.
3. Revisions have been made to clarify designation of Nebraska’s statewide planning region.

## ACTION

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This policy supersedes and cancels the *Local Workforce Development Areas and Statewide Planning Region* policy (effective date December 2, 2020).<sup>4</sup> Questions and comments on this policy may be submitted in writing to the policy mailbox at [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov).

## POLICY

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This policy acknowledges that Nebraska’s local areas received initial designation prior to the date of this policy and establishes:

- requirements and procedures for designation, redesignation, and subsequent designation of local areas; and
- the single statewide planning region.

This policy has three sections and three appendices.

Section I.	Designation, redesignation, and subsequent designation of local areas .....	2
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## Section I. Designation, redesignation, and subsequent designation of local areas

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### (a) Initial designation

All Nebraska local areas received initial designation prior to the effective date of this policy in accordance with WIOA Sec. 106(b)(1) – (2) and 20 CFR § 679.250(a) – (b).

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<sup>4</sup> The State’s policy manual is accessible at <https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies>.

### (b) New local area designation

The Governor may designate a new local area, meaning one that was not designated as a local area under the Workforce Investment Act of 1998 (WIA), provided the proposed new local area:<sup>5</sup>

- is consistent with local labor market areas;
- has a common economic development area; and
- has necessary Federal and non-Federal resources, including appropriate education and training institutions, to administer Title IB adult, dislocated worker and youth program activities.

### (c) Redesignation

Two or more local boards and chief elected officials may make a joint written request for redesignation of their respective local areas as a single local area. The Governor may redesignate the local areas as a single local area if the redesignation has been requested jointly and the Governor approves the request.<sup>6</sup> If the Governor approves the request, the Nebraska Workforce Development Board must authorize use of statewide Title I funds to facilitate redesignation activities.<sup>7</sup> If Title I statewide funds are not available during the program year when the request is approved, funds for redesignation activities may be provided during the next program year.<sup>8</sup>

Activities that may be carried out by local areas approved for redesignation may include:<sup>9</sup>

- convening sessions and conferences on the topic of redesignation;
- renegotiating contracts and agreements impacted by redesignation; and
- other activities directly associated with redesignation deemed appropriate by the Nebraska Workforce Development Board.

### (d) Subsequent designation

If a local board and chief elected official request subsequent designation of their local area, the request must be approved if the local area, for the two most recent program years of initial designation:<sup>10</sup>

- performed successfully and sustained fiscal integrity;<sup>11</sup> and

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<sup>5</sup> 20 CFR § 679.240(a)

<sup>6</sup> 20 CFR § 679.240(c)

<sup>7</sup> WIOA Sec. 106(b)(6); 20 CFR § 679.280(a)

<sup>8</sup> 20 CFR § 679.280(b)

<sup>9</sup> 20 CFR § 679.280(c)

<sup>10</sup> WIOA Sec. 106(b)(3); 20 CFR § 679.250(b)

<sup>11</sup> Definitions of *performed successfully* and *sustained fiscal integrity* are provided in the State's performance accountability policy. The State's policy manual is accessible at <https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies>.

- participated in regional planning activities that resulted in *all* of the following activities:<sup>12</sup>
  - preparation of a regional plan;
  - establishment of regional service strategies, including use of cooperative service delivery agreements;
  - development and implementation of sector initiatives for in-demand industry sectors or occupations for the region;
  - collection and analysis of regional labor market data (in conjunction with the State);
  - establishment of administrative cost arrangements for the region, including pooling of funds for administrative costs;
  - coordination of transportation and other supportive services for the region, as appropriate;
  - coordination of activities with regional economic development providers; and
  - establishment of an agreement on how local boards in the planning region will:
    - collectively negotiate and reach agreement with NDOL on local levels of performance for the local Title I programs in the planning region; and
    - report on performance accountability measures described in WIOA Sec. 116(c) for the local areas.

## Section II. Procedures

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### (a) Designation and redesignation procedural requirements

#### (1) General procedural requirements

General procedural requirements for designation and redesignation of local areas include:<sup>13</sup>

- consultation with the Nebraska Workforce Development Board, local boards, and chief elected officials;
- consideration of comments received through a public comment process, which must:
  - provide an opportunity for comment by representatives of local boards, chief elected officials, businesses, institutions of higher education, labor organizations, other primary stakeholders, and the general public regarding designation or redesignation of local areas, as applicable; and

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<sup>12</sup> WIOA Sec. 106(c)(1); 20 CFR § 679.250(b)(3)

<sup>13</sup> WIOA Sec. 106(b)(1); 20 CFR § 679.230

- offer adequate time for public comment prior to designation or redesignation of local areas;
- consideration of the extent to which local areas, including potential new local areas:
  - are consistent with labor market areas in the state;
  - are consistent with regional economic development areas in the state; and
  - have Federal and non-Federal resources necessary to effectively administer activities required under Title I and other applicable provisions of WIOA, including whether the areas have the appropriate education and training providers, such as institutions of higher education and area career and technical education schools.

## (2) New local area procedural requirements<sup>14</sup>

The Governor may approve at any time a request from a unit of general local government or combination of units a request for designation of a new local area, meaning one that was not designated as a local area under the Workforce Investment Act of 1998.

In addition to the general procedural requirements described in [Section II\(a\)\(1\)](#), the following procedures must be followed for new local area designation.

1. The unit or combination of units seeking designation as a new local area must submit a written request and documentation demonstrating the requirements of [Section I\(b\)](#) and procedural requirements of [Section II\(a\)\(1\)](#) have been met.
2. The request and documentation must be submitted simultaneously by email to Bradley Pierce, Director, Reemployment Services Division, at [bradley.pierce@nebraska.gov](mailto:bradley.pierce@nebraska.gov) and the policy mailbox at [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov).
3. Following receipt of the request and documentation, NDOL will:
  - a. review the request and documentation to ensure the request and documentation meet the requirements of 20 CFR § 679.240 and [Section I\(b\)](#) and [Section II\(a\)\(1\)](#); and
  - b. prepare a written recommendation for consideration by the Nebraska Workforce Development Board (Board) and the Governor.
4. NDOL will provide to the Board for review and consideration during the Board's next regularly scheduled meeting:
  - a. the submitted request and documentation; and
  - b. NDOL's recommendation on the request.

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<sup>14</sup> 20 CFR § 679.240

5. Following the Board's review and consideration of the submitted request and documentation, NDOL will forward to the Governor the:
  - a. submitted request and documentation;
  - b. the Board's recommendation; and
  - c. NDOL's recommendation.
6. The Governor will review the materials and will make a determination within 120 calendar days, absent extenuating circumstances.
7. NDOL will notify the Board, unit or units, and existing local boards and chief elected officials of the Governor's determination.

### (3) Redesignation procedural requirements

In addition to the general procedural requirements described in [Section II\(a\)\(1\)](#), the following procedures must be followed for redesignation of two or more local areas as a single local area.

1. Local boards and chief elected officials seeking redesignation as a single local area must:
  - a. prepare a joint written request and documentation:
    - i. demonstrating procedural requirements described in [Section II\(a\)\(1\)](#) have been met; and
    - ii. describing reasonable and verifiable projected costs for redesignation activities;
  - b. submit the request and documentation simultaneously by email to:
    - i. Bradley Pierce, Director, Reemployment Services Division, at [bradley.pierce@nebraska.gov](mailto:bradley.pierce@nebraska.gov); and
    - ii. the policy mailbox at [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov).
2. Following receipt of the request and documentation, NDOL will:
  - a. review the request and documentation to ensure the request meets the requirements of 20 CFR § 679.280 and [Section II\(a\)\(1\)](#);
  - b. verify the availability of Title I statewide funds for the current program year; and
  - c. prepare a written recommendation for consideration by Nebraska Workforce Development Board (Board).
3. NDOL will provide to the Board for review and consideration during the Board's next regularly scheduled meeting:
  - a. the submitted request and documentation;

- b. NDOL's assessment of the availability of Title I statewide funds; and
  - c. NDOL's recommendation on the request.
- 4. Following the Board's review and consideration of the submitted request and documentation, NDOL will forward to the Governor:
  - a. the submitted request and documentation;
  - b. the Board's recommendation;
  - c. NDOL's assessment of the availability of Title I statewide funds; and
  - d. NDOL's recommendation on the request.
- 5. The Governor will review the materials and will make a determination within 120 calendar days, absent extenuating circumstances.
- 6. NDOL will notify the Board and local boards and chief elected officials of the Governor's determination.
- 7. If the Governor approves the request, the Board must authorize use of Title I statewide funds during its next regularly scheduled meeting, provided Title I statewide funds are available for the current program year. If statewide funds are not available during the program year when the request is approved, funds from the next program year may be provided.

**(b) Subsequent designation procedural requirements**

The Governor must approve a request from a local board and chief elected official for subsequent designation if the requirements of [Section I\(d\)](#) have been met.<sup>15</sup>

- 1. The local board and chief elected official seeking subsequent designation must submit a written request and documentation demonstrating the requirements of 20 CFR § 679.250(b) and [Section I\(d\)](#) have been met.
- 2. The request and documentation must be submitted by email to Bradley Pierce, Director, Reemployment Services Division, at [bradley.pierce@nebraska.gov](mailto:bradley.pierce@nebraska.gov) and the policy mailbox at [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov).
- 3. Following receipt of the request and documentation, NDOL will:
  - a. review the request and documentation to ensure the request and documentation meet the requirements of 20 CFR § 679.250 and [Section I\(d\)](#); and
  - b. prepare a written recommendation for consideration by the Governor.

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<sup>15</sup> 20 CFR § 679.250(b)

4. NDOL will provide to the Governor for review and consideration:
  - a. the submitted request and documentation; and
  - b. NDOL's recommendation.
5. The Governor will review the materials and will make a determination within 120 calendar days, absent extenuating circumstances.
6. NDOL will notify the local board and chief elected official of the Governor's determination.

#### (1) Continued subsequent designation

For local areas that have received subsequent designation, the local board and chief elected official are considered as having requested continued subsequent designation unless the local board and chief elected official notify the Governor in writing that they no longer seek continued subsequent designation.<sup>16</sup> The notification must be made in writing by email to Bradley Pierce, Director, Reemployment Services Division, at [bradley.pierce@nebraska.gov](mailto:bradley.pierce@nebraska.gov) and the policy mailbox at [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov). The notification will be transmitted to the Governor by NDOL.

#### (2) Review following subsequent designation

The Governor must review a local area that has received subsequent designation during each four-year state-plan planning cycle to evaluate whether the local area continues to meet requirements for subsequent designation as described in [Section I\(d\)](#).<sup>17</sup> In addition, the Governor may review a local area at any time to evaluate whether it continues to meet requirements for subsequent designation described in [Section I\(d\)](#).<sup>18</sup>

#### (e) Appealing a denied request for designation, redesignation, or subsequent designation

A local board and chief elected official or unit of general local government or combination of such units may appeal a denied request for designation, redesignation, or subsequent designation as a local area to the Nebraska Workforce Development Board and US Secretary of Labor (Secretary), according to the procedures described below.<sup>19</sup>

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<sup>16</sup> 20 CFR § 679.250(e)

<sup>17</sup> 20 CFR § 679.250(d)(2)

<sup>18</sup> 20 CFR § 679.250(d)(1)

<sup>19</sup> WIOA Secs. 102(b)(2)(D)(i)(IV) and 106(b)(5); 20 CFR §§ 679.290 and 683.630

### (1) Appeal to the Nebraska Workforce Development Board

The local board and chief elected official or unit of general local government or combination of such units must submit a written request for a hearing to the Chair of the Nebraska Workforce Development Board within 15 calendar days of the date of notification of denial. The written request must include a description of the basis for the appeal and be submitted:

- by certified mail, return receipt requested to Chair, Nebraska Workforce Development Board, Attention Bradley Pierce, Director, Reemployment Services Division, Nebraska Department of Labor, 550 South 16<sup>th</sup> Street, Lincoln, NE 68508;
- with a copy sent the policy mailbox by email to [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov).

Absent extenuating circumstances, the Chair of the Nebraska Workforce Development Board will assign a hearing officer and a hearing will take place within 15 calendar days of the Chair's receipt of the written request for a hearing. The hearing will include:

- a statement of the reason(s) for denial of the request; and
- an appeal by the local board and chief elected official or unit of general local government or combination of such units describing why the decision should be reversed or a compromise established.

The Chair will render a decision within 15 calendar days of the date of the hearing.

### (2) Appeal to the Secretary of Labor<sup>20</sup>

If a decision on the appeal is not rendered by the Chair of the Nebraska Workforce Development Board within a reasonable amount of time *or* if the appeal does not result in designation, the local board and chief elected official or unit of general local government or combination of such units may request a review by the Secretary. When appealing to the Secretary, the local board and chief elected official or unit of general local government or combination of such units must file the appeal no later than 30 calendar days after receipt of written notification of denial from the Chair of the Nebraska Workforce Development Board. In the appeal to the Secretary, the local board and chief elected official or unit of general local government or combination of such units must establish that:

- procedural rights under the appeal process set forth in 20 CFR § 683.640 and this policy were not afforded; or
- the local area or proposed new local area meets the requirements for designation, redesignation, or subsequent designation provided under WIOA Secs. 106(b)(2) or 106(b)(3) and 20 CFR §§ 679.240 or 679.250, as applicable.

The appeal to the Secretary must be submitted by certified mail, return receipt requested, to:

- Secretary, United States Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210, Attention: ASET.

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<sup>20</sup> 20 CFR § 683.640

In addition, a copy of the appeal to the Secretary must be submitted simultaneously:

- by certified mail, return receipt requested to Commissioner, Nebraska Department of Labor, 550 South 16<sup>th</sup> Street, Lincoln, NE 68508;
- by certified mail, return receipt requested to Chair, Nebraska Workforce Development Board, Attention Bradley Pierce, Director, Reemployment Services Division, Nebraska Department of Labor, 550 South 16<sup>th</sup> Street, Lincoln, NE 68508;
- with a copy sent the policy mailbox by email to [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov).

In making a determination, the Secretary may consider any comments submitted by the Nebraska Workforce Development Board in response to the appeal. The Secretary must issue a written decision to the Governor and the appellant.

### **Section III.   Statewide planning region**

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#### **(a) Consultation**

On October 14, 2020, the State held a statewide consultation session with representatives from local boards, chief elected officials, and local area administrative entities, as required under WIOA Sec. 106(a)(1), regarding establishment of a single statewide planning region in lieu of the then-current three designated planning regions originally identified in 2016 based primarily on worker commuting patterns and areas of economic concentration.

In preparation for the consultation, the State evaluated 2016 commuting patterns in contrast to preliminary 2020 commuting patterns and determined that commuting patterns are not static (commuting pattern maps provided as APPENDIX II and APPENDIX III). The State also evaluated Title I participant mobility for Program Years 2018 and 2019.

- During Program Year 2018, 148 participants were served by two or more local areas.
- During Program Year 2019, 99 participants were served by two or more local areas.

This data was presented to and discussed by the representatives, in addition to other considerations, especially the burden placed upon all three local areas regarding assignment to multiple planning regions pursuant to a waiver granted at the State's request by the US Department of Labor. All local area representatives supported and agreed unanimously that establishment of a single statewide planning region would:

- support alignment of the state's one-stop delivery system, including:
  - development of a single cohesive statewide regional plan;
  - elimination of fragmentation and duplication of regional planning efforts; and
  - improvement of Title I service delivery across local area boundaries;

- eliminate burden placed upon all three local areas based on assignment to multiple planning regions and involvement in development and implementation of multiple overlapping regional plans.

#### (b) Designation

Following the consultation and local area consensus, the Governor designated the statewide planning region and assigned Nebraska's local areas to the statewide planning region, as indicated in the designation letter included as appendix to the State's regional and local plans policy.<sup>21</sup>

#### DISCLAIMER

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This policy is based on NDOL's reading of the applicable statutes, regulations, rules and guidance released by the US 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>21</sup> The State's policy manual is accessible at <https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies>.

## APPENDIX I. Definitions

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**PURPOSE.** Definitions in this appendix are provided as supplemental information that supports the provisions of the policy. The terms and phrases defined in this appendix should be read and understood in the context in which they are used in the policy and not as stand-alone information independent of that context.

### 1. Chief elected official

The term *chief elected official* means:<sup>22</sup>

- the chief elected executive officer of a unit of general local government in a local area; or
- in the case of a local area that includes multiple units of general local government, the individual(s) designated under a written agreement executed among the chief elected officials of the local area in accordance with WIOA Sec. 107(c)(1)(B).

Chief elected official also refers to a chief elected officials board established in accordance with WIOA Sec. 107(c)(1)(B).

### 2. Consultation

*Consultation* means the process by which state or local stakeholders convene to discuss changes to the public workforce system and constitutes a robust conversation in which all parties are given an opportunity to express thoughts and opinions.<sup>23</sup>

### 3. In-demand industry sector or occupation

The term *in-demand industry sector or occupation* means:<sup>24</sup>

- an industry sector that:
  - has a substantial current or potential impact on the state's economy or regional or local economies, including positions that lead to economic self-sufficiency and opportunities for advancement; and
  - contributes to the growth or stability of other supporting businesses or the growth of other industry sectors;
- an occupation that currently has or is projected to have a number of positions, including positions that lead to economic self-sufficiency and opportunities for advancement within an industry sector and has or will have a significant impact on the state's economy or regional or local economies.

The determination of whether an industry sector or occupation is in-demand is made by the Nebraska Workforce Development Board or a local board, as appropriate, using state and regional business and labor market projections and information.

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<sup>22</sup> WOA Sec. 3(9)

<sup>23</sup> 20 CFR § 675.300

<sup>24</sup> WIOA Sec. 3(23)

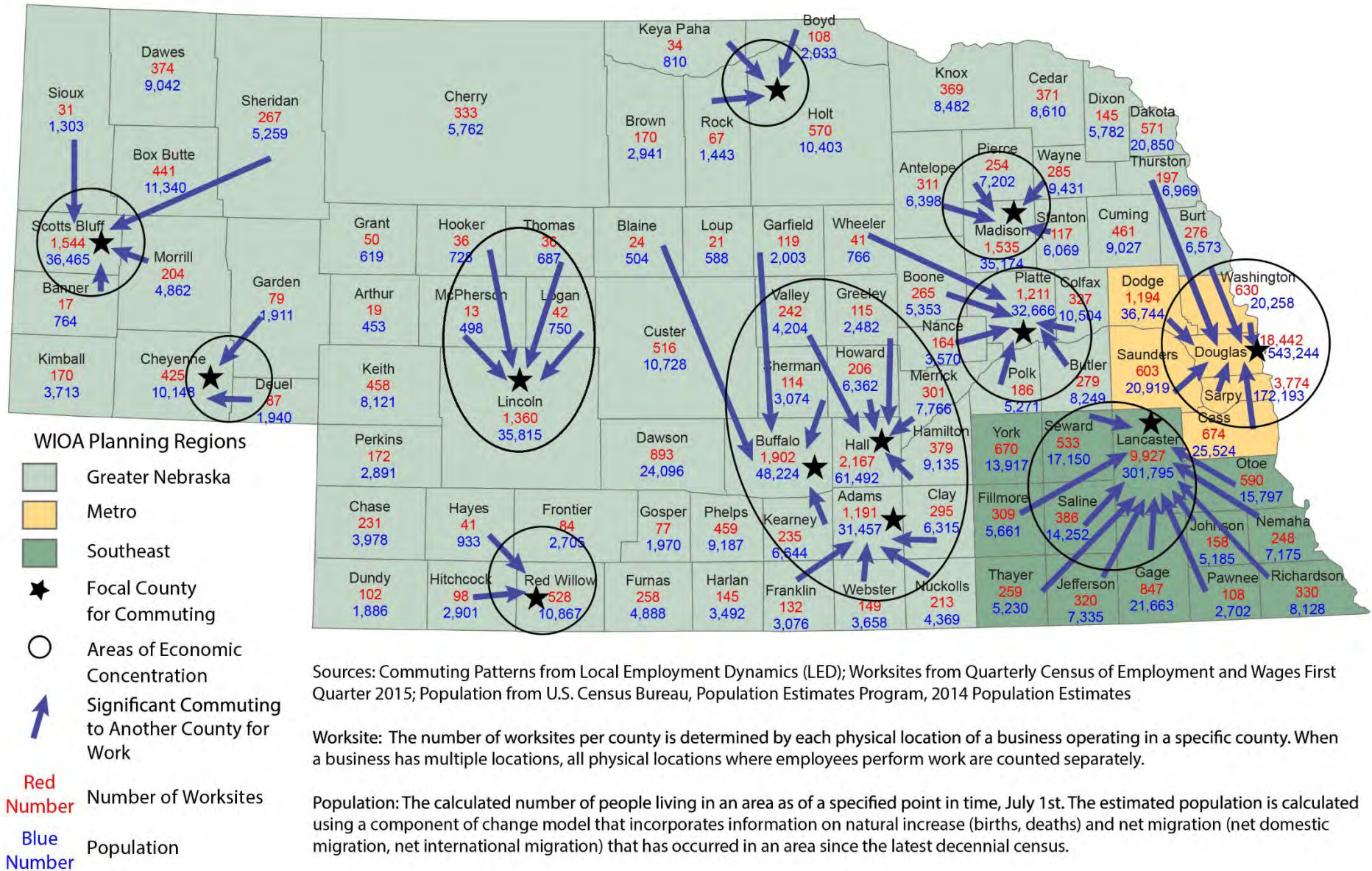
#### 4. Unit of general local government

The term *unit of general local government* means any general-purpose political subdivision of a state that has the power to levy taxes and spend funds and has general corporate and police powers.<sup>25</sup>

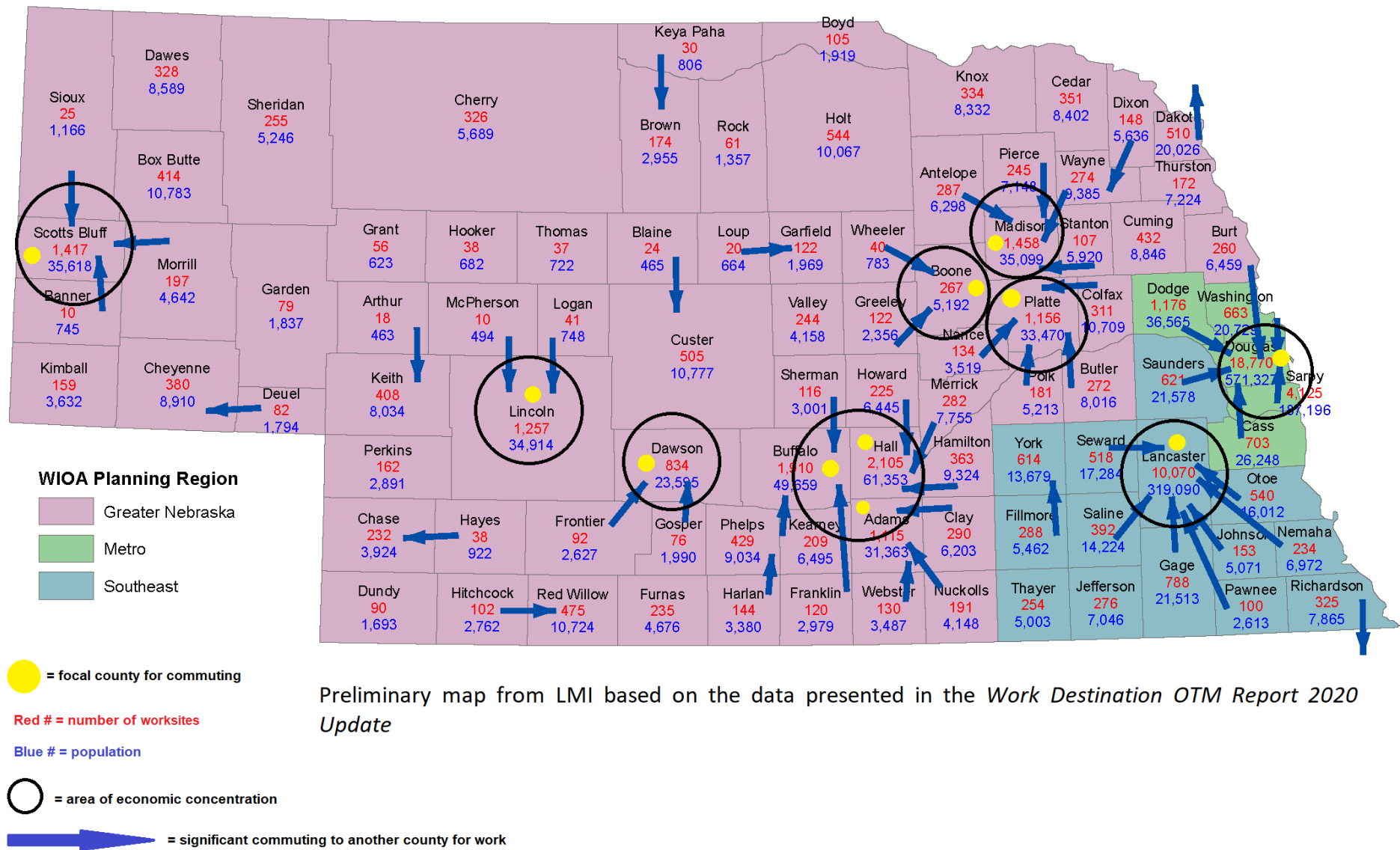
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<sup>25</sup> WIOA Sec. 3(62)

## APPENDIX II. 2016 commuting patterns map



## APPENDIX III. 2022 commuting patterns map



Preliminary map from LMI based on the data presented in the *Work Destination OTM Report 2020 Update*

### 1.3. Regional and Local Plans, MOUs, and Funding Agreements

## State Policy

## Workforce Innovation and Opportunity Act (WIOA)

Nebraska Department of Labor (NDOL) Division of Reemployment Services 550 South 16 <sup>th</sup> Street Lincoln, NE 68508 402.471.9000 <a href="mailto:ndol.wioa_policy@nebraska.gov">ndol.wioa_policy@nebraska.gov</a>	Policy category
	Governance
	Effective date
	December 2, 2020
	Supersedes
	Regional and Local Plans, Change 4 (effective date August 10, 2018)

## Regional and Local Plans, Change 5

### 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

Local boards must collectively submit and obtain approval for a *single* four-year plan for the statewide planning region and subsequent modifications of the regional plan; and each local board must submit and obtain approval for a four-year local plan for its local area and subsequent modifications of the local plan.<sup>1</sup>

### ACTION

This policy supersedes and cancels the State's<sup>2</sup> policy titled Regional and Local Plans, Change 4 (effective date August 10, 2018). Questions and comments regarding this policy may be submitted in writing to the WIOA policy mailbox at [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov).

<sup>1</sup> WIOA Secs. 106(c)(1)(A) and 108(a)

<sup>2</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).

Local boards must:<sup>3</sup>

- collectively participate in regional planning activities for single statewide planning region, in partnership with local chief elected officials (CEOs<sup>4</sup>) in the planning region, that result in the preparation of a *single* four-year regional plan and subsequent modifications of the plan;
- individually participate in local planning activities, in partnership with the local CEO, that result in the preparation of a four-year plan for its local area and subsequent modifications of the plan;
- ensure that regional and local plans and subsequent modifications of the plans support the vision, goals, and strategies described in the current Combined State Plan for Nebraska's Workforce System (state plan) and subsequent modifications of the state plan;<sup>5</sup> and
- submit regional and local plans and subsequent modifications of the plans according to the requirements and procedures established in this policy and relevant Division of Reemployment Services Notices issued by NDOL.

## CHANGES

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This policy establishes the following material changes to the superseded policy.

- The Governor has designated a *single* statewide planning region and assigned all local areas to the planning region, as indicated the letter of designation and assignment provided as [APPENDIX I](#). Changes have been made throughout this policy to reflect the designation of the *single* statewide planning region.
- Required regional and local plan elements listed in [APPENDIX II](#) have been revised to address the designation of the *single* statewide planning region and reorganized for clarity.
- One regional plan element in the superseded policy has been moved to the list of required local plan elements, specifically element 1 in [APPENDIX II section \(b\)](#) regarding strategic vision supporting economic growth and economic self-sufficiency.
- Clarifications have been made to required local plan elements, specifically element 15 in [APPENDIX II section \(b\)](#) relating to cooperative agreements.
- [APPENDIX III](#) has been added, which identifies the economic development districts mentioned in the list required regional plan elements.

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<sup>3</sup> WIOA Secs. 106(c)(1)(A) and 108(a); 20 CFR § 679.510 and 679.550

<sup>4</sup> For purposes of this policy, CEO also refers to a *chief elected officials board*.

<sup>5</sup> The current state plan is accessible at

<https://dol.nebraska.gov/EmploymentAndTraining/Training/WIOA/ManualsPlansReports> under *WIOA Combined State Plan and Modifications > 2020 - 2024*. Any subsequent modification of the state plan will be accessible at the same location.

## POLICY

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This policy establishes the following for regional and local plans and subsequent modifications of the plans regarding:

- requirements for planning activities, content, modifications, and public comment;
- submission procedures and timelines; and
- approval processes.

This policy includes five sections and three appendices.

Section I.	Purpose.....	3
Section II.	Requirements.....	4
Section III.	Submission procedures and timelines .....	6
Section IV.	Approval processes.....	6
Section V.	Technical assistance.....	6
APPENDIX I.	Letter of designation of the statewide planning region and local area assignment .....	8
APPENDIX II.	Required regional and local plan elements .....	9
APPENDIX III.	Nebraska's economic development districts .....	17

### Section I. Purpose

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Regional and local plans serve as four-year action plans for:<sup>6</sup>

- developing, aligning, and integrating regional and local service delivery strategies; and
- supporting the state's vision, goals, and strategies described in the state plan.

In addition, regional and local plans establish strategies for:

- directing investments in economic, education, and workforce training programs to focus on providing relevant education and training to ensure that individuals, including youth and individuals with barriers to employment, have the skills to compete in Nebraska's job market and to ensure that employers have a ready supply of skilled workers;<sup>7</sup>
- applying job-driven strategies within the one-stop delivery system;<sup>8</sup>
- enabling economic, education, and workforce partners to build a skilled workforce through innovation in and alignment of employment, training, and education programs;<sup>9</sup> and

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<sup>6</sup> 20 CFR § 679.500(a)

<sup>7</sup> 20 CFR § 679.500(a)(1)

<sup>8</sup> 20 CFR § 679.500(a)(2)

<sup>9</sup> 20 CFR § 679.500(a)(3)

- coordinating resources among local boards and local areas within the statewide planning region.<sup>10</sup>

## Section II. Requirements

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### (a) Planning activities

All local areas have been assigned to a *single* statewide planning region, as described in [APPENDIX I](#). All local boards, in collaboration with local CEOs in the statewide planning region, are collectively responsible for conducting regional planning activities that result in the preparation, submission, and approval of:

- a *single* four-year regional plan;<sup>11</sup> and
- subsequent modifications of the regional plan.<sup>12</sup>

In addition, each local board, in collaboration with its local CEO, is responsible for conducting local planning activities that result in the preparation, submission, and approval of:

- a four-year local plan for its local area;<sup>13</sup> and
- subsequent modifications of the local plan.<sup>14</sup>

### (b) Content

The regional plan and local plans must provide responses that address the required elements described in [APPENDIX II](#).

### (c) Modifications

#### (1) Regional plans

At the end of the first two-year period of the four-year regional plan, local boards in the statewide planning region, in partnership with local CEOs, must review the regional plan and prepare, submit, and obtain approval for a mandatory two-year modification to the regional plan to reflect changes in:<sup>15</sup>

- labor market and economic conditions in the statewide planning region; and
- other factors affecting the implementation of local plans, which are part of and incorporated into the regional plan,<sup>16</sup> including but not limited to changes in the financing

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<sup>10</sup> 20 CFR § 679.500(a)(4)

<sup>11</sup> 20 CFR § 679.510

<sup>12</sup> 20 CFR § 679.530(b). Refer to [Section II\(c\)\(1\)](#) for information on modification of the regional plan.

<sup>13</sup> 20 CFR § 679.550

<sup>14</sup> 20 CFR § 679.580(b). Refer to [Section II\(c\)\(2\)](#) for information on modification of local plans.

<sup>15</sup> 20 CFR § 679.530(b)

<sup>16</sup> 20 CFR §§ 679.510(a)(2)(ii) and 679.540(a)

available to support WIOA Title I programs and partner-provided WIOA services in the statewide planning region.

## (2) Local plans

At the end of the first two-year period of the four-year local plan, the local board, in partnership with the local CEO, must review the local plan and prepare, submit, and obtain approval for a mandatory two-year modification to the plan to reflect changes in:<sup>17</sup>

- local labor market and economic conditions; and
- other factors affecting the implementation of the local plan, including:
  - significant changes in local economic conditions;
  - changes in the financing available to support local WIOA Title I programs and partner-provided WIOA services;
  - changes in local board structure; and
  - a need to revise strategies to meet local performance goals established in the plan.

## (d) Public comment

Local boards must provide an opportunity for public comment on the development of the regional plan and local plans, as well as subsequent modifications of the plans, before submission of the plans and modifications to NDOL. To provide adequate opportunity for public comment, local boards must:

- make information about and copies of the plan and subsequent modifications available to the public through electronic and other means, such as public hearings and local news media;<sup>18</sup>
- include an opportunity for comment by members of the public, including representatives of businesses, education, and labor organizations.<sup>19</sup>
- provide no more than a 30-day period for comments on the plan and subsequent modifications before submission to NDOL, beginning on the date on which the plan and modifications are made available to the public;<sup>20</sup>
- submit to NDOL any comments that represent disagreement with the plan or subsequent modifications<sup>21</sup> or indicate that disagreeing public comments were not received, if that is the case; and

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<sup>17</sup> 20 CFR § 679.580(b)

<sup>18</sup> 20 CFR §§ 679.510(b)(1) and (5)

<sup>19</sup> 20 CFR § 679.510(b)(2)

<sup>20</sup> 20 CFR § 679.510(b)(3)

<sup>21</sup> 20 CFR § 679.510(b)(4)

- ensure that all open meetings are held in compliance with the Nebraska Open Meetings Act.<sup>22</sup>

### Section III. Submission procedures and timelines

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Procedures and timelines for submission of regional and local plans and subsequent modifications of the plans are provided by NDOL through Division of Reemployment Services Notices.

### Section IV. Approval processes

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NDOL reviews the submitted regional plan and local plans and subsequent modifications of the plans. The plans are considered approved 90 days after NDOL's receipt of the plans according to the submission procedures established in the relevant Division of Reemployment Services Notice, unless NDOL notifies local boards in writing that:<sup>23</sup>

1. there are deficiencies in workforce investment activities that have been identified through audits and a local area has not made acceptable progress in implementing plans to address the deficiencies;
2. the plans or modifications do not comply with applicable provisions of WIOA and WIOA regulations, including required consultations, public comment provisions, and the nondiscrimination requirements of WIOA Sec. 188 and 29 CFR Part 38; or
3. the plans or modifications do not align with the state plan, including alignment of the core programs to support the vision, goals, and strategies identified in the state plan, in accordance with WIOA Sec. 102(b)(1)(E) and 20 CFR § 676.105.

### Section V. Technical assistance

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NDOL will provide technical assistance and labor market data to assist with regional and local plan development and subsequent service delivery efforts.<sup>24</sup>

- For technical assistance with *labor market data* during plan development and subsequent modification of the plan, submit a request to [lmi\\_ne@nebraska.gov](mailto:lmi_ne@nebraska.gov).
- For technical assistance with *all other aspects* of development of the plan and subsequent modification of the plan, as well as subsequent service delivery efforts, submit a request to the WIOA policy mailbox at [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov).

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<sup>22</sup> Neb. Rev. Stat. §§ 84-1407 through 84-1414

<sup>23</sup> 20 CFR §§ 679.520 and 679.570

<sup>24</sup> 20 CFR § 679.510(c)

## DISCLAIMER

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

## APPENDIX I. Letter of designation of the statewide planning region and local area assignment

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**Pete Ricketts**  
Governor

STATE OF NEBRASKA

OFFICE OF THE GOVERNOR  
P.O. Box 94848 • Lincoln, Nebraska 68509-4848  
Phone: (402) 471-2244 • [pete.ricketts@nebraska.gov](mailto:pete.ricketts@nebraska.gov)

October 15, 2020

John H. Albin  
Commissioner of Labor/State WIOA Liaison  
Nebraska Department of Labor  
P.O. Box 94600  
Lincoln, NE 68509-4600

Dear Commissioner Albin,

As required under the Workforce Innovation and Opportunity Act of 2014 (WIOA), I hereby designate the entire State of Nebraska as a planning region. Also, as required under WIOA, I assign all of Nebraska's local workforce development areas to the Statewide Planning Region:

1. Greater Omaha Workforce Development Area
2. Greater Lincoln Workforce Development Area
3. Greater Nebraska Workforce Development Area

Sincerely,

A handwritten signature in blue ink, reading "Pete Ricketts".  
Pete Ricketts  
Governor

cc: Mark Moravec, Chair, Nebraska Workforce Development Board  
Bradley Pierce, Director, Office of Employment and Training  
Deb Andersen, Interim Administrator of Reemployment Services

## APPENDIX II. Required regional and local plan elements

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### (a) Regional plan elements<sup>25</sup>

1. Provide the following regional analyses<sup>26</sup> based on conditions in each of Nebraska's economic development districts, which are identified in [APPENDIX III](#):
  - a. economic conditions, including existing and emerging in-demand industry sectors and occupations,<sup>27</sup> based on regional labor market data for each district;<sup>28</sup>
  - b. employment needs of employers in existing and emerging in-demand industry sectors and occupations based on regional labor market data for each district;<sup>29</sup>
  - c. knowledge and skills needed by job seekers to meet the employment needs of the employers in each district, including employment needs for in-demand industry sectors and occupations;<sup>30</sup>
  - d. workforce in each district, including:
    - i. current labor force employment and unemployment data;
    - ii. information on labor market trends; and
    - iii. educational and skill levels of the workforce, including individuals with barriers to employment;<sup>31</sup>
  - e. workforce development activities in each district, including education and training activities, which must include descriptions of:
    - i. the strengths and weaknesses of workforce development activities; and

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<sup>25</sup> As permitted under 20 CFR §§ 679.540(b) and 679.560(d), NDOL has designated the items in Section 1 as appropriate for common responses in the regional plan where there is a shared regional responsibility.

<sup>26</sup> 20 CFR § 679.510(a)(1)(iv). As permitted under 20 CFR § 679.560(a)(1)(iii), local boards may use existing analyses, which are timely current descriptions of the regional economies, to meet this requirement.

<sup>27</sup> WIOA Sec. (3)(23)(A) IN GENERAL. —The term “in-demand industry sector or occupation” means— (i) an industry sector that has a substantial current or potential impact (including through jobs that lead to economic self-sufficiency and opportunities for advancement) on the State, regional, or local economy, as appropriate, and that contributes to the growth or stability of other supporting businesses, or the growth of other industry sectors; or (ii) an occupation that currently has or is projected to have a number of positions (including positions that lead to economic self-sufficiency and opportunities for advancement) in an industry sector so as to have a significant impact on the State, regional, or local economy, as appropriate. (B) DETERMINATION. —The determination of whether an industry sector or occupation is in-demand under this paragraph shall be made by the State board or local board, as appropriate, using state and regional business and labor market projections, including the use of labor market information.

<sup>28</sup> 20 CFR § 679.560(a)(1)(i).

<sup>29</sup> 20 CFR § 679.560(a)(1)(ii).

<sup>30</sup> 20 CFR § 679.560(a)(2).

<sup>31</sup> 20 CFR § 679.560(a)(3).

- ii. capacity to provide the workforce development activities to address the education and skill needs of the workforce in each district, including individuals with barriers to employment, and the employment needs of employers.<sup>32</sup>
- 2. Describe service strategies established by the local boards in each district, including the establishment of *cooperative service delivery agreements*, which are required under WIOA Sec. 106(c)(1)(B) and 20 CFR § 679.510(a)(1)(ii). In this context, a *cooperative service delivery agreement* is an agreement among the local boards and CEOs in the statewide planning region regarding service delivery that crosses local area boundaries.
- 3. Describe the coordination of administrative cost arrangements by the local boards in the statewide planning region, including the pooling of funds for administrative costs, as appropriate.<sup>33</sup>
- 4. Describe the development and implementation of sector initiatives by the local boards for in-demand industry sectors or occupations in the statewide planning region.<sup>34</sup>
- 5. Describe how the local boards coordinate transportation and other supportive services in the statewide planning region, as appropriate.<sup>35</sup>
- 6. Describe how the local boards in the statewide planning region coordinate services with economic development services and providers in each district.<sup>36</sup>
- 7. Describe the agreement established among the local boards that addresses how the local boards in the statewide planning region will:<sup>37</sup>
  - a. collectively negotiate and reach agreement with NDOL on local levels of performance for the performance indicators described in WIOA Sec. 116(c); and
  - b. report local area performance on those indicators.
- 8. Describe the process followed by the local boards in the statewide planning region to provide an opportunity for the public comment on the development of the regional plan or any subsequent modification of the plan before submitting the plan to NDOL. To provide adequate opportunity for public comment, local boards must, as described in [Section II\(d\)](#) of the policy:
  - a. make information about and copies of the plan and subsequent modifications available to the public through electronic and other means, such as public hearings and local news media;<sup>38</sup>

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<sup>32</sup> 20 CRR § 679.560(a)(4)

<sup>33</sup> 20 CFR § 679.510(a)(1)(v)

<sup>34</sup> 20 CFR § 679.510(a)(1)(iii)

<sup>35</sup> 20 CFR § 679.510(a)(1)(vi)

<sup>36</sup> 20 CFR § 679.510(a)(1)(vii)

<sup>37</sup> 20 CFR § 679.510(a)(1)(viii)

<sup>38</sup> 20 CFR §§ 679.510(b)(1) and (5)

- b. include an opportunity for comment by members of the public, including representatives of businesses, education, and labor organizations.<sup>39</sup>
- c. provide no more than a 30-day period for comments on the plan and subsequent modifications before submission to NDOL, beginning on the date on which the plan and modifications are made available to the public;<sup>40</sup>
- d. submit to NDOL any comments that represent disagreement with the plan or subsequent modifications<sup>41</sup> or indicate that disagreeing public comments were not received, if that is the case; and
- e. ensure that all open meetings are held in compliance with the Nebraska Open Meetings Act.<sup>42</sup>

#### (b) Local plan elements

1. Describe the strategic vision of the local board to support regional economic growth and economic self-sufficiency, which must include goals that align with the goals and strategies defined in the current state plan or subsequent modification of the state plan for the following factors:<sup>43</sup>
  - a. preparing an educated and skilled workforce (including youth and individuals with barriers to employment); and
  - b. relating to the performance accountability measures based on the performance indicators described in 20 CFR § 677.155(a)(1).
2. Taking into account the analyses described in Section 1 for [regional plan elements](#), describe the local board's strategy to:
  - a. work with entities that carry out core programs and required one-stop partner programs in the local area to align resources available to the statewide planning region and the local area; and
  - b. achieve the strategic vision and goals described directly above in Section 1 for local plan elements.<sup>44</sup>
3. Describe the *workforce development* system in the local area, including:
  - a. the partners and programs that are included in the *workforce development* system;<sup>45</sup> and

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<sup>39</sup> 20 CFR § 679.510(b)(2)

<sup>40</sup> 20 CFR § 679.510(b)(3)

<sup>41</sup> 20 CFR § 679.510(b)(4)

<sup>42</sup> Neb. Rev. Stat. §§ 84-1407 through 84-1414

<sup>43</sup> 20 CFR § 679.560(a)(5)

<sup>44</sup> 20 CFR § 679.560(a)(6)

<sup>45</sup> 20 CFR § 679.560(b)(1)(i). *Workforce development system* refers to the entirety of the workforce development system in the local area, which may include partners other than required one-stop partners.

- b. how the local board will work with the entities carrying out core programs and other one-stop partner programs to support service alignment, including programs of study authorized under the Carl D. Perkins Career and Technical Education Act of 2006 (20 USC 2301 et seq.).<sup>46</sup>
- 4. Describe the *one-stop delivery* system in the local area, including:
  - a. how the local board will ensure the continuous improvement of providers in the *one-stop delivery* system and ensure that the providers will meet the employment needs of local employers, workers, and job seekers;<sup>47</sup>
  - b. how the local board will facilitate access to services provided through the *one-stop delivery* system through the use of technology and other means, including access in remote areas;<sup>48</sup>
  - c. how entities within the *one-stop delivery* system, including one-stop operators and the one-stop partners, will comply with WIOA Sec. 188 and applicable provisions of the Americans with Disabilities Act of 1990 (42 USC § 12101 et seq.) regarding the physical and programmatic accessibility of facilities, programs and services, technology, and materials for individuals with disabilities, including the provision of staff training and support for addressing the needs of individuals with disabilities;<sup>49</sup> and
  - d. roles and resource contributions of the one-stop partners.<sup>50</sup>
- 5. Describe how the local board will work with entities carrying out the core programs to:<sup>51</sup>
  - a. expand access to employment, training, education, and supportive services for eligible individuals, particularly eligible individuals with barriers to employment;
  - b. facilitate the development of career pathways, in accordance with the goals and strategies defined in the state plan and subsequent modifications of the state plan, and co-enrollment in the core programs; and
  - c. improve access to activities leading to a recognized postsecondary credential (including a credential that is an industry-recognized certificate or certification, portable, and stackable).

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<sup>46</sup> 20 CFR § 679.560(b)(1)(ii)

<sup>47</sup> 20 CFR § 679.560(b)(5)(i)

<sup>48</sup> 20 CFR § 679.560(b)(5)(ii)

<sup>49</sup> 20 CFR § 679.560(b)(5)(iii)

<sup>50</sup> 20 CFR § 679.560(b)(5)(iv). The term *resource contributions* refers to programmatic and service contributions, rather than contributions pursuant to funding agreements.

<sup>51</sup> 20 CFR § 679.560(b)(2)

6. Describe the strategies and services that will be used in the local area:<sup>52</sup>
- a. to facilitate employer engagement with *workforce development* programs, including engagement of small employers and employers in in-demand industry sectors and occupations;
  - b. to support a local *workforce development* system that meets the needs of businesses in the local area;
  - c. to better coordinate *workforce development* programs and economic development;
  - d. to strengthen linkages between the local *one-stop delivery* system and the Nebraska's unemployment insurance programs; and
  - e. that may include the implementation of initiatives (which must support the strategies described above in Sections 6.a. through 6.d.), such as incumbent worker training programs, on-the-job training programs, customized training programs, industry and sector strategies, career pathways initiatives, utilization of effective business intermediaries, and other business services and strategies designed to meet the needs of regional employers.
7. Describe how the local board will coordinate local workforce investment activities with regional economic development activities that are carried out in the local area and how the local board will promote entrepreneurial skills training and microenterprise services.<sup>53</sup>
8. Describe and assess the type and availability of adult and dislocated worker employment and training activities in the local area.<sup>54</sup>
9. Describe how the local board will coordinate workforce investment activities carried out in the local area with statewide Rapid Response activities.<sup>55</sup>
10. Describe and assess the type and availability of youth workforce investment activities in the local area including activities for youth who are individuals with disabilities, which must include identification of successful models of such activities.<sup>56</sup>
11. Describe how the local board will coordinate relevant secondary and postsecondary education programs and activities with education and workforce investment activities to align strategies, enhance services, and avoid duplication of services.<sup>57</sup>
12. Describe how the local board will coordinate WIOA Title I workforce investment activities with the provision of transportation and other appropriate supportive services in the local area.<sup>58</sup>

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<sup>52</sup> 20 CFR § 679.560(c)(i)-(v)

<sup>53</sup> 20 CFR § 679.560(b)(4)

<sup>54</sup> 20 CFR § 679.560(b)(6)

<sup>55</sup> 20 CFR § 679.560(b)(7)

<sup>56</sup> 20 CFR § 679.560(b)(8)

<sup>57</sup> 20 CFR § 679.560(b)(9)

<sup>58</sup> 20 CFR § 679.560(b)(10)

13. Describe plans, assurances, and strategies for maximizing coordination, improving service delivery, and avoiding duplication of WIOA Title III Wagner-Peyser services and other services provided through the one-stop delivery system.<sup>59</sup>
14. Describe how the local board will coordinate WIOA Title I workforce investment activities with adult education and literacy activities provided under WIOA Title II. This description must include how the local board will carry out the review of local adult education service provider applications, consistent with WIOA Secs. 107(d)(11)(A) and (B)(i) and 232.<sup>60</sup>
15. Provide copies of executed *cooperative agreements*, as attachments to the local plan, which define how *all* local service providers will carry out requirements for integration of and access to the entire set of services available in through local one-stop delivery system.<sup>61</sup> In this context, *cooperative agreement* means a legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a non-Federal entity that is, consistent with 31 USC §§ 6302-6305:<sup>62</sup>
  - a. used to enter into a relationship, the principal purpose of which *is to* transfer anything of value from the Federal awarding agency or pass-through entity to the non-Federal entity to carry out a public purpose authorized by a law of the United States (refer to 31 USC § 6101(3)) and *not to* acquire property or services for the Federal government or pass-through entity's direct benefit or use; and
  - b. distinguished from a grant in that it provides for substantial involvement between the Federal awarding agency or pass-through entity and the non-Federal entity in carrying out the activity contemplated by the Federal award.

The term *cooperative agreement* does not include:<sup>63</sup>

- a. cooperative research and development agreements, as defined in 15 USC § 3710a; or
- b. agreements that provide only:
  - i. Direct United States Government cash assistance to an individual;
  - ii. subsidies;
  - iii. loans;
  - iv. loan guarantees; or
  - v. insurance.

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<sup>59</sup> 20 CFR § 679.560(b)(11)

<sup>60</sup> 20 CFR § 679.560(b)(12)

<sup>61</sup> 20 CFR § 679.560(b)(13)

<sup>62</sup> 20 CFR § 675.300

<sup>63</sup> 31 USC §§ 6302-6305

16. Identify the entity responsible for the disbursement of grant funds described in WIOA Sec. 107(d)(12)(B)(i) as determined by NDOL or the local CEO, as applicable.<sup>64</sup>
17. Describe the competitive process that will be used to award local area subgrants and contracts for WIOA Title I activities.<sup>65</sup>
18. Describe the current local levels of performance negotiated with NDOL, consistent with WIOA Sec. 116(c), to be used by the local board to measure the performance of:
  - a. local WIOA Title I programs; and
  - b. performance of the local fiscal agent, if applicable, local Title I service providers, and the local one-stop delivery system.<sup>66</sup>
19. Describe the actions the local board will take toward becoming or remaining a high-performing local board, consistent with factors developed by the state board.<sup>67</sup>
20. Describe how training services for adults and dislocated workers outlined in WIOA Sec. 134 will be provided through the use of individual training accounts,<sup>68</sup> including:
  - a. whether contracts for training services will be used;
  - b. how the use of contracts for training services will be coordinated with the use of individual training accounts; and
  - c. how the local board will ensure informed customer choice in the selection of training programs regardless of how the training services are to be provided.
21. Describe how the local area one-stop center(s) is implementing and transitioning to an integrated, technology-enabled intake and case management information system for programs carried out under WIOA and by other one-stop partners.<sup>69</sup>
22. Describe the direction given by NDOL to the local board and by the local board to the one-stop operator will ensure that:
  - a. priority for adult career and training services will be given to recipients of public assistance, other low-income individuals, and individuals who are basic skills deficient, consistent with WIOA Sec. 134(c)(3)(E) and 20 CFR § 680.600;<sup>70</sup> and
  - b. Veterans receive priority of service in all USDOL-funded training services, which includes training services provided through Title I programs.<sup>71</sup>

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<sup>64</sup> 20 CFR § 679.560(b)(14)

<sup>65</sup> 20 CFR § 679.560(b)(15)

<sup>66</sup> 20 CFR § 679.560(b)(16)

<sup>67</sup> 20 CFR § 679.560(b)(17)

<sup>68</sup> 20 CFR § 679.560(b)(18)

<sup>69</sup> 20 CFR § 679.560(b)(20)

<sup>70</sup> 20 CFR § 679.560(b)(21)

<sup>71</sup> 20 CFR § 680.650

23. Describe the process used by the local board to provide an opportunity for the public comment on the development of the local plan or any subsequent modification of the plan before submitting the plan to NDOL. To provide adequate opportunity for public comment, local boards must, as described in [Section II\(d\)](#) of the policy:

- f. make information about and copies of the plan and subsequent modifications available to the public through electronic and other means, such as public hearings and local news media;<sup>72</sup>
- g. include an opportunity for comment by members of the public, including representatives of businesses, education, and labor organizations.<sup>73</sup>
- h. provide no more than a 30-day period for comments on the plan and subsequent modifications before submission to NDOL, beginning on the date on which the plan and modifications are made available to the public;<sup>74</sup>
- i. submit to NDOL any comments that represent disagreement with the plan or subsequent modifications<sup>75</sup> or indicate that disagreeing public comments were not received, if that is the case; and
- j. ensure that all open meetings are held in compliance with the Nebraska Open Meetings Act.<sup>76</sup>

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<sup>72</sup> 20 CFR §§ 679.510(b)(1) and (5)

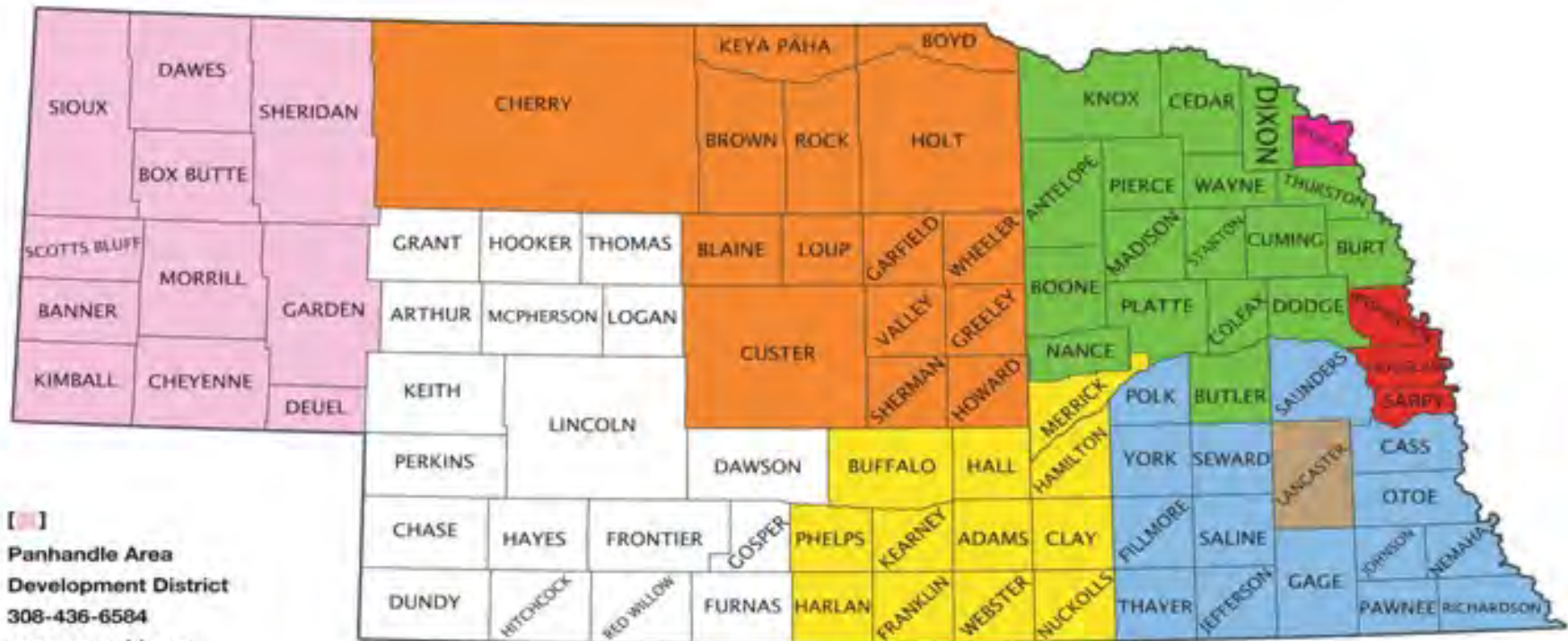
<sup>73</sup> 20 CFR § 679.510(b)(2)

<sup>74</sup> 20 CFR § 679.510(b)(3)

<sup>75</sup> 20 CFR § 679.510(b)(4)

<sup>76</sup> Neb. Rev. Stat. §§ 84-1407 through 84-1414

## APPENDIX III. Nebraska's economic development districts



**Panhandle Area  
Development District**  
308-436-6584  
[www.nepadd.com](http://www.nepadd.com)



**West Central Nebraska  
Development District**  
308-284-6077  
[www.wcnedd.org](http://www.wcnedd.org)



**Central Nebraska Economic  
Development District**  
402-925-2373  
[www.cnedd.org](http://www.cnedd.org)



**South Central Economic  
Development District**  
308-995-3190  
[www.scedd.us](http://www.scedd.us)



**Northeast Nebraska Economic  
Development District**  
402-379-1150  
[www.nenedd.org](http://www.nenedd.org)



**Southeast Nebraska  
Development District**  
402-475-2560



**Siouxland Interstate Metro.  
Planning Council**  
712-279-6286  
[www.simpco.org](http://www.simpco.org)



**Metropolitan Area Planning Agency**  
402-444-6866  
[www.mapacog.org](http://www.mapacog.org)



**Lancaster county**  
402-447-7447  
[www.lancaster.ne.gov](http://www.lancaster.ne.gov)

## State Policy

## Workforce Innovation and Opportunity Act (WIOA)

Nebraska Department of Labor (NDOL) Division of Reemployment Services 550 South 16 <sup>th</sup> Street Lincoln, NE 68508 402.471.9000 <a href="mailto:ndol.wioa_policy@nebraska.gov">ndol.wioa_policy@nebraska.gov</a>	<b>Policy category</b> Regional and Local Plans, MOUs, and Funding Agreements
	<b>Effective date</b> August 1, 2022
	<b>Supersedes</b> Memorandums of Understanding and Funding Agreements, Change 1 (effective June 26, 2018)

## Memorandums of Understanding and Funding Agreements, Change 2

### 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

Local boards and chief elected officials<sup>1</sup> (CEOs) are required to establish memorandums of understanding (MOUs) and funding agreements with required one-stop partners concerning the operation of the one-stop delivery system and one-stop centers in their respective local areas. Local boards and CEOs may also establish MOUs and funding agreement with additional one-stop partners.

### CHANGES

This policy establishes and implements the following material changes to the superseded policy.

- Provisions clarifying implementation of the state funding mechanism have been added as [Section I\(c\)\(4\)\(B\)](#).

<sup>1</sup> CEO also refers to a *chief elected officials board*.

- Timelines in [Section II\(c\)](#) regarding required notifications for outcomes of negotiations of MOUs and funding agreement have been revised to include specific dates.
- Percentage caps on required one-stop partner contributions under the state funding mechanism are addressed in [APPENDIX II](#).

## ACTION

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This policy supersedes and cancels the State’s policy titled *Memorandums of Understanding and Funding Agreements, Change 1* (effective date June 26, 2018). Questions and comments on this policy may be submitted in writing to the WIOA policy mailbox at [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov).

Each local board, in partnership with the CEO:<sup>2</sup>

- must develop, negotiate, and enter into MOUs and funding agreements with all required one-stop partners operating in its local area; and
- may develop, negotiate, and enter into MOUs with additional one-stop partners, which must include funding agreements.

## POLICY

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This policy:

- provides guidance and timelines for:
  - developing, negotiating, and entering into MOUs and funding agreements; and
  - reporting outcomes of MOU and funding agreement negotiations;
- provides guidance relating to funding of infrastructure and additional costs of one-stop center operations using a local funding mechanism or the state funding mechanism; and
- establishes the process by which one-stop partners may appeal decisions regarding partners’ required contributions under the state funding mechanism.

This policy has three sections and two appendices.

Section I.	MOUs .....	3
Section II.	Reporting outcomes of negotiations .....	11
Section III.	Appeal process for the state funding mechanism.....	14
APPENDIX I.	Definitions.....	16
APPENDIX II.	Percentage caps on required one-stop partner contributions under state funding mechanism.....	20

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<sup>2</sup> WIOA Sec. 121(c)(1) – (2)

## Section I. MOUs

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### (a) Purpose and development

An MOU is an agreement developed and executed by the local board and one or more one-stop partners, with the agreement of the CEO, that includes a funding agreement identifying the one-stop partner's contributions to funding of infrastructure and additional costs of one-stop center operations.<sup>3</sup> Further, the MOU defines local area one-stop center operations and funding of those operations.

A single “umbrella” MOU and funding agreement may be developed and executed by the local board and two or more one-stop partners.<sup>4</sup> Establishing an umbrella MOU is encouraged for the sake of transparency. The local board, with the agreement of the CEO, may enter into a separate MOU with each one-stop partner or with groups of one-stop partners; however, the aim of the umbrella MOU is to allow partner programs to focus on service delivery and not the process of negotiating several MOUs.

The US Departments of Education and Labor expect local areas to use a collaborative approach to MOU and funding agreement negotiations and encourage local boards, CEOs, and one-stop partners to work together when developing and amending MOUs and funding agreements, demonstrating the spirit and intent of WIOA to ensure the successful integration and implementation of partner programs in one-stop centers.<sup>5</sup> All individuals participating in the development and amendment of MOUs and funding agreements must negotiate in good faith to reach agreement.<sup>6</sup> In addition, each local board must document its negotiation of MOUs and funding agreements, including amendments, and efforts made to reach consensus.<sup>7</sup>

### (b) Required elements of an MOU<sup>8</sup>

An MOU must include provisions describing:

1. services provided through one-stop centers in the local area, including the way services will be coordinated and delivered;
2. how the costs of the services and the operating costs of the centers will be funded ([Section I\(c\)](#) covers funding agreement requirements);<sup>9</sup>
3. methods for referring individuals by the one-stop operator to one-stop partners for appropriate services and activities;

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<sup>3</sup> 20 CFR § 678.500(a); TEGLs 16-16 and 16-16 Change 1

<sup>4</sup> 20 CFR § 678.500(a); TEGL 17-16

<sup>5</sup> 20 CFR § 678.510(a); TEGL 16-16

<sup>6</sup> 20 CFR § 678.510(a); TEGL 17-16

<sup>7</sup> 20 CFR § 678.510(c)(1)

<sup>8</sup> WIOA Sec. 121(c)(2)(A); 20 CFR § 678.500(b) – (e); TEGL 16-16. The US Department of Labor, Employment and Training Administration provides a *Sample MOU and Infrastructure Costs Toolkit*, which is accessible at [https://ion.workforcegps.org/resources/2017/03/23/13/30/Sample\\_MOU\\_Infrastructure\\_Costs\\_Toolkit](https://ion.workforcegps.org/resources/2017/03/23/13/30/Sample_MOU_Infrastructure_Costs_Toolkit).

<sup>9</sup> The US Department of Labor, Employment and Training Administration provides the *One-stop Operating Budget Training Series* at <https://ion.workforcegps.org/resources/2022/05/06/19/12/OneStopOperatingBudgetTrainingSeries>.

4. methods for ensuring that the needs of job seekers, including youth and individuals with barriers to employment, are addressed when providing access to services, including access to technology and materials that are available through the one-stop center;
5. the duration (term) of the MOU and procedures for amending it;
6. assurances that the MOU will be reviewed and updated no less frequently than once every three years to:
  - a. ensure appropriate funding and delivery of services; and
  - b. reflect any changes to:
    - i. authorized signatory officials for the local board, CEO, or one-stop partners, meaning officials who have the authority to bind the local board, CEO, and one-stop partners to the terms and conditions of the MOU; and
    - ii. funding of infrastructure and additional costs of one-stop center operations, *including any changes to a partner's required cost contributions under the state funding mechanism*;
7. signatures of the local board chair and CEO and a representative of the one-stop partner having authority to bind the partner to the MOU.

An MOU may contain other provisions, provided they are consistent with WIOA Title I and its implementing regulations and statutes, as well as regulations authorizing one-stop partner programs.

### (c) Funding agreements

#### (1) Local board and CEO responsibilities regarding funding agreement development

The local board and CEO must:<sup>10</sup>

- ensure that local area one-stop partners adhere to the guidance provided in this policy;
- work with partners to achieve consensus and informally mediate any possible conflicts or disagreements among partners; and
- provide technical assistance to new one-stop partners and local grant recipients to ensure that those entities are informed and knowledgeable of the elements contained in the MOU and the funding agreement.

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<sup>10</sup> 20 CFR § 678.715(b)

## (2) Required elements of a funding agreement

A funding agreement must include provisions describing the:<sup>11</sup>

1. duration (term) of the funding agreement, which may differ from the duration (term) of the MOU;
2. budget for infrastructure and additional costs *and* an assurance that the budget will be reconciled periodically against actual costs incurred and adjusted accordingly to ensure that the budget:
  - a. reflects a cost allocation methodology that demonstrates how infrastructure costs are charged to the one-stop partner in proportion to its use of the one-stop center and relative benefit received; and
  - b. complies with Uniform Guidance<sup>12</sup> or any corresponding similar regulation or ruling;
3. all parties to the agreement (local board, CEO, and one-stop partner(s));
4. steps the local board, CEO, and one-stop partner used to reach consensus on a local funding mechanism *or* an assurance that the local area followed the requirements of this policy if funding is based on the state funding mechanism ([Sections I\(c\)\(3\)](#) and [I\(c\)\(4\)](#) cover funding mechanisms);
5. process to be used by the local board, CEO, and one-stop partner to resolve issues during term of the agreement when the parties are at an impasse *or* consensus is not reached; and
6. periodic review and modification process to ensure equitable benefit among all one-stop partners.

## (3) Local funding mechanism

Under the local funding mechanism, the local board, CEO, and one-stop partner agree to budget amounts and methods for calculating amounts partners will contribute for funding of infrastructure and additional costs of one-stop center operations, based on proportionate share and relative benefit of the partner.

### (A) Infrastructure costs

The funding agreement must meet the following requirements regarding infrastructure costs.<sup>13</sup>

1. Infrastructure costs must be funded through cash, fairly evaluated non-cash, or third-party in-kind partner contributions, including any funding from philanthropic organizations or other private entities or through other alternative financing options, to provide a stable and equitable funding stream for ongoing one-stop center operations.

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<sup>11</sup> 20 CFR § 678.755; TEGL 17-16

<sup>12</sup> *Uniform Guidance* refers to 2 CFR Part 200

<sup>13</sup> 20 CFR § 678.715(a); TEGL 17-16

2. One-stop partner contributions must be negotiated by the local board, CEO, and one-stop partner and the amounts to be contributed must be described in the funding agreement.
3. One-stop partners' proportionate share of funding must be calculated in accordance with the Uniform Guidance and based upon a reasonable cost allocation methodology<sup>14</sup> whereby infrastructure costs are charged to the partner programs *relative to the benefit received by the partner programs and in proportion to the programs' use of the one-stop center*, and the costs must be allowable, reasonable, necessary, and allocable.
4. One-stop partner contributions must be periodically reviewed and reconciled against actual costs incurred and adjusted to ensure that actual costs charged to partners are *proportionate to the partner programs' use of the one-stop center and relative benefit received*.

#### (B) Additional costs

The funding agreement must meet the following requirements regarding additional costs.<sup>15</sup>

1. The one-stop partner must use a portion of funds made available under their program's authorizing Federal legislation *or* make fairly evaluated in-kind contributions<sup>16</sup> to pay additional costs of one-stop center operations. *These other costs must include costs associated with the partners' provision of applicable career services and may include other costs, including shared services.*
2. Shared services costs may include the costs of shared services that are authorized for and may be commonly provided through the one-stop partner programs to any individual, such as initial intake, assessment of needs, appraisal of basic skills, identification of appropriate services to meet such needs, referrals to other one-stop partners, and business services. Shared costs may also include shared costs of the local board's functions.
3. One-stop partner contributions to funding of additional costs related to operation of the one-stop center may be cash, non-cash, or third-party in-kind contributions, consistent with 20 CFR § 678.720(c).
4. The one-stop partner's share of additional costs must be allocated *proportionate to the partner program's use of the one-stop center and relative benefit received*, consistent with the Federal legislation authorizing the partner's program and consistent with all other applicable legal requirements, including Federal cost principles described in the Uniform Guidance or any corresponding similar regulation or ruling requiring that costs are allowable, reasonable, necessary, and allocable.

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<sup>14</sup> TEGL 17-16. Approaches to developing reasonable cost allocation methodologies are provided in the US Department of Labor "One-stop Comprehensive Financial Management Technical Assistance Guide – Part I," which is accessible at <https://dol.nebraska.gov/webdocs/getfile/b6a9aacd-a6be-44f3-b649-43dc12cd6c59>. The US Department of Labor, Employment and Training Administration provides a *Sample MOU and Infrastructure Costs Toolkit*, which is accessible at [https://ion.workforcegps.org/resources/2017/03/23/13/30/Sample\\_MOU\\_Infrastructure\\_Costs\\_Toolkit](https://ion.workforcegps.org/resources/2017/03/23/13/30/Sample_MOU_Infrastructure_Costs_Toolkit).

<sup>15</sup> 20 CFR § 678.760

<sup>16</sup> Pursuant to TEGL 16-16 Change 1, SCSEP participants' community service hours can be considered as an in-kind contribution for purposes of SCSEP's contribution towards additional costs.

5. Additional costs agreed upon by the one-stop partners must be clearly defined in the funding agreement.

#### (4) State funding mechanism

##### (A) General requirements and limitations

If the local board, CEO, and all required one-stop partners in a local area reach an impasse or consensus is not reached on methods for sufficiently funding one-stop center infrastructure costs, the Governor must administer funding through the state funding mechanism for the program year impacted by the local area's failure to reach consensus.<sup>17</sup> To clarify, the state funding mechanism applies to the local area for the *entire applicable program year once implemented*. The Governor, through NDOL, determines required one-stop partner contributions under the state funding mechanism, except as described below.

NDOL does not determine infrastructure cost contributions for the following required one-stop partners under the state funding mechanism:<sup>18</sup>

- Indian and Native American (INA) programs;
- WIOA Title II (Adult Education and Family Literacy Act) programs;
- programs provided under WIOA Title IV (programs delivered by the Nebraska Commission for the Blind and Visually Impaired and the Nebraska Vocational Rehabilitation Program); and
- Career and Technical Education programs provided under the Perkins Act.

The amount to be contributed by WIOA Title II and IV programs and Career and Technical Education programs must be determined by the Commissioner of the Nebraska Department of Education in consultation with the Commissioner of the Nebraska Department of Labor.<sup>19</sup>

It is important to note the following points.

- *The state funding mechanism provides funding for infrastructure costs only.*<sup>20</sup> The local board must still come to agreement with one-stop partners on funding of additional costs, which must be documented in the funding agreement. While required one-stop partners must pay their proportionate share of additional costs relating to the operation of the one-stop delivery center,<sup>21</sup> failure to reach consensus on funding of additional costs *does not* trigger use of the state funding mechanism.
- *The state funding mechanism does not apply to additional one-stop partners* and cannot be triggered by an additional partner's disagreement with the terms of the funding agreement or their refusal to sign a funding agreement.

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<sup>17</sup> 20 CFR §§ 678.725 and 678.730(a)

<sup>18</sup> 20 CFR § 678.730(c)

<sup>19</sup> 20 CFR § 678.730(c)(2)

<sup>20</sup> TEGL 17-16

<sup>21</sup> 20 CFR § 678.760(a)

## (B) State funding mechanism implementation

The process for determining required one-stop partner contributions under the state funding mechanism consists of five steps.<sup>22</sup>

### 1. Notice of failure to reach consensus given to NDOL

If the local board, CEO, and one or more required one-stop partners fail to reach consensus on methods of sufficiently funding a one-stop center's infrastructure costs and the amounts to be contributed by each partner program, the local board is required to notify NDOL. Notification must be given as described in [Section II\(c\)](#).

### 2. Local negotiation materials provided to NDOL

To assist NDOL in making state-funding mechanism calculations and determinations, the local board must provide appropriate and relevant materials and documents used during negotiation of the local funding mechanism, preferably when notifying the NDOL of the failure to reach consensus. At a minimum, the local board must provide:

- the local board's local plan;
- the cost allocation methodology or methodologies proposed by the partners to be used in determining the proportionate share;
- the proposed amounts or budget to fund infrastructure costs and the amount of partner funds included;
- the type of funds available (cash, non-cash, and third-party in-kind contributions);
- any proposed or agreed upon one-stop center or system budget; and
- any partially agreed upon, proposed, or draft funding agreements.

The local board also may provide additional materials that it or NDOL finds appropriate.

### 3. Establishing the budget for infrastructure costs<sup>23</sup>

If the local board provides an agreed-upon budget for infrastructure costs with its notification *and* only the individual programmatic contributions to funding of infrastructure costs funding are at issue, that budget may be used to calculate each required one-stop partner's contribution consistent with the cost allocation methodologies contained in the Uniform Guidance.

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<sup>22</sup> TEGL 17-16

<sup>23</sup> 20 CFR § 678.736; TEGL 17-16

If an agreed-upon budget is not submitted or the agreed-upon budget does not adequately meet the needs of the local area, the formula established by the state board is used to determine the budget. To determine a budget using the state board formula, the one-stop center budget for the local area from the previous program year is adjusted by subtracting all:

- additional costs (i.e., non-infrastructure costs);
- costs charged to non-required one-stop partners and INA programs; and
- alternative funding that defrays infrastructure costs.

The resulting amount is the local area budget for infrastructure costs under the state funding mechanism. The budget may be increased by up to three percent, if warranted, based on materials provided with the local board's notification, subject to the approval of NDOL.

#### 4. Establishing the cost allocation methodology<sup>24</sup>

Once the budget is determined for a local area in step 1, the Commissioner of Labor, in consultation with Commissioner Education, must determine the appropriate cost allocation methodology to be applied to required one-stop partner programs in the local area, consistent with the Federal cost principles permitted under the Uniform Guidance, to fund the infrastructure costs budget. When determining each required one-stop partner's proportionate share of infrastructure costs, consideration must be given to the costs of administration of the one-stop delivery system for purposes not related to one-stop centers, such as:

- costs associated with maintaining the local board or information technology systems;
- statutory requirements for each partner program;
- required one-stop partners' ability to fulfill such requirements; and
- all other applicable legal requirements.

Consideration may also be given to the extent to which the required one-stop partners in the local area have agreed in determining partners' proportionate share, including any agreements reached at the local level by one or more partners, as well as any other materials or documents of the negotiating process provided by the local board.

#### 5. Determining partner shares

Each required one-stop partner's proportionate share of the infrastructure costs budget is determined, subject to the requirements and limitations established under 20 CFR § 678.738 and TEGL 17-16, using the four-step methodology described below. Required one-stop partners are then notified of their determined costs in writing according to timelines established in [Section II\(c\)\(2\)](#), Table 2.

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<sup>24</sup> 20 CFR §§ 678.736 and 678.737

### 5.1. Determining maximum statewide contributions

Formula for calculations:  $ma = sc \times ff$

- $ma$  = maximum statewide contribution in dollars
- $sc$  = statewide cap percentage
- $ff$  = Federal funds

Example calculation:

Factor	Amount
$sc$	0.03
$ff$	\$1,000,000
$ma$	\$30,000

### 5.2. Determining maximum local contributions

Formula:  $lc = ma \times u$

- $lc$  = maximum local area contribution in dollars
- $ma$  = maximum statewide contribution in dollars
- $u$  = use of local area
  - $u = p1 / p2$ 
    - $p1$  = local area population
    - $p2$  = state population

Example calculation:

Factor	Amount
$p1$	90,000
$p2$	2,000,000
$u$	0.45

Factor	Amount
$ma$	\$30,000
$u$	0.45
$lc$	\$13,500

### 5.3. Determining proportionate share

Formula:  $n1 / n2 = s$

- $n1$  = number of local area participants served by the required one-stop partner program at the one-stop center, as reported by the partner, during the previous program year (July 1 – June 30)
- $n2$  = number of local area participants served by all required one-stop programs at the one-stop center (sum of  $n1$  for all partners) during the previous program year (July 1 – June 30)
- $s$  = proportionate share

Example calculation:

Factor	Proportionate share
<i>n1</i>	1,500
<i>n2</i>	10,000
<i>s</i>	0.15

#### 5.4. Determining contribution amount

Example calculation:

Partner	Statewide cap ( <i>sc</i> )	Local area cap ( <i>lc</i> )	Proportionate share % ( <i>s</i> )	Proportionate share \$ ( <i>s x ff</i> )	Contribution amount
A	\$30,000	\$13,500	0.15	\$15,000	\$13,500

Note that a required one-stop partner's *contribution amount* under the state funding mechanism *must not* exceed the local area percentage cap for the partner program. Refer to [APPENDIX II](#) for a listing of percentage caps for all required one-stop partner contributions under the state funding mechanism.

## Section II. Reporting outcomes of negotiations

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### (a) Notification requirements

Each local board must notify NDOL of the outcomes of its MOU and funding agreement negotiations<sup>25</sup> according to the timelines in Tables 1 and 2 below. Under certain conditions, as described in the tables, the local board is also required to notify the state board as well as state agencies responsible for administering partner programs.

Notifications to NDOL and the state board must be submitted by email to:

- Bradley Pierce, Director of the Division of Reemployment Services, at [bradley.pierce@nebraska.gov](mailto:bradley.pierce@nebraska.gov);
- WIOA policy mailbox at [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov); and

Notifications to entities responsible for administering required one-stop partner programs must be submitted according to directions provided by the one-stop partners.

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<sup>25</sup> TEGL 17-16

### (b) Notifications when consensus is reached

If consensus is reached during MOU and/or funding agreement negotiations, the local board must promptly notify NDOL that consensus has been reached. Notification must be submitted by email to:

- Bradley Pierce, Director of the Division of Reemployment Services, at [bradley.pierce@nebraska.gov](mailto:bradley.pierce@nebraska.gov);
- WIOA policy mailbox at [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov); and

Note that submission of supporting documentation is not required when consensus is reached.

### (c) Notifications when consensus is not reached<sup>26</sup>

#### (1) MOU negotiations

If the local board and CEO fail to reach consensus during MOU negotiations with one or more required one-stop partners, email notifications must be sent according to the timelines described in Table 1 and [Section II\(a\)](#). Notifications must include, as attachments, the materials and documents used during negotiations as described in [Section I\(c\)\(4\)\(B\)](#). NDOL will provide technical assistance to local boards according to the timelines described in Table 1.

Table 1. Timelines when consensus is not reached on MOUs

Responsible party – event	Deadline
Local board – notifies NDOL that it has reached an impasse or failed to reach consensus with 1 or more required one-stop partners during negotiation of MOUs	No later than April 1 of the applicable year
NDOL – provides initial technical assistance to the local board and requires the local board and CEO to resume negotiations for up to 30 days	No longer than 30 days starting on April 1
Local board – notifies NDOL of the outcome of the first round of resumed negotiations	No later than May 1
NDOL – if the local board and CEO remain at an impasse or fail to reach consensus with 1 or more required one-stop partners following the first round of resumed negotiations, NDOL provides follow-up technical assistance to the local board and requires the local board and CEO to resume negotiations for up to 30 additional days	No longer than 30 days starting on May 1
Local board – notifies NDOL of the outcome of the second round of resumed negotiations; and if the impasse is not resolved or consensus is not reached, the local board must also notify the state board, as well as the entity responsible for administering the applicable partner program	No later than June 1
NDOL – if the local board remains at an impasse or fails to reach consensus with 1 or more required one-stop partners following the second round of resumed negotiations, NDOL provides additional technical assistance to the local board and requires the local board and CEO to resume negotiations for up to 30 additional days	No longer than 30 days starting on June 1
Local board – notifies NDOL of the outcome of the final round of resumed negotiations; and if the local board fails to execute MOUs within 30 days of additional technical assistance, local board must also report the failure to the state	No later than July 1

<sup>26</sup> 20 CFR § 678.510(c)

Responsible party – event	Deadline
board and the entity responsible for administering the applicable required one-stop partner programs	
NDOL – reports the failure to execute MOUs with 1 or more required one-stop partners to the Secretary of Labor and the head of any other Federal agency with responsibility for oversight of the applicable required one-stop partner's program	Within 15 days of receipt of notification of failure to execute MOUs by July 1

## (2) Funding agreement negotiations<sup>27</sup>

If the local board and CEO reach an impasse or fail to reach consensus during funding agreement negotiations with one or more required one-stop partners, email notification must be made as described in Table 2 and [Section II\(a\)](#). Notifications must include the documentation described in item 2 of [Section I\(c\)\(4\)\(B\)](#).<sup>28</sup> NDOL will provide technical assistance to local boards as described in Table 2.

Table 2. Timelines when consensus is not reached on funding agreements

Responsible party – event	Deadline
Local board – notifies NDOL that it has reached an impasse or failed to reach consensus with 1 or more required one-stop partners during negotiation of funding agreements	No later than April 1 of the applicable year
NDOL – provides initial technical assistance to the local board and requires the local board to resume negotiations for up to 30 days	No longer than 30 days starting on April 1
Local board – notifies NDOL of the outcome of the first round of resumed negotiations	No later than May 1
NDOL – if the local board and CEO remain at an impasse or fail to reach consensus with 1 or more required one-stop partners following the first round of resumed negotiations, NDOL provides follow-up technical assistance to the local board and requires the local board and CEO to resume negotiations for up to 30 additional days	No longer than 30 days starting on May 1
Local board – notifies NDOL of the outcome of the second round of resumed negotiations	No later than June 1
NDOL – if the local board and CEO remain at an impasse or fail to reach consensus with 1 or more required one-stop partners following the second round of resumed negotiations, NDOL provides additional technical assistance to the local board and requires the local board and CEO to resume negotiations for up to 30 additional days	No longer than 30 days starting on June 1
Local board – notifies NDOL of the outcome of the final round of resumed negotiations; and if the local board and CEO remain at an impasse or fail to reach consensus within 30 days of additional technical assistance, the state funding mechanism takes effect for the local area for the applicable program year	No later than July 1
NDOL – notifies all required one-stop partners in the local area of required contribution amounts for the applicable program year	Within 30 days of receipt of notification of failure to reach consensus following final round of resumed negotiations
Required one-stop partners – submit written appeals regarding proposed amounts or budget to fund infrastructure, amount of total partner funds included, type of funds or non-cash contributions, proposed one-stop center budgets, individual	No later than 15 days after notification of required contribution amounts

<sup>27</sup> 20 CFR § 678.510(c)

<sup>28</sup> TEGL 17-16

Responsible party – event	Deadline
programmatic contributions to infrastructure funding based on proportionate use of the one-stop center and relative benefit received	
NDOL – completes hearings and makes determinations on appeals regarding proposed amounts or budget to fund infrastructure, amount of total partner funds included, type of funds or non-cash contributions, proposed one-stop center budgets, individual programmatic contributions to infrastructure funding based on proportionate use of the one-stop center and relative benefit received	Within 30 days after receipt of appeals, absent extenuating circumstances
Local board – executes funding agreements with all required one-stop partners based on required contribution amounts	Within 30 days of determinations on appeals

### Section III. Appeal process for the state funding mechanism<sup>29</sup>

A required one-stop partner may appeal the determination of its required contribution to funding of infrastructure costs under the state funding mechanism. An appeal may be made based on:<sup>30</sup>

- proposed amounts or budget to fund infrastructure costs;
- proposed one-stop center budgets;
- amount of total partner funds included;
- types of funds or non-cash contributions;
- individual programmatic contributions to infrastructure funding based on proportionate use of the one-stop center and relative benefit received; or
- a claim that the determination is inconsistent with the requirements and limitations established under 20 CFR § 678.738 .

#### (a) When and how to appeal

To appeal a determination of its required contribution to funding of infrastructure costs, a required one-stop partner must:

1. submit the appeal in writing within 15 days of NDOL's notification to the partner regarding its required contribution; and
2. provide the following information with the written appeal:
  - a. description of the partner's basis for appeal; and
  - b. rationale for reversing the determination or establishing a compromise.

<sup>29</sup> 20 CFR § 678.750

<sup>30</sup> 20 CFR § 678.735(a) – (b)

The written appeal, including supporting documentation, must be submitted to:

Commissioner of Labor  
Nebraska Department of Labor  
PO Box 94600  
Lincoln, NE 68509-4600

In addition, the appeal and supporting documentation must be sent simultaneously by email to:

- the chair of the applicable local board and CEO;
- all other required one-stop partners operating in the local area;
- Bradley Pierce, Director, Division of Reemployment Services, Nebraska Department of Labor at [bradley.pierce@nebraska.gov](mailto:bradley.pierce@nebraska.gov); and
- the WIOA policy mailbox at [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov).

#### (b) Determination of an appeal

Absent extenuating circumstances, the Commissioner of Labor will assign a hearing officer and a hearing will take place and a determination made within 30 days of the receipt of the written appeal and supporting documentation. The hearing will include a:

1. statement of the reason for the determination of the required one-stop partner's required contribution;
2. statement by the partner, describing why the decision should be reversed or a compromise established; and
3. final judgment that will include an explanation of the reasons for retention or reversal of the determination or establishment of a compromise.

#### DISCLAIMER

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

## APPENDIX I. Definitions

### 1. infrastructure costs and additional costs<sup>31</sup>

*Infrastructure costs* are non-personnel costs that are necessary for the general operation of the one-stop center. Tables 3 through 5 provide examples of allowable infrastructure costs.

Table 3. Examples of allowable one-stop center infrastructure costs – facilities

Facilities costs category/line item	Line-item description
Lease cost	Cost of one-stop center space pursuant to a lease
Facility maintenance	Cost of upkeep and maintenance of leased space, including grounds keeping, trash and shredding, if not already included in a lease
Property and casualty insurance	Cost of property and general liability insurance for one-stop center space, if not already included in a lease
Security services	Cost of third-party contractors and/or camera-based surveillance, if not already included in a lease
Cleaning services	Cost of janitorial services, if not already included in a lease
Utilities	Electricity, water, gas, and other utility costs associated with one-stop center space, if not included in a lease
Equipment	Costs of shared computers, printers, copiers, postage machines utilized for the operation of the one-stop center and related maintenance and supplies

Table 4. Examples of allowable one-stop center infrastructure costs – technology

Technology costs category/line item	Line-item definition
Telecommunications, including internet	Cost of phone and internet connectivity in the resource room and other shared spaces in the one-stop center
Assessment-related and assistive technology	Cost of assessment-related and assistive technology enabling individuals with disabilities to utilize the resource room or other services provided at the one-stop center
Planning and outreach	Cost of technology used for one-stop center planning and outreach activities including costs associated with the development and use of the common identifier

Table 5. Examples of allowable one-stop center infrastructure costs – common identifier

Common identifier category/line item	Line-item definition
Signage	One-time costs associated with new exterior and interior signage displaying the common identifier
Other common identifier costs	Cost of printed materials, website changes, business cards, and similar costs incurred to implement the common identifier

*Additional costs* must include applicable career services and may include shared operating costs, shared services, and any other additional costs necessary to maintain a fully functioning one-stop center. Table 6 provides a list of examples of allowable additional costs. This list is not exhaustive.

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<sup>31</sup> 20 CFR § 678.760

Table 6. Examples of allowable one-stop center additional costs

Cost category	Examples of allowable one-stop center additional costs
Costs related to local board functions	<ul style="list-style-type: none"> <li>▪ Salary, benefits, and other expenses associated with staffing board functions</li> <li>▪ Board meeting costs</li> <li>▪ Audit costs of incorporated boards</li> <li>▪ Errors and omissions insurance for board directors and officers</li> <li>▪ Non-technology costs associated with marketing services to employers and other customers</li> <li>▪ Non-technology costs of strategic data gathering and analysis projects intended to isolate area workforce needs, priorities, and issues</li> </ul>
Costs to promote integration and streamlining of services	<ul style="list-style-type: none"> <li>▪ Joint staff training, including staff of comprehensive one-stop centers</li> <li>▪ Customer satisfaction measurement</li> <li>▪ Business services</li> <li>▪ Receptionist at the one-stop center</li> <li>▪ Resource room materials and staffing costs at the one-stop center</li> </ul>
Shared services and operating costs for required one-stop partners	<ul style="list-style-type: none"> <li>▪ Delivery of career services</li> <li>▪ Shared services</li> <li>▪ Shared operating costs</li> <li>▪ Any allowable non-technology cost item (e.g., initial intake or needs assessments)</li> </ul>

## 2. one-stop center<sup>32</sup>

The term *one-stop center* refers to any certified:

- comprehensive American Job Center or AJC;
- affiliate center; or
- specialized center.

### a. comprehensive American Job Center<sup>33</sup>

The term *comprehensive American Job Center* (or *AJC*) refers the physical location of a certified one-stop center where job seekers and employers access the programs, services, and activities of all required one-stop partner programs.

### b. affiliate site<sup>34</sup>

The term *affiliate site* means a certified one-stop center where job seekers and employers access one or more one-stop partner programs, services, or activities. Affiliate sites are access points in addition to the certified comprehensive AJC(s) in a local area.

<sup>32</sup> WIOA Secs. 3(40) and 121(e)(2)

<sup>33</sup> 20 CFR § 678.305

<sup>34</sup> 20 CFR § 678.310

### c. specialized center<sup>35</sup>

The term *specialized center* means a certified one-stop center that addresses specific needs, such as the needs of dislocated workers, youth, or key industry sectors or clusters.

### 3. one-stop delivery system<sup>36</sup>

The term *one-stop delivery system* refers to a network of one-stop centers and must include at least one AJC and may include:

- an affiliate site or network of affiliate sites;
- a network of one-stop partners that are linked, either physically or through technology, to an affiliate site or other access point; and
- specialized centers.

### 4. program year

The term *program year* means the one-year period beginning on July 1 and ending on June 30.

### 5. required one-stop partners and additional one-stop partners

Table 7. Required one-stop partners and their authorizing legislation<sup>37</sup>

Required one-stop partner	Authorizing legislation or authority
1. Adult Education and Family Literacy Act (AEFLA) program	WIOA Title II
2. Adult, Dislocated Worker, and Youth programs	WIOA Title IB
3. Career and technical education programs at the postsecondary level	Carl D. Perkins Career and Technical Education Act of 2006
4. Employment and training activities carried out by the Department of Housing and Urban Development under Jobs Plus Initiative grants	Jobs Plus Initiative, Housing and Urban Development
5. Employment and training activities carried out under the Community Services Block Grant	42 USC § 9901 <i>et seq.</i>
6. Ex-offender (Second Chance Act) programs	Second Chance Act of 2007, Section 212
7. Job Corps	WIOA Title IC
8. Jobs for Veterans State Grants programs	38 USC Chapter 41
9. Migrant and Seasonal Farmworker programs	WIOA Title ID
10. INA programs	WIOA Title ID
11. Programs authorized under Nebraska's Unemployment Compensation law	Neb. Rev. Stat. § 48-617
12. Senior Community Service Employment Program	Older Americans Act, Title V
13. Trade Adjustment Assistance programs	Trade Act of 1974, Title II, Chapter 2
14. Nebraska Commission for the Blind and Visually Impaired	Rehabilitation Act of 1973, Title I, as amended by WIOA Title IV

<sup>35</sup> 20 CFR § 678.300(d)(3)

<sup>36</sup> 20 CFR § 678.300

<sup>37</sup> 20 CFR § 678.400

Required one-stop partner	Authorizing legislation or authority
15. Nebraska Vocational Rehabilitation Program	Rehabilitation Act of 1973, Title I, as amended by WIOA Title IV
16. Wagner-Peyser Act Employment Service program	Wagner-Peyser Act, as amended by WIOA Title III
17. Work, education, and training activities carried out by the Temporary Assistance for Needy Families (TANF) program	Social Security Act, Title IV, Part A
18. YouthBuild programs	WIOA Title ID

In addition to required one-stop partners, other Federal, state, and local entities responsible for administering employment and training programs and activities in a local area may participate as additional partners. Table 8 lists potential additional one-stop partners and their authorizing legislation.<sup>38</sup> This list is not exhaustive.

Table 8. Additional one-stop partners and their authorizing legislation

Required one-stop partner	Authorizing legislation
1. Employment and training programs administered by the Social Security Administration, including the Ticket to Work and Self-Sufficiency Program	Social Security Act, Section 1148
2. Employment and training programs carried out by the Small Business Administration;	Varies depending on current legislative authorization
3. Supplemental Nutrition Assistance Program (SNAP) employment and training programs	Food and Nutrition Act of 2008, Sections 6(d)(4) and 6(o)
4. Client Assistance Programs	Rehabilitation Act of 1973, Section 112
5. Programs authorized under the National and Community Service Act of 1990	National and Community Service Act of 1990
6. Other appropriate Federal, State, or local programs, including, but not limited to, employment, education, and training programs provided by public libraries or in the private sector	Varies depending on current legislative authorization

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<sup>38</sup> 20 CFR § 678.410

## APPENDIX II. Percentage caps on required one-stop partner contributions under state funding mechanism

Table 9. Percentage caps on required one-stop partner contributions under the state funding mechanism<sup>39</sup>

Required one-stop partner (and authorizing legislation or authority)	Percentage limitation (cap)
1. Adult, Dislocated Worker, and Youth programs (WIOA Title IB)	Up to 3% of Federal fiscal year funds provided to the state for the program
2. Adult Education and Family Literacy Act (AEFLA) programs (WIOA Title II)	Up to 1.5% of Federal fiscal year funds provided to the state for the program
3. Career and technical education programs at the postsecondary level (The Strengthening Career and Technical Education Act for the 21 <sup>st</sup> Century (2018))	Up to 1.5% of the amount made available by the state for postsecondary level programs and activities and the amount of funds used by the state during the prior year to administer postsecondary level programs and activities
4. Employment and training activities carried out by the Department of Housing and Urban Development <i>under Jobs Plus Initiative grants</i>	Up to 1.5% of the amount of Federal funds provided to carry out the program in the state for a fiscal year
5. Employment and training activities carried out under the Community Services Block Grant (42 USC 9901 <i>et seq.</i> )	Up to 1.5% of the total amount of CSBG funds determined by the Nebraska Department of Health and Human Services to have been expended by local CSBG-eligible entities for the provision of employment and training activities during the prior Federal fiscal year for which information is available (as reported to the U.S. Department of Health and Human Services (HHS) on the CSBG Annual Report) and any additional amount that the Nebraska Department of Health and Human Services reasonably determines was expended for administrative purposes in connection with these activities and was separately reported to HHS as an administrative cost
6. Ex-offender programs (Second Chance Act of 2007, Section 212)	Up to 1.5% of the amount of Federal funds provided to carry out the program in the state for a fiscal year
7. Jobs Corps (WIOA Title IC)	Up to 1.5% of the amount of Federal funds provided to carry out the program in the state for a fiscal year
8. Jobs for Veterans State Grant (JVSG) program (38 USC Chapter 41)	Up to 1.5% of the amount of Federal funds provided to carry out the program in the state for a fiscal year
9. Migrant and Seasonal Farmworker programs (WIOA Title ID)	Up to 1.5% of the amount of Federal funds provided to carry out the program in the state for a fiscal year
10. Native American programs (WIOA Title ID)	Not applicable
11. Programs authorized under Nebraska's Unemployment Compensation Law (Neb. Rev. Stat. § 48-617)	Up to 1.5% of the amount of Federal funds provided to carry out the program in the state for a fiscal year
12. Senior Community Service Employment Program (SCSEP) (Older Americans Act, Title V)	Up to 1.5% of the amount of Federal funds provided to carry out the program in the state for a fiscal year
13. Trade Adjustment Assistance programs (Trade Act of 1974, Title II, Chapter 2)	Up to 1.5% of the amount of Federal funds provided to carry out the program in the state for a fiscal year

<sup>39</sup> 20 CFR § 678.738(c)(1) – (6)

Required one-stop partner (and authorizing legislation or authority)	Percentage limitation (cap)
14. Nebraska Commission for the Blind and Visually Impaired (WIOA Title IV) <sup>40</sup>	Up to 1.5% of the amount of Federal provided to carry out the combined WIOA Title IV programs in the state for a fiscal year, phased in over 4 years: <ul style="list-style-type: none"> <li>• 0.75% year 1 (Program Year 2017)</li> <li>• 1.00% year 2 (Program Year 2018)</li> <li>• 1.25% year 3 (Program Year 2019)</li> <li>• 1.50% year 4 (Program Year 2020 and subsequent Program Years)</li> </ul>
15. Nebraska Vocational Rehabilitation Program (WIOA Title IV) <sup>41</sup>	Up to 1.5% of the amount of Federal provided to carry out the combined WIOA Title IV programs in the state for a fiscal year, phased in over 4 years: <ul style="list-style-type: none"> <li>• 0.75% year 1 (Program Year 2017)</li> <li>• 1.00% year 2 (Program Year 2018)</li> <li>• 1.25% year 3 (Program Year 2019)</li> <li>• 1.50% year 4 (Program Year 2020 and subsequent Program Years)</li> </ul>
16. Wagner-Peyser Employment Service programs (WIOA Title III)	Up to 3% of the amount of Federal funds provided to carry out the program in the state for a fiscal year
17. Work, education, and training activities carried out by the Temporary Assistance for Needy Families (TANF) program (Social Security Act, Title IV, Part A)	Up to 1.5% of the total Federal TANF funds expended by the Nebraska Department of Health and Human Services for work, education, and training activities during the prior Federal fiscal year (as reported to the U.S. Department of Health and Human Services (HHS) on the quarterly TANF Financial Report form), plus any additional amount of Federal TANF funds that the Nebraska Department of Health and Human Services reasonably determines was expended for administrative costs in connection with these activities but that was separately reported to HHS as an administrative cost
18. YouthBuild (WIOA Title ID)	Up to 1.5% of the amount of Federal funds provided to carry out the program in the state for a fiscal year

<sup>40</sup> Pursuant to the preamble discussion on 20 CFR § 678.738, in states where there are two VR agencies (general and blind), the combined contribution from the programs cannot be required to exceed the cap, which is based on the total VR allotment to the state.

<sup>41</sup> Ibid.

## 2. One-stop Delivery System

## State Policy

## Workforce Innovation and Opportunity Act (WIOA)

Nebraska Department of Labor (NDOL) Division of Reemployment Services 550 South 16 <sup>th</sup> Street Lincoln, NE 68508 402.471.9000 <a href="mailto:ndol.wioa_policy@nebraska.gov">ndol.wioa_policy@nebraska.gov</a>	<b>Policy category</b> One-stop Delivery System
	<b>Effective date</b> February 15, 2023
	<b>Supersedes</b> One-stop Delivery System Assessment and One-stop Center Certification, Change 2 (effective date May 28, 2020)

### One-stop Delivery System Assessment and One-stop Center Certification, Change 3

## 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

WIOA assigns responsibilities at the Federal, state, and local levels to ensure the creation and maintenance of a one-stop delivery system that enhances the range and quality of education and workforce development services that jobseekers, workers, and employers can access.<sup>1</sup> WIOA requires that state boards, in consultation with chief elected officials and local boards, establish objective criteria and procedures for local boards to use when assessing local one-stop delivery systems and assessing and certifying one-stop centers for effectiveness, physical and programmatic accessibility, and continuous improvement.<sup>2</sup>

## ACTION

This policy supersedes and cancels the State's policy titled One-stop Delivery System Assessment and One-stop Center Certification, Change 2 (effective date May 28, 2020). Questions and comments on this policy may be submitted in writing to the WIOA policy mailbox at [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov).

<sup>1</sup> 20 CFR § 678.300(b)

<sup>2</sup> 20 CFR § 678.800(a)

Each local board must assess the effectiveness, physical and programmatic accessibility, and continuous improvement of its local one-stop delivery system at least *once every three years* based on the requirements established in this policy,<sup>3</sup> as well as the requirements established in the State's *Security and the One-stop Delivery System* policy.<sup>4</sup> As part of that assessment, the local board must also assess and certify at least one comprehensive one-stop center based on the same requirements.<sup>5</sup> During the *triennial* assessment of the local one-stop delivery system and assessment and certification of one-stop centers, including any designated affiliate sites and specialized centers, each local board must follow the requirements and procedures established in this policy and the requirements of WIOA and its implementing regulations and guidance, including WIOA Sec. 188 and 29 CFR Part 38, and the applicable provisions of the Americans with Disability Act of 1990 (42 USC 12101 et seq.).<sup>6</sup>

In addition to the triennial assessments described above, each local board must *annually* assess the physical and programmatic accessibility of all one-stop centers in the local area.<sup>7</sup> During its annual assessment of the physical and programmatic accessibility of all one-stop centers in the local area, each local board must follow the requirements and procedures established in this policy, the requirements established in the State's *Security and the One-stop Delivery System* policy, and the requirements of WIOA and its implementing regulations and guidance, including WIOA Sec. 188 and 29 CFR Part 38, and the applicable provisions of the Americans with Disability Act of 1990 (42 USC 12101 et seq.).<sup>8</sup>

## CHANGES

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[Section I](#) has been revised to clarify requirements for:

- *triennial* assessment of local one-stop delivery systems and assessment and certification of one-stop centers; and
- *annual* assessment of local area one-stop centers for physical and programmatic accessibility.

[Section I](#) has also been revised to include criteria regarding:

- physical and programmatic accessibility for individuals who are limited English proficient; and
- compliance with the Americans with Disabilities Act of 1990.

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<sup>3</sup> WIOA Sec. 121(g)(1) and (4); 20 CFR § 678.800(d)

<sup>4</sup> The *Security and the One-stop Delivery System* policy is included in the State policy manual, which is accessible at <https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies>.

<sup>5</sup> 20 CFR § 678.800(d); TEGL 16-16

<sup>6</sup> 20 CFR §§ 678.800 and 679.370(p); TEGL 16-16

<sup>7</sup> 20 CFR § 679.370(p)

<sup>8</sup> 20 CFR §§ 678.800 and 679.370(p); TEGL 16-16

[Section II](#) has been revised to clarify procedures that must be followed during:

- *triennial* assessment of local one-stop delivery systems and assessment and certification of one-stop centers;
- *annual* assessment of local area one-stop centers; and
- *recertification* of relocated one-stop centers.

[APPENDIX II](#) (one-stop delivery system assessment and one-stop center assessment and certification forms) has been revised to address security requirements under this policy.

## POLICY

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This policy establishes requirements regarding assessment of local one-stop delivery systems and certification of one-stop centers.

This policy has three sections and two appendices.

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### Section I. Criteria requirements

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Each local board must assess the effectiveness, physical and programmatic accessibility, and continuous improvement of its local one-stop delivery system *at least once every three* years based on the requirements established in this policy<sup>9</sup> and the requirements established in the State's *Security and the One-stop Delivery System* policy.<sup>10</sup> As part of that assessment, the local board must also assess and certify at least one comprehensive one-stop center based on the same requirements.<sup>11</sup> If the local board designates affiliate sites or specialized centers for inclusion in the local one-stop delivery system, the local board must certify the sites and centers for those sites and centers to be eligible for infrastructure funding support from partner programs.<sup>12</sup>

In addition to the *triennial* assessment described above, each local board must *annually* assess the physical and programmatic accessibility of all one-stop centers in the local area based on the

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<sup>9</sup> WIOA Sec. 121(g)(1) and (4); 20 CFR § 678.800(d)

<sup>10</sup> The *Security and the One-stop Delivery System* policy is included in the State policy manual, which is accessible at <https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies>.

<sup>11</sup> 20 CFR § 678.800(d); TEGL 16-16

<sup>12</sup> WIOA Secs. 121(g)(1) and 121(h)(1)(A)(i). For information on infrastructure funding, refer to the State's current policy on memorandums of understanding and funding agreements. The policy is accessible at <https://dol.nebraska.gov/EmploymentAndTraining/LCRWP/WIOA/Policies>.

requirements of this policy<sup>13</sup> and the requirements established in the State's *Security and the One-stop Delivery System* policy.

Criteria and requirements for assessments and certifications are described below in subsections (a) through (d).

#### (a) Effectiveness

The local board's assessment of the effectiveness of the local one-stop delivery system and local one-stop centers must include how well the system and centers:<sup>14</sup>

1. operate in a cost-efficient manner;
2. integrate available services for jobseekers, workers, and employers;
3. meet the workforce development needs of jobseekers, workers, and employment needs of local employers;
4. coordinate services among the one-stop partner programs; and
5. provide access to one-stop partner program services to the maximum extent practicable, including providing services outside of regular business hours where there is a workforce need identified by the local board.

In addition, the local board's assessment of the effectiveness of the local one-stop delivery system and one-stop centers must take into account feedback from one-stop customers, .<sup>15</sup>

#### (b) Physical and programmatic accessibility

The local board's assessment of the physical and programmatic accessibility of its local one-stop delivery system and one-stop centers must address how well the system and centers take actions to comply with the requirements established in WIOA Sec. 188 and its implementing rule, 29 CFR Part 38, regarding equal opportunity and non-discrimination. The actions that must be assessed include how well the system and centers, including affiliate sites and specialized centers:<sup>16</sup>

1. provide reasonable accommodations for individuals with disabilities;
2. make reasonable modifications to policies, practices, and procedures where necessary to avoid discrimination against individuals with disabilities;
3. administer programs in the most appropriate integrated setting;
4. communicate with individuals with disabilities as effectively as with other individuals;

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<sup>13</sup> 20 CFR § 679.370(p)

<sup>14</sup> 20 CFR § 678.800(b)

<sup>15</sup> 20 CFR § 678.800(b)

<sup>16</sup> 20 CFR §§ 678.800(b)(1) – (6) and 678.900; State's *Security and One-stop Delivery System* policy

5. provide appropriate auxiliary aids and services, including assistive technology devices and services when necessary, to provide individuals with disabilities an equal opportunity to participate in and enjoy the benefits of the program or activity;
6. provide physical accessibility for individuals with disabilities;
7. provide meaningful access for individuals who are limited English proficient (LEP) and ensure LEP individuals are effectively informed about program services and able to participate in those services;<sup>17</sup>
8. use the common identifier (*American Job Center or a proud partner of the American Job Center network*) on all:<sup>18</sup>
  - a. products, programs, activities, services, electronic resources, facilities, and related property and new materials used within the one-stop delivery system; and
  - b. interior and exterior branding, including signage;
9. ensure the physical security of system facilities and property.

All one-stop centers, including affiliate sites and specialized centers, must comply with the physical and programmatic accessibility requirements described in this policy, the requirements of the State's *Security and the One-stop Delivery System* policy, as well as WIOA Sec. 188, 29 CFR Part 38, and the applicable provisions of the Americans with Disability Act of 1990.<sup>19</sup>

### (c) Continuous Improvement

The local board's assessment of continuous improvement of the local one-stop delivery system and one-stop centers:<sup>20</sup>

- must include how well the system and centers support the achievement of negotiated local levels of performance for the performance indicators described in WIOA Sec. 116(b)(2) and 20 CFR § 677.205;<sup>21</sup> and
- may include other continuous improvement factors, such as:
  - regular processes for identifying and responding to technical assistance needs of the system and centers;
  - regular systems of continuing professional staff development; and
  - systems for capturing and responding to specific customer feedback.

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<sup>17</sup> 29 CFR § 38.9(b)

<sup>18</sup> 20 CFR § 678.900. Local boards, local areas, and one-stop partners may use additional (not alternative) identifiers on or for their facilities and related property, products, programs, activities, services, and materials [20 CFR § 678.900(d)].

<sup>19</sup> 20 CFR §§ 678.800(e) and 679.370(p)

<sup>20</sup> 20 CFR § 678.800(c)

<sup>21</sup> Refer to the State's current performance accountability policy for information on the performance indicators. The policy is accessible at <https://dol.nebraska.gov/EmploymentAndTraining/LCRWP/WIOA/Policies>.

#### (d) Local criteria<sup>22</sup>

A local board may establish additional assessment and certification criteria or set higher standards for service coordination than those established in this policy and the State's *Security and the One-stop Delivery System* policy. If additional criteria and standards are established, the local board must review and update the criteria and standards every two years as part of regional and local plan development and modification processes.

## Section II. Processes and procedures

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#### (a) Triennial assessment and certification

The local board's processes for assessment and certification of one-stop centers must:

- be established in writing by the local board *prior* to commencement of triennial assessment and certification processes;
- comply with the requirements of this policy and the State's *Security and One-stop Delivery System* policy;
- require use of the assessment and certification forms provided as APPENDIX II.A. and APPENDIX II.C., in according with APPENDIX II.B.; and
- require submission of a notification to NDOL regarding the outcome of the assessment and certification processes and such submission must be submitted by email to [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov) and [ndol.state\\_monitor@nebraska.gov](mailto:ndol.state_monitor@nebraska.gov) and include:
  - a fully signed *one-stop delivery system and one-stop center assessment and certification assurances* form (included as APPENDIX II.A.); and
  - digital copies of all forms completed during the assessment and certification processes, including all required attachments identified in the review form (APPENDIX II.C.).

#### (b) Annual assessments

As mentioned above, the local board must use the forms included with this policy as [APPENDIX II](#). In APPENDIX II, sections C.III and C.IV of the review form must be completed during the annual assessment process.

Local boards are not required to notify NDOL of the outcomes of annual assessments of the physical and programmatic accessibility of local area one-stop centers. However, conduct and documentation of the outcomes of the annual assessments are subject to review by the State EO Officer and the State WIOA Monitor, as well as the US Department of Labor and other applicable

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<sup>22</sup> 20 CFR § 678.800(d); TEGL 16-16

Federal agencies. Documentation resulting from assessments and certification is subject to the record retention requirements described in the State's current policy on records management.<sup>23</sup>

### (c) Recertification of relocated one-stop centers

If the location of a certified one-stop center changes, the one-stop center must be recertified within 90 day of the opening of the new location. The local board must follow the requirements of this policy to recertify the one-stop.

## Section III. Timelines

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Effective July 1, 2017, each local board must:

- assess its local one-stop delivery system and one-stop centers *at least once every three years* (triennially) based on the requirements established in this policy;
- certify at least one comprehensive one-stop center *at least once every three years* (triennially) based on the requirements established in this policy; and
- *annually* assess the physical and programmatic accessibility of local area one-stop centers based on the requirements established in this policy.

In addition, relocated one-stop centers must be recertified within 90 day of the opening of the new location, as stated above in [Section II\(c\)](#).

## DISCLAIMER

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This policy is based on NDOL's reading of the applicable statutes, regulations, rules, and guidance released by the US 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>23</sup> The policy is accessible at <https://dol.nebraska.gov/EmploymentAndTraining/LCRWP/WIOA/Policies>.

## APPENDIX I. Definitions

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**PURPOSE.** Definitions in this appendix are provided as supplemental information that supports the provisions of the policy. The terms and phrases defined in this appendix should be read and understood in the context in which they are used in the policy and not as stand-alone information independent of that context.

### 1. access

Providing access to each partner program and its services means:<sup>24</sup>

- having a program staff member physically present at the one-stop center;
- having a staff member from a different partner program physically present at the one-stop center that is appropriately trained to provide information to customers about the programs, services, and activities available through partner programs; or
- providing a direct linkage through technology to program staff who can give meaningful information or services.

### 2. affiliate site (affiliate one-stop center)<sup>25</sup>

An *affiliate site* (affiliate one-stop center) is a site that makes available to jobseekers, workers, and employers one or more one-stop partner programs, services, and activities. An *affiliate site* must be connected to a comprehensive one-stop center.

### 3. comprehensive one-stop center (comprehensive American Job Center or AJC)<sup>26</sup>

A *comprehensive one-stop center* (comprehensive American Job Center or AJC) is a physical location where jobseekers, workers, and employers can access the programs, services, and activities of all required one-stop partners.

### 4. direct linkage<sup>27</sup>

*Direct linkage* means providing a direct connection to a comprehensive one-stop center (or certified affiliate site or specialized center) and a required one-stop partner staff member who can provide program information or services to the customer, within a reasonable period, by phone or through real-time web-based communications. Simply providing a phone number, web address for services or information, pamphlets, or other materials *does not* constitute direct linkage.

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<sup>24</sup> 20 CFR § 678.305.(d)(1) – (3)

<sup>25</sup> 20 CFR § 678.310(a)

<sup>26</sup> 20 CFR § 678.305(a)

<sup>27</sup> 20 CFR § 678.305(d)(3)(i) – (ii)

5. specialized center<sup>28</sup>

A *specialized center* is a center that addresses specific needs, including those of dislocated workers, youth, Veterans, employers, key industry sectors or clusters, or other groups specified by a local board. A *specialized center* must be connected to a comprehensive one-stop center and any appropriate affiliate site.

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<sup>28</sup> 20 CFR § 678.300(d)(3); TEGL 16-16

## APPENDIX II. One-stop center assessment and certification forms

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Each local board must assess the effectiveness, physical and programmatic accessibility, and continuous improvement of its local one-stop delivery system and local area one-stop centers at least *once every three years* (triennially).<sup>29</sup> As part of the *triennial* assessment process, the local board must certify at least one comprehensive American Job Center. If the local board designates affiliate sites or specialized centers for inclusion in its local one-stop delivery system, the local board must certify those sites and centers in order for those locations to be eligible for infrastructure funding.

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<sup>29</sup> 20 CFR § 678.800(b) and (d)

## **A. Instructions: One-stop center triennial assessment and certification**

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For triennial assessment and certification of each local area American Job Center (AJC), affiliate site, and specialized center, the local board must complete and submit the following forms, as described in and required under Section II of the State's current *One-stop Delivery System Assessment and One-stop Center Certification* policy.<sup>30</sup>

- one-stop center triennial assessment and certification assurances form (APPENDIX II.B.);
- one-stop center triennial assessment and certification outcome form for each certified AJC, affiliate site, and specialized center (APPENDIX II.C.); and
- one-stop partner program triennial assessment form for each program evaluated for certification of an AJC, affiliate site, and specialized center (APPENDIX II.D.).

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<sup>30</sup> The State's policy manual is accessible at <https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies>.

## B. Form: One-stop center triennial assessment and certification assurances

By signing and submitting this form, along with the documentation required under the State's current *One-stop Delivery System Assessment and One-stop Center Certification* policy,<sup>31</sup> the undersigned chief elected official for the local workforce development area (CEO) and chair of the local workforce development board (Chair) assure that the requirements established under the aforementioned policy have been met regarding certification of the local AJC(s), affiliate site(s), and specialized center(s) identified below. Further, the CEO and Chair assure their understanding that onsite and/or virtual reviews will be conducted by the Nebraska Department of Labor State Monitoring Unit to verify compliance with the requirements established under the policy.

1. Local workforce development area

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2. Triennial period for which the certification(s) apply (example: Program Years 2022 through 2024)

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3. Certified one-stop center(s) (enter *not applicable* as appropriate)

Center type	Center name and physical address
Comprehensive American Job Center 1	
Comprehensive American Job Center 2	
Affiliate site 1	
Affiliate site 2	
Specialized center 1	
Specialized center 2	

4. CEO signature (must be digital)

Digital signature of CEO	
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5. Chair signature (must be digital)

Digital signature of Chair	
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<sup>31</sup> The State's policy manual is accessible at <https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies>

### C. Form: One-stop center triennial assessment and certification outcome

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As stated in APPENDIX II.A., the local board must complete and submit this form to document the outcome of its triennial assessment and certification processes for each local area AJC, affiliate site, and specialized center.

1. **AJC** considered for certification (provide name and physical address of AJC)

- ☐ certified  
☐ conditionally certified  
☐ failed certification

Reasons for conditional certification (provide concise description, attach additional pages if necessary)

Reasons for failure to certify (provide concise description and supporting documentation, attach additional pages if necessary)

2. **Affiliate site** considered for certification (provide name and physical address)

- ☐ certified  
☐ conditionally certified  
☐ failed certification  
☐ not applicable

Reasons for conditional certification (provide concise description, attach additional pages if necessary)

Reasons for failure to certify (provide concise description and supporting documentation, attach additional pages if necessary)

3. **Specialized center** considered for certification (provide name and physical address)

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- ☐ certified
- ☐ conditionally certified
- ☐ failed certification
- ☐ not applicable

Reasons for conditional certification (provide concise description, attach additional pages if necessary)

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Reasons for failure to certify (provide concise description and supporting documentation, attach additional pages if necessary)

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#### **D. Form: One-stop partner program triennial assessment**

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As stated in APPENDIX II.A., the local board must complete and submit the following form to document assessment of *each* required one-stop partner program and additional one-stop partner program with which the local board has established a memorandum of understanding, including a funding agreement.<sup>32</sup>

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<sup>32</sup> Refer to the State's current *Memorandums of Understanding and Funding Agreements* policy for detailed information on MOUs and funding agreements. The policy is included in the State's policy manual which is accessible at <https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies>.

Provide the following information *for all individuals* involved in assessment and certification processes.

[illegible]

## I. Effectiveness criteria

Requirement	Minimum certification criteria	Indicator demonstrating requirement is met	Criteria met yes or no	Comments/planned corrective actions
1. Governance	<ul style="list-style-type: none"> <li>• A governance agreement among all local area CEOs is in place.</li> <li>• A written agreement between the CEO and the local board is in place.</li> <li>• All MOUs, including funding agreements, between the local board and required and additional one-stop partners are fully executed.</li> </ul>	<ul style="list-style-type: none"> <li>• The governance agreement among all local area CEOs reflects: <ul style="list-style-type: none"> <li>◦ processes for appointment of local board members and describes their roles;</li> <li>◦ designation of a grant recipient and fiscal agent regarding funding allocated to the local area by the State;</li> <li>◦ processes for collaboration during regional and local planning activities; and</li> <li>◦ other governance functions.</li> </ul> </li> <li>• The written agreement between the CEO and local board defines CEO and local board roles and responsibilities, including roles and responsibilities regarding conflict of interest.</li> <li>• All MOUs must comply with requirements established in the State's current <i>Memorandums of Understanding and Funding Agreements</i> policy.</li> </ul>		
2. Governance	<ul style="list-style-type: none"> <li>• One-stop operator procurement documents clearly delineate requirements for daily operations of the local one-stop delivery system and one-stop centers, as well as the roles and responsibilities of the one-stop operator and its staff.</li> <li>• If the one-stop operator is participating in assessment procedures <i>and</i> fulfills one or more additional roles within the one-stop delivery system, a written agreement between the local board and the one-stop operator has been established, defining the one-stop operator's roles and responsibilities regarding assessment and certification of one-stop centers.</li> <li>• The local board and one-stop operator have established a written continuity-of-service plan that will be initiated if an AJC is not certified.</li> </ul>	<ul style="list-style-type: none"> <li>• The local board has documentation demonstrating that one-stop operator procurement and selection: <ul style="list-style-type: none"> <li>◦ complied with Federal rules, regulation, and guidance and State policies on One-Stop Operator Selection and Procurement;</li> <li>◦ was based on a compliant process that was in place prior to selection, including clear conflict of interest policies and procedures demonstrating internal controls during selection and procurement; and</li> <li>◦ resulted in a written agreement among the selected one-stop operator, the local board, and CEO, clarifying how the one-stop operator will carry out its responsibilities while demonstrating compliance with WIOA and its corresponding rules and regulations, including those regarding conflict of interest.</li> </ul> </li> </ul>		

Requirement	Minimum certification criteria	Indicator demonstrating requirement is met	Criteria met yes or no	Comments/planned corrective actions
		<ul style="list-style-type: none"> <li>• Local board policies and procedures identify one-stop operator roles and responsibilities, including:               <ul style="list-style-type: none"> <li>○ requirements for coordination of service delivery by one-stop partner programs and service providers;</li> <li>○ requirements regarding disclosure of potential conflicts of interest arising from the one-stop operator's relationship with particular services providers;</li> <li>○ requirements regarding compliance with Federal rules, regulations, and procurement policies relating to the calculation and use of profits; and</li> <li>○ additional roles and responsibilities established by the local board for the one-stop operator; and</li> <li>○ prohibitions against:                   <ul style="list-style-type: none"> <li>▪ establishing practices that create disincentives to providing services to individuals with barriers to employment who may require longer-term services, such as intensive employment, training, and education services;</li> <li>▪ convening system stakeholders to assist in the development of the local plan;</li> <li>▪ preparation and submission of local plans;</li> <li>▪ self-oversight;</li> <li>▪ managing or significantly participating in the competitive selection process for a one-stop operator;</li> <li>▪ selecting or terminating a one-stop operator, career services providers, and youth providers;</li> <li>▪ negotiating local performance accountability measures; and</li> <li>▪ developing and submitting budgets for activities of the local board.</li> </ul> </li> </ul> </li> </ul>		

Requirement	Minimum certification criteria	Indicator demonstrating requirement is met	Criteria met yes or no	Comments/planned corrective actions
		<ul style="list-style-type: none"> <li>• When the entity serving as the one-stop operator is also serving 1 or more additional roles within the one-stop delivery system, such as Title I service provider, the local board has established sufficient firewalls and conflict of interest policies and procedures.</li> <li>• The written continuity-of-service plan that will be initiated if an AJC is not certified is documented and available for review.</li> </ul>		
3. Responsiveness to needs of jobseekers, workers, and program participants	<p>One-stop partners, in coordination with the one-stop operator, have identified specific methods for:</p> <ul style="list-style-type: none"> <li>• coordinating one-stop partner program services that meet the needs of jobseekers, workers, and program participants; and</li> <li>• reporting the performance of their respective programs to the local board regarding service delivery for jobseekers, workers, and program participants.</li> </ul>	<ul style="list-style-type: none"> <li>• One-stop partner policies and procedures for service delivery for jobseekers, workers, and program participants identify standards and processes for coordination of services and referrals.</li> <li>• Each one-stop partner has identified and documented goals for serving jobseekers, workers, and program participants.</li> <li>• Regular one-stop partner program performance reports regarding services for jobseekers, workers, and program participants are provided to the local board, available, and reflected in the minutes of local board meetings.</li> </ul>		
4. Responsiveness to needs of employers	<p>One-stop partners, in coordination with the one-stop operator, have identified specific methods for:</p> <ul style="list-style-type: none"> <li>• responding to economic and labor force needs within the one-stop delivery system;</li> <li>• matching employers with skilled workers; and</li> <li>• reporting performance of their respective programs to the local board regarding service delivery for employers.</li> </ul>	<ul style="list-style-type: none"> <li>• One-stop partner policies and procedures for service delivery for employers identify standards and processes for coordination of services and referrals.</li> <li>• Each one-stop partner has identified and documented goals for serving employers.</li> <li>• Regular one-stop partner program performance reports regarding services for employers are provided to the local board, available, and reflected in the minutes of local board meetings.</li> </ul>		
5. Operational coordination	<ul style="list-style-type: none"> <li>• Resource room teams consist of representatives from one-stop center partner programs.</li> <li>• Resource room materials are accurate current materials describing all one-stop partner</li> </ul>	<ul style="list-style-type: none"> <li>• Regarding resource room teams: <ul style="list-style-type: none"> <li>○ Rosters of resource room teams include representatives from one-stop center partner programs.</li> </ul> </li> </ul>		

Requirement	Minimum certification criteria	Indicator demonstrating requirement is met	Criteria met yes or no	Comments/planned corrective actions
	<p>program services are readily available to customers.</p> <ul style="list-style-type: none"> <li>• One-stop delivery system and one-stop center websites and resource materials provide accurate current information about all programs and services available to all customers.</li> <li>• Business services teams include representatives from all core partner<sup>33</sup> programs to avoid duplication of effort, minimize employer fatigue, and encourage collaboration.</li> </ul>	<ul style="list-style-type: none"> <li>○ Job descriptions for resource team staff reflect cross-program functions and responsibilities.</li> <li>• Resource room materials are: <ul style="list-style-type: none"> <li>○ accurate, current, and regularly updated;</li> <li>○ include a date or other method for determining the materials are current; and</li> <li>○ readily available.</li> </ul> </li> <li>• One-stop delivery system and one-stop center websites provide accurate current information on services available to customers through all one-stop partner programs and: <ul style="list-style-type: none"> <li>○ information on the websites is current; and</li> <li>○ resource room materials include a date or other method for determining the materials are current.</li> </ul> </li> <li>• Rosters of business services teams include representatives from all one-stop delivery system and one-stop center partner programs.</li> <li>• A record of business services team meetings reflect participation by representatives of all core partner programs.</li> </ul>		
6. Service hours: The one-stop delivery system and one-stop centers provide maximum access to required one-stop partner program services during regular business hours (8a – 5p) and any other predictable timeframes outside of regular business	The local board considers optimum business hours to accommodate the needs of jobseekers, workers, and employers, including business hours, work schedules, childcare, and transportation.	<ul style="list-style-type: none"> <li>• Regular business hours are clearly visible on the exterior and interior of one-stop centers.</li> <li>• Directions for arranging for services outside of regular business hours are clearly stated and widely available to the public, including persons with disabilities.</li> <li>• Local board meeting minutes reflect discussions and decisions regarding regular business hours and the availability of services outside of regular business hours.</li> </ul>		

<sup>33</sup> *Core partners* means WIOA Title IB adult, dislocated worker, and youth programs; WIOA Title II Adult Education and Family Literacy Act programs; WIOA Title III Wagner-Peyser Employment Service; and WIOA Title IV programs provided by the Nebraska Vocational Rehabilitation Program and the Nebraska Commission for the Blind and Visually Impaired.

Requirement	Minimum certification criteria	Indicator demonstrating requirement is met	Criteria met yes or no	Comments/planned corrective actions
hours, as determined by the local board to be feasible and effective.				
7. Equal opportunity and non-discrimination: One-stop delivery system and one-stop center staff are familiar with and comply all applicable Federal, state, and local laws, rules, regulations, and policies regarding non-discrimination and equal opportunity for persons with disabilities.	<ul style="list-style-type: none"> <li>• One-stop delivery system and one-stop center staff training covers the following topics: <ul style="list-style-type: none"> <li>◦ obligation to inform one-stop delivery system customers that auxiliary aids and accommodations are available;</li> <li>◦ instructions for using TDD/TTY and other adaptive technologies;</li> <li>◦ reasonable modifications to avoid discrimination and meet individual needs, such as allowing an individual with a cognitive disability extra time to complete forms; and</li> <li>◦ effective strategies for communicating with persons with disabilities.</li> </ul> </li> <li>• One-stop delivery system and one-stop center partners ensure customers have access to services, in accordance all applicable Federal, state, and local laws, rules, regulations, and policies.</li> </ul>	<ul style="list-style-type: none"> <li>• One-stop delivery system and one-stop center staff members demonstrate they: <ul style="list-style-type: none"> <li>◦ inform one-stop delivery system customers of the availability of auxiliary aids and accommodations;</li> <li>◦ know how to use the adaptive technologies and are aware of available resources;</li> <li>◦ are familiar with the modification of procedures to avoid discrimination; and</li> <li>◦ utilize effective strategies for communicating with persons with disabilities.</li> </ul> </li> <li>• Corrective action plans are developed if partners or customers identify barriers to participation in services.</li> </ul>		
8. Customer feedback: Customer feedback from jobseekers, workers, and employers is actively sought and utilized.	One-stop delivery system and one-stop center staff actively collect customer feedback from jobseekers, workers, and employers.	<ul style="list-style-type: none"> <li>• Customer feedback data is provided to the local board, and documentation on the data is readily available.</li> <li>• Minutes of local board meetings reflect the provision and review of customer-feedback reports.</li> </ul>		
9. Branding: The common identifier ( <i>American Job Center</i> or <i>a proud partner of the American Job Center network</i> ) is used, as required under WIOA Sec. 121(e)(4) and 20 CFR § 678.900, at	All products, programs, activities, services, electronic resources, facilities, and all related property and new materials include the common identifier.	<ul style="list-style-type: none"> <li>• The common identifier is found on all products, programs, activities, services, electronic resources (including websites), facilities, related property (including signage), and all new materials used in the one-stop delivery system and at one-stop centers, including brochures, business cards, publications, promotional materials, and all other electronic or tangible materials.</li> </ul>		

Requirement	Minimum certification criteria	Indicator demonstrating requirement is met	Criteria met yes or no	Comments/planned corrective actions
each AJC, affiliate sites, and specialized centers, and by one-stop partners connected to AJCs, affiliate sites, and specialized centers through direct linkage.				
10. Protection of personal identifiable information (PII): The local board ensures that PII is protected as required under Federal, state, and local laws, rules, regulations, and policies.	PII is protected in accordance with Federal, state, and local laws, rules, regulations, and policies.	<ul style="list-style-type: none"> <li>The local board has established policies and procedures for protection of PII throughout the one-stop delivery system and all one-stop centers, in accordance with Federal, state, and local laws, rules, regulations, and policies.</li> </ul>		
11. Additional comments on effectiveness				

## II. Physical accessibility criteria

Minimum requirement	Minimum certification criteria	Indicator demonstrating requirement is met	Criteria met yes or no	Comments/planned corrective actions
1. Physical layout access: The physical layout of one-stop centers eliminates structural barriers and is accessible to the public, including individuals with disabilities.	The physical layout of one-stop centers is physically accessible in accordance with Federal, state, and local laws, rules, and regulations, including WIOA Sec. 188 and 29 CFR part 38.	The layout of all one-stop centers is easily accessible, usable by persons with disabilities and is absent of physical barriers, as defined by the ADA Standards for Accessible Design and Uniform Federal Accessibility Standards (UFAS). <sup>34</sup>		

<sup>34</sup> The UFAS are accessible at <https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-aba-standards/background/ufas>.

Minimum requirement	Minimum certification criteria	Indicator demonstrating requirement is met	Criteria met yes or no	Comments/planned corrective actions
2. Equal opportunity access: One-stop delivery system and one-stop center staff provide equal access to the system and centers in compliance with the requirements established in WIOA Sec. 188 and 29 CFR Part 38.	<ul style="list-style-type: none"> <li>▪ One-stop delivery system and one-stop center staff:               <ul style="list-style-type: none"> <li>○ provide reasonable accommodations for persons with disabilities;</li> <li>○ administer programs in the most appropriate integrated setting;</li> <li>○ communicate with persons with disabilities as effectively as with others.</li> </ul> </li> <li>▪ One-stop delivery system and one-stop center partners reasonably modify policies, practices, and procedures to avoid discrimination and to meet individual needs.</li> </ul>	<ul style="list-style-type: none"> <li>▪ One-stop delivery system and one-stop center staff demonstrate:               <ul style="list-style-type: none"> <li>○ availability of auxiliary aids and accommodations, including assistive technology devices and services;</li> <li>○ they inform customers of the availability of auxiliary aids and accommodations, including assistive technology devices and services;</li> <li>○ how to use the adaptive technologies and are aware of available resources;</li> <li>○ familiarity with modification of procedures to avoid discrimination; and</li> <li>○ use of effective strategies for communicating with persons with disabilities.</li> </ul> </li> <li>▪ One-stop delivery system and one-stop center partners demonstrate that each has reasonably modified policies, practices, and procedures to avoid discrimination and to meet individual needs</li> </ul>		
3. Location: Locations of one-stop centers are accessible by public transportation, driving, or walking.	<ul style="list-style-type: none"> <li>▪ Customers who use public transportation can access one-stop centers within a reasonable walking distance.</li> <li>▪ Adequate parking is available and accessible for customers who drive to one-stop centers.</li> <li>▪ Locations of one-stop centers are identifiable in high-traffic areas.</li> </ul>	<ul style="list-style-type: none"> <li>▪ One-stop centers have dedicated parking lots suitable for the anticipated number of customers.</li> <li>▪ One-stop center parking lots have spaces closest to the door that are dedicated to and marked for persons with disabilities.</li> <li>▪ One-stop center signage is easily visible on the exterior and in the interior of the facility.</li> <li>▪ Meeting minutes demonstrate the local board has considered whether the locations of one-stop centers are within reasonable walking distance from public transportation stops.</li> </ul>		
4. Signage and logos: The common identifier ( <i>American Job Center</i> or <i>a proud partner of the American Job Center network</i> ) are used on	Signage and logos include the common identifier, making the physical location of one-stop centers simple to find and identifiable.	The common identifier is highly visible on signage and logos, with easy-to-see signage on the exterior and interior one-stop centers.		

Minimum requirement	Minimum certification criteria	Indicator demonstrating requirement is met	Criteria met yes or no	Comments/planned corrective actions
signage and logos, as required under WIOA Sec. 121(e)(4) and 20 CFR § 678.900.				
5. Annual assessment of physical accessibility: The local board has annually assessed the physical accessibility of all one-stop centers.	Since Program Year 2017, the local board has annually assessed the physical accessibility of all one-stop centers, as required under 20 CFR 679.370(p).	Documentation of the local board's annual assessment for Program Years 2018 and 2019 of the physical accessibility of all one-stop centers is readily available and provides the results of the assessment.		
6. Additional comments on physical accessibility				

### III. Programmatic accessibility criteria

Minimum requirement	Minimum certification criteria	Indicator demonstrating requirement is met	Criteria met yes or no	Comments/planned corrective actions
1. Career services: Basic and individualized career services, including supportive services and follow-up services, are accessible throughout the one-stop delivery system and at all one-stop centers, as required under 20 CFR § 680.150.	All basic and individualized career , including supportive services and follow-up services, are available and accessible throughout the one-stop delivery system and at all one-stop centers for all eligible individuals, including individuals with disabilities.	<ul style="list-style-type: none"> <li>• The local board's MOUs with one-stop partners demonstrate that all basic and individualized careers, including supportive services and follow-up services, are accessible through the one-stop delivery system and one-stop centers and available on demand and in real-time in person or through technology.</li> <li>• Clear descriptions of the availability of all basic and individualized careers, including supportive services and follow-up services, are readily available in accessible formats, including formats accessible to individuals with disabilities.</li> </ul>		
2. Youth program services: Youth program services, including supportive services and follow-up services, are accessible throughout	All youth program services, including supportive and follow-up services, are available and accessible throughout the one-stop delivery system and at all one-stop centers for all eligible individuals, including individuals with disabilities.	<ul style="list-style-type: none"> <li>• The local board's MOUs with one-stop partners demonstrate that all youth program services, including supportive and follow-up services, are accessible throughout the one-stop delivery system and at all one-stop centers and available on demand and in real-time in person or through technology.</li> </ul>		

Minimum requirement	Minimum certification criteria	Indicator demonstrating requirement is met	Criteria met yes or no	Comments/planned corrective actions
the one-stop delivery system and at all one-stop centers, as required under 20 CFR § 681.460.		<ul style="list-style-type: none"> <li>• Clear descriptions of the availability of all youth program services, including supportive and follow-up services, are readily available in accessible formats, including formats accessible to individuals with disabilities.</li> </ul>		
3. Other services: Training services, education services, employment services, and business services are accessible throughout the one-stop delivery system and at all one-stop centers.	<ul style="list-style-type: none"> <li>• All training services and education services are available and accessible throughout the one-stop delivery system and at all one-stop centers for all eligible individuals, including individuals with disabilities.</li> <li>• All employment services provided by WIOA Title III Wagner-Peyser Employment Service services are available and accessible throughout the one-stop delivery system and at all one-stop centers for all eligible individuals, including individuals with disabilities.</li> <li>• All business services are available and accessible throughout the one-stop delivery system and at all one-stop centers for all eligible employers and individuals, including individuals with disabilities.</li> </ul>	<ul style="list-style-type: none"> <li>• The local board's MOUs with one-stop partners demonstrate that all training services, education services, employment services, and business services are available and accessible throughout the one-stop delivery system and at all one-stop centers available on demand and in real-time in person or through technology.</li> <li>• Clear descriptions of the availability of all training services, education services, employment services, and business services are readily available in accessible formats, including formats accessible to individuals with disabilities.</li> </ul>		
4. Accommodations: The one-stop delivery system and all one-stop centers provide reasonable accommodations for individuals with disabilities and individuals with language barriers.	The one-stop delivery system and all one-stop centers provide reasonable accommodations for individuals with disabilities and individuals with language barriers.	<ul style="list-style-type: none"> <li>• The local board has implemented one or more policies regarding accommodations for individuals with disabilities and individuals regarding with language barriers.</li> <li>• Assistive technology devices or other auxiliary aids are readily available throughout the one-stop delivery system and at all one-stop centers.</li> <li>• The local board has implemented one or more policies regarding accommodations for individuals with language barriers.</li> <li>• Bilingual resources, including on-demand translation services, are available and accessible throughout the one-stop delivery system and at all one-stop centers.</li> </ul>		
5. Annual assessment of programmatic accessibility: The	Since Program Year 2017, the local board has annually assessed the programmatic	Documentation of the local board's annual assessment for Program Years 2018 and 2019 of the programmatic accessibility of all one-stop		

Minimum requirement	Minimum certification criteria	Indicator demonstrating requirement is met	Criteria met yes or no	Comments/planned corrective actions
local board has annually assessed the programmatic accessibility of all one-stop centers.	accessibility of all one-stop centers, as required under 20 CFR 679.370(p).	centers is readily available and provides the results of the assessment.		
6. Additional comments on programmatic accessibility				

#### IV. Continuous improvement criteria

Minimum requirement	Minimum certification criteria	Indicator demonstrating requirement is met	Criteria met yes or no	Comments/planned corrective actions
1. Negotiated levels of performance: The local board includes one-stop partners in decision making regarding strategic improvements to achieve negotiated levels of performance for the primary indicators of performance established under WIOA Sec. 116(b)(2)(A) and 20 CFR §.677.155.	<ul style="list-style-type: none"> <li>The local board requires periodic performance reports from one-stop partners regarding negotiated levels of performance for the primary indicators of performance.</li> <li>One-stop partners and the one-stop operator use periodic performance reports to identify specific goals and tactics for improving performance.</li> </ul>	<ul style="list-style-type: none"> <li>The local board has identified specific goals and metrics in work plans for continuous improvement regarding negotiated levels of performance for the primary indicators of performance, based on periodic performance reports submitted by one-stop partners and the one-stop operator.</li> <li>Local board meeting minutes demonstrate decision making regarding strategic improvements to achieve negotiated levels of performance for the primary indicators of performance.</li> </ul>		
2. Customer feedback: The local board has established a systematic method for collection and analysis of feedback from customers, including jobseekers, workers, and employers; and the feedback is used to	<ul style="list-style-type: none"> <li>Customer satisfaction surveys are provided to jobseekers, workers, and employers and ask for input on the following topics: <ul style="list-style-type: none"> <li>the way in which customers access the services;</li> <li>overall satisfaction with services provided;</li> <li>satisfaction level regarding the courteousness, knowledge, and responsiveness of staff;</li> <li>timeliness of services provided;</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Customer satisfaction survey data indicates regular collection by the local board.</li> <li>Customer satisfaction survey data can be disaggregated by service, program, and category of customer, including customers with disabilities.</li> <li>Customer satisfaction survey data can be disaggregated to determine whether individuals with disabilities are prevented or inhibited from participating in each program and service.</li> </ul>		

Minimum requirement	Minimum certification criteria	Indicator demonstrating requirement is met	Criteria met yes or no	Comments/planned corrective actions
continuously improve service delivery and operations throughout the one-stop delivery system and at all one-stop centers.	<ul style="list-style-type: none"> <li>○ accessibility and availability of program services;</li> <li>○ physical accessibility of the one-stop delivery system and one-stop centers; and</li> <li>○ ideas for improvement.</li> <li>● Results of customer satisfaction surveys are reported to the local board.</li> <li>● The local board has a systematic process for identifying customer complaints and developing appropriate responses and corrective actions.</li> </ul>	<ul style="list-style-type: none"> <li>● Local board meeting minutes reflect that customer satisfaction data was considered in decision-making regarding continuous improvement.</li> <li>● The local board has established a mechanism for customers to provide feedback outside of the routine customer feedback survey.</li> <li>● Receipt of customer complaints is dated, tracked, and provided the local board.</li> <li>● Corrective action plans addressing customer complaints are documented with plans for implementation.</li> <li>● Note: Any disaggregation of data must comply with all Federal, state, and local laws, regulations, and policies regarding protection of personal identifiable information (PII).</li> </ul>		
3. Internal and external evaluation of operations: The local board's internal procedures and systems monitor operational effectiveness and identify opportunities for improvement.	<ul style="list-style-type: none"> <li>● The local board has established internal mechanisms for identification of the operational efficiency and effectiveness of the one-stop delivery system and all one-stop centers.</li> <li>● The local board has established external mechanisms for identification of the operational efficiency and effectiveness of the one-stop delivery system and all one-stop centers.</li> </ul>	<ul style="list-style-type: none"> <li>● The local board has established policies and procedures regarding internal evaluation systems and identification and tracking of operational efficiency and effectiveness of the one-stop delivery system and all one-stop centers.</li> <li>● The local board has established policies and procedures regarding external evaluation systems and identification and tracking of operational efficiency and effectiveness of the one-stop delivery system and all one-stop centers.</li> <li>● Local board meeting minutes reflect that internal and external evaluations of operational efficiency and effectiveness of the one-stop delivery system and all one-stop centers is considered in decision-making regarding continuous improvement efforts.</li> </ul>		
4. Professional development for staff: The local board ensures that continual professional	<ul style="list-style-type: none"> <li>● Training on new policies, procedures, or regulatory guidance is available to staff throughout the one-stop delivery system and at all one-stop centers in a timely manner.</li> </ul>	<ul style="list-style-type: none"> <li>● Documentation of training provided to staff throughout the one-stop delivery system and at all one-stop centers is available and identifies staff attendance and dates of training.</li> </ul>		

Minimum requirement	Minimum certification criteria	Indicator demonstrating requirement is met	Criteria met yes or no	Comments/planned corrective actions
development for staff is available throughout the one-stop delivery system and at all one-stop centers.	<ul style="list-style-type: none"> <li>• Roles and responsibilities of one-stop delivery system and all one-stop center staff are made clear, starting with orientation and continuing throughout employment as roles and responsibilities change.</li> <li>• The one-stop delivery system and all one-stop centers have systems and procedures in place to assess staff skills and core competencies, as well as gaps.</li> <li>• One-stop delivery system and one-stop center staff demonstrate motivation to advance professional skills.</li> </ul>	<ul style="list-style-type: none"> <li>• Materials used during training sessions are provided to staff throughout the one-stop delivery system and at all one-stop centers following training sessions, as evidenced by training records.</li> <li>• A local policy manual or other guidance is current and easily accessible by staff throughout the one-stop delivery system and at all one-stop centers.</li> <li>• Staff orientation materials are available and describe each staff member's function and how that staff member fits into the integrated operations of the one-stop delivery system and all one-stop centers.</li> <li>• A method for skills-gap analysis for one-stop delivery system and at all one-stop centers staff is documented and available.</li> <li>• Goals and opportunities for one-stop delivery system and one-stop center staff skills development are documented.</li> <li>• Training documentation verifies that one-stop delivery system and one-stop center staff participated in professional development opportunities.</li> </ul>		
5. Additional comments on continuous improvement				

V. Additional certification requirements or criteria established by the local board

If the local board has not established additional criteria, enter “not applicable.”

Minimum certification criteria	Indicator demonstrating requirement is met	Criteria met yes or no	Comments/planned corrective actions

## VI. Attachments

Attach and list (below) all relevant information that substantiates outcomes the regarding one-stop delivery system assessment and one-stop center certification.

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## 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
	American Job Centers and Local Workforce Delivery Systems
	Effective date
	June 6, 2017
	Supersedes
	None

## One-stop Operator Competitive Selection

### REFERENCE

Workforce Innovation and Opportunity Act of 2014 (WIOA) Secs. 101, 107, 121; Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR Part 200, including 2 CFR part 2900; 20 CFR § 677.150, 678.600, 678.605, 678.610, 678.615, 678.620, 678.625, 679.390, 679.430; TEGL 15-16

### BACKGROUND<sup>1</sup>

Each local workforce development boards (local board) must:

- use a competitive process for the selection of a one-stop operator for the local workforce delivery system; and
- ensure the recompetition of the one-stop operator occurs no less frequently than once every four (4) years.

WIOA does not allow for the “designation” or “certification” of any entity as a one-stop operator, including a local board, without a competitive process.

WIOA provides no explicit authority to “grandfather” in existing one-stop operators.

Records and supporting documentation on expenditure of Federal funds on grant activities, such as the competitive selection of the one-stop operators, must be retained<sup>2</sup> to sufficiently support the expenditures reported on the quarterly ETA-9130 form.

<sup>1</sup> 20 CFR § 678.605(a); TEGL 15-16

<sup>2</sup> 20 CFR § 678.605(d)

Record retention and recordkeeping requirements are also applicable to conflict of interest<sup>3</sup> requirements and local board meetings.

## ACTION

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Each local board must insure that:

- its local plan addresses the requirements of this policy;
- its local procurement policies and procedures align with the requirements of this policy; and
- the one-stop operator for its local workforce development area (local area) is selected in accordance with the requirements of this policy.

This policy is final after a ten (10) 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 the minimum requirements for a local board's competitive selection of a one-stop operator;
- identifies the essential elements of the local board's contract with the selected one-stop operator; and
- identifies the basic requirements for monitoring of one-stop operators.

This policy is organized in seven (7) sections.

Section I.	Competitive Selection Requirement .....	3
Section II.	Eligible Entities .....	3
Section III.	One-stop Operator Responsibilities and Prohibited Functions .....	6
Section IV.	Uniform Guidance and Procurement Standards .....	7
Section V.	Essential Contract Elements .....	15
Section VI.	Monitoring of One-stop Operators .....	15
Section VII.	Timelines .....	16

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<sup>3</sup> Refer to NDOL's current policy on conflict of interest, which is accessible on NDOL's WIOA policies page at <http://dol.nebraska.gov/EmploymentAndTraining/LCRWP/WIOA/Policies>.

## Section I. Competitive Selection Requirement<sup>4</sup>

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Each local board must use a competitive process based on local procurement policies and procedures and the principles of competitive procurement in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 200 (commonly referred to as the Uniform Guidance), including the U.S. Department of Labor (Department) specific requirements at 2 CFR part 2900.

Competitive selection of the one-stop operator must comply with the timelines established in [Section IX](#) of this policy, in addition to all other requirements described in this policy.

Sole-source procurement of a one-stop operator is permissible only under certain circumstances, as described in [Section IV\(a\)\(vi\)](#) of this policy.

## Section II. Eligible Entities<sup>5</sup>

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The one-stop operator must be an entity (public, private, or nonprofit) or a consortium of entities that, at a minimum, includes three (3) or more of the required one-stop partners of demonstrated effectiveness, located in the local area.

Entities selected and serving as one-stop operators are subrecipients<sup>6</sup> of a Federal award and thus are required to follow the Uniform Guidance.

Entities eligible for selection as a one-stop operator, include, but are not limited to:

- government agencies or governmental units, such as:
  - local or county governments;
  - school districts;
  - state agencies, and Federal WIOA partners;
- Employment Service state agencies under the Wagner-Peyser Act, as amended by WIOA Title III;
- Indian Tribes, tribal organizations, Alaska Native entities, Indian-controlled organizations serving Indians, or Native Hawaiian organizations (collectively referred to herein as “Indian Tribes”);

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<sup>4</sup> WIOA Sec. 121(d)(2)(A); 20 CFR § 678.605 (a); TEGL 15-16

<sup>5</sup> 20 CFR § 678.600(a) and (c); TEGL 15-16

<sup>6</sup> *Subrecipient* means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency [2 CFR § 200.93].

- educational institutions, such as:
  - institutions of higher education; and
  - nontraditional public secondary schools such as night schools, and area career and technical education schools (however, elementary and other secondary schools are not eligible to become a one-stop operator);
- community-based organizations;
- nonprofit entities;
- workforce intermediaries;
- other interested organizations that are capable of carrying out the duties of the one-stop operator, such as a local chamber of commerce, other business organization, or labor organization;
- private for-profit entities; and
- local boards, if approved by the Chief Elected Official (CEO) and the Governor (see [Section II\(a\)](#) of this policy).

#### (a) Local Boards as One-stop Operators<sup>7</sup>

While the entities listed above are eligible to serve as one-stop operators, an entity's eligibility to be the one-stop operator in a specific local area is affected by the nature of the procurement process, particularly as it relates to conflict of interest and avoiding "less-than arms-length" relationships.

As stated above, a local board may compete for and be selected as a one-stop operator, as long as appropriate firewalls and conflict of interest policies and procedures are in place. These policies and procedures must conform to the specifications of 20 CFR § 679.430 for demonstrating internal controls and preventing conflict of interest.<sup>8</sup> In addition, the local board must meet mandatory competition requirements described in this policy, WIOA and its implementing rules, and the Uniform Guidance including the U.S. Department of Labor (Department) specific requirements at 2 CFR part 2900.

In situations where the outcome of the competitive process is the selection of the local board as the one-stop operator, the Governor and the CEO must agree to the selection of the local board as required by WIOA sec. 107(g)(2).

Sole-source procurement of a local board as a one-stop operator is permissible only under certain circumstances, as described in [Section IV\(a\)\(vi\)](#) of this policy, and only with the agreement of the Governor and the CEO.<sup>9</sup> If a local board is selected as the one-stop operator through sole-source

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<sup>7</sup> 20 CFR § 678.615(a); TEGL 15-16

<sup>8</sup> 20 CFR § 678.615(a)

<sup>9</sup> 20 CFR § 678.610(d)

procurement, the local board must establish sufficient conflict of interest policies and procedures and these policies must be approved by the Governor.<sup>10</sup>

#### (b) Competitive Selection of an One-stop Operator by NDOL<sup>11</sup>

In the event that NDOL carries out the one-stop competition on behalf of a local board, NDOL must follow the same policies and procedures that the State of Nebraska uses for procurement with non-Federal funds. These state policies and procedures may include additional or different procurement methods beyond those included in the Uniform Guidance.<sup>12</sup>

#### (c) For-profit Entities<sup>13</sup>

For-profit entities that are subrecipients of a Federal award as one-stop operators must adhere to the Uniform Guidance, including any requirements identified by the Department under 2 CFR part 2900.

- The Department requires private for-profit entities that are one-stop operators to adhere to the requirements of 2 CFR § 200.323 concerning earning and negotiating a fair and reasonable profit.
- The Uniform Guidance requires that profit is reasonable and fair and that the entity conducting the competition negotiate profit separately from costs.<sup>14</sup>
- Negotiation with for-profit entities entitled to earn profit must separate amounts intended to pay for costs from amounts intended to pay for profit.
- Contract price equals costs plus profit.
- Profit should be based on the contractors' efforts and risks in achieving a performance result that typically aligns with the performance measures outlined in the local board's local plan.
- Conditions to consider in quantifying the opportunity to earn profit are referenced at 48 CFR 15.404-4.
- Local boards are allowed to cap the maximum profit potential that could be earned per performance results within the approved budget.
- The earning of profit should not be based on total budget, expending of the budget, and/or pass through costs, such as tuition or fixed costs, that require minimal to no effort from the contractor nor directly achieve a performance goal.

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<sup>10</sup> 20 CFR § 678.610(d)

<sup>11</sup> TEGL 15-16

<sup>12</sup> 2 CFR § 200.317; 20 CFR § 678.605(b)

<sup>13</sup> TEGL 15-16

<sup>14</sup> 2 CFR § 200.323(b)

#### (d) Other Entities<sup>15</sup>

All non-Federal entities, including Indian Tribes, nonprofit organizations, educational institutions that are not state agencies, community-based organizations, and other entities, must adhere to the Uniform Guidance at 2 CFR part 200, including any requirements identified by the Department under 2 CFR part 2900, when acting as a one-stop operator.

### **Section III. One-stop Operator Responsibilities and Prohibited Functions<sup>16</sup>**

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The role of the one-stop operator must be clearly articulated in all phases of the procurement process, as well as in the legally binding agreement between the local board and the one-stop operator.

#### (a) Required Responsibilities<sup>17</sup>

At a minimum, the local board must ensure that, in carrying out this role, the one-stop operator must:

- coordinate the service delivery of required one-stop partners and service providers;
- in coordinating services and serving as a one-stop operator, refrain from establishing practices that create disincentives to providing services to individuals with barriers to employment who may require longer-term services, such as intensive employment, training, and education services;
- disclose any potential conflicts of interest arising from the relationships of the one-stop operator with particular training service providers or other service providers, including but not limited to, career services providers; and
- comply with Federal regulations, and procurement policies, relating to the calculation and use of profits.

#### (b) Additional Responsibilities<sup>18</sup>

The local board may establish additional roles for the one-stop operator, including the following:

- being the primary provider of services within the center;
- providing some of the services within the center;
- coordinating service providers within the center and across the one-stop system; and
- coordinating service delivery in a multi-center area, which may include affiliated sites.

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<sup>15</sup> WIOA Sec. 121(d)(4)(C); 20 CFR § 678.605(c); TEGL 15-16

<sup>16</sup> 20 CFR § 678.620; TEGL 15-16

<sup>17</sup> 20 CFR § 678.620(a); TEGL 15-16

<sup>18</sup> 20 CFR § 678.620(a); TEGL 15-16

### (c) Prohibited Functions<sup>19</sup>

The one-stop operator must not perform the following functions:

- convene system stakeholders to assist in the development of the local plan;
- prepare and submit local plans;
- be responsible for oversight of itself;
- manage or significantly participate in the competitive selection process for a one-stop operator;
- select or terminate a one-stop operator, career service providers, and youth providers;
- negotiate local performance accountability measures; or
- develop and submit budgets for activities of the local board.

When the entity serving as the one-stop operator is also serving in a different role within the one-stop delivery system (as, for example, when a local board serves as the one-stop operator), the one-stop operator may perform some or all of these functions, but only if it has established sufficient firewalls and conflict of interest policies and procedures.<sup>20</sup>

## Section IV. Uniform Guidance and Procurement Standards

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As the subrecipient of Federal funds, the one-stop operator must follow the Uniform Guidance at 2 CFR part 200, including the contractual provisions in 2 CFR 200.326 and 2 CFR part 2900.

Once the local board has competitively selected a one-stop operator, the local board and one-stop operator must execute a legally binding agreement which may take the form of a written contract or another type of agreement, such as a memorandum of understanding (MOU). The contract, agreement, or MOU with one-stop operators is addressed in [Section V](#) of this policy.<sup>21</sup>

If NDOL is conducting the competitive process, NDOL must follow the same policies and procedures it uses for procurements with non-Federal funds. NDOL is expected to conduct a competitive process for the selection of a one-stop operator, with appropriate protections from conflict of interest, in accordance with procurement policies and procedures of the State of Nebraska.

All other non-Federal entities, including entities that receive funding from the State of Nebraska (such as the local board), must use a competitive process to select a one-stop operator that is

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<sup>19</sup> 20 CFR § 678.620(b)(1); TEGL 15-16

<sup>20</sup> 20 CFR §§ 678.620(b)(2) and 678.625

<sup>21</sup> The use of an MOU to document the agreement between a local board and a one-stop operator is different from the MOUs that are required between the local board and its one-stop partners. An MOU between a local board and a one-stop operator must be in the form of a legal binding agreement [TEGL 15-16].

based on local procurement policies that are consistent with the procurement standards of the Uniform Guidance at 2 CFR 200.318 through 200.326.

#### (a) General Procurement Requirements<sup>22</sup>

Under WIOA, and consistent with the Uniform Guidance, the general procurement requirements include:<sup>23</sup>

##### (i) Written Policies and Procedures

Written general and one-stop operator specific procurement policies and procedures must be consistent with the Uniform Guidance. The preparation of written documentation explaining the determination concerning the nature of the competitive process to be followed in selecting a one-stop operator.<sup>24</sup> These written policies must outline a timetable to ensure that the selection of a one-stop operator through a competitive process is conducted every four (4) years. These written policies must also address the settlement of all contractual and administrative issues arising out of procurements, such as protests, appeals, and disputes.

##### (ii) Methods of Procurement for Competitions

Non-Federal entities (such as local boards) are required to use the methods of procurement described at 2 CFR 200.320 when selecting a one-stop operator. The method selected will vary by the particular circumstances of the local board. The following methods of procurement are permissible to select a one-stop operator through a competitive process:

- a. sealed bids (formal advertising), such as an invitation for bids (IFB);<sup>25</sup> and
- b. competitive proposals, such as a request for proposals (RFP).<sup>26</sup>

In addition, where certain criteria are met, a one-stop operator may be selected by noncompetitive proposals (sole source).<sup>27</sup>

##### (iii) Full and Open Competition<sup>28</sup>

All procurement transactions must be conducted using full and open competition.<sup>29</sup> Written procedures must allow for sufficient time for all phases of the procurement process to be carried out in a manner that would not unduly restrict competition. Pre-qualified lists must be current and include enough qualified sources to ensure open and free competition and must not preclude bidders and offerors from qualifying during the solicitation period. Additionally, the following conditions apply.

- a. Procurements that are in excess of the simplified acquisition threshold (currently set at \$150,000 by 48 CFR § 2.1) require a procurement process by means other than a small

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<sup>22</sup> TEGL 15-16

<sup>23</sup> TEGL 15-16

<sup>24</sup> 20 CFR § 678.605(d)

<sup>25</sup> 2 CFR § 3200.320(c)

<sup>26</sup> 2 CFR § 200.320(d)

<sup>27</sup> 2 CFR § 200.320(f); refer to [Section IV\(a\)\(vi\)](#) of this policy for information of sole-source procurement.

<sup>28</sup> Refer to [Section IV\(c\)](#) of this policy for more information on full and open competition.

<sup>29</sup> 2 CFR § 200.319(a)

purchase procurement. Two such permissible procurement methods are the use of sealed bids (formal advertising) and competitive proposals. These procurement methods must be outlined in a written procurement policy, so that all parties involved in any stage of the process are familiar with their roles, functions, and responsibilities.

- b. Entities performing a competitive procurement must ensure that the proposed costs of the one-stop operator are allowable, meaning that they are reasonable, necessary, and allocable, as required in the Uniform Guidance at 2 CFR part 200.
- c. Situations considered to be restrictive of competition include, but are not limited to:<sup>30</sup>
  - i. placing unreasonable requirements on firms in order for them to qualify to do business;
  - ii. requiring unnecessary experience and excessive bonding;
  - iii. noncompetitive pricing practices between firms or between affiliated companies;
  - iv. noncompetitive contracts to consultants that are on retainer contracts;
  - v. organizational conflicts of interest;
  - vi. specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
  - vii. any arbitrary action in the procurement process.

For example, although WIOA requires the one-stop operator to be located in the local area, unnecessarily limiting the bids/proposals to companies or businesses located in a certain zip code would restrict competition. Another example, a RFP or IFB may specify the addresses of the American Job Centers in which the one-stop operators will be located, but it could not specify that bids/proposals may only come from companies physically located in those same zip codes.

#### (iv) Written Standards of Conduct

The local board must have written standards of conduct,<sup>31</sup> and the Department interprets the requirement to compete the one-stop operator as requiring fairness and objectivity during all phases of the procurement process. The ethical standards of persons with fiduciary responsibility for public funds are expected to be above reproach and such that they are able to withstand any public scrutiny. Written standards of conduct must address the following:

- a. *Persons and entities involved in the competitive process to select a one-stop operator using Federal funds must be free of apparent or real conflicts of interest.* Conflicts of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to

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<sup>30</sup> 2 CFR § 200.319(a)

<sup>31</sup> 2 CFR §§ 200.318 and 200.319

employ any of the parties indicated has a financial or other interest or a tangible personal benefit from a firm considered for a contract.<sup>32</sup>

- b. *Disclosure of any real or apparent conflict of interest, whether individual, or organizational.* Written standards of conduct must identify the process for recusal of individuals or organizations that are members of the local board who disclose a real or apparent conflict of interest.<sup>33</sup>
- c. *Demonstrating internal controls and preventing conflict of interest.* The written standards of conduct must include a description of the use of firewalls to mitigate conflict of interest in circumstances including, but not limited to, situations where an entity acts in more than one role in the one-stop delivery system or performs more than one function in the procurement process, as well as situations where the non-Federal entity uses a sole source selection.<sup>34</sup>
- d. *Confidentiality.* Information contained in the proposals submitted by offerors/bidders is maintained in a manner that is confidential, to avoid the use of the information to another offeror's or bidder's advantage and to prevent collusive bidding.
- e. *Firewalls.* Firewalls that will mitigate conflict of interest are required.
- f. *Ineligibility.* No entity that develops or drafts specifications, requirements, statements of work, IFBs or RFPs, and evaluation of proposals may compete under that procurement.<sup>35</sup>

#### (v) Transparency and Responsibility

The entire procurement process must be performed under a process that promotes transparency and responsibility from the planning phase to the closeout phase.

- a. *Sunshine Provisions.* Information about the selection and certification of the one-stop operators must be made available to the public on a regular basis through electronic means and open meetings<sup>36</sup> and made available to auditors and Federal reviewers. Such information may include minutes from local board meetings in which the decision on selection and certification is made. This provides an opportunity for public comment and participation in the process as appropriate. Making information available to the public includes regularly posting information to a website and responding promptly to written or electronically submitted requests for information.

The information that the local board is required to make available to the public includes, but is not limited to, the local board's written conflict of interest policy, the local board's written procurement policies, the procurement solicitation itself, a listing of the entities that have submitted bids or proposals, an abstract of those bids or proposals, the identity of the selected one-stop operator, and total award amount and duration of the contract with the one-stop operator.

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<sup>32</sup> 2 CFR § 200.318(c)(1)

<sup>33</sup> WIOA Sec.121(d)(4)(A)

<sup>34</sup> 20 CFR §§ 678.610(c) and 679.430

<sup>35</sup> 2 CFR § 200.319(a)

<sup>36</sup> WIOA Secs. 101(g) and 107(e)

- b. *Responsible Entities*. When selecting a one-stop operator, the non-Federal entity must award only to responsible entities that possess the ability to successfully perform under the terms and conditions of the proposed procurement. Consideration must be given to the entity's integrity, compliance with public policy, record of past performance, and financial and technical resources.<sup>37</sup> A local board must also ensure that any entity to be selected as a one-stop operator is not debarred, suspended, or otherwise excluded from or made ineligible for participation in Federal assistance programs or activities.<sup>38</sup> The Uniform Guidance requires that past performance be an evaluation factor when it is time to re-procure the one-stop operator.<sup>39</sup>

(vi) **Sole-source Procurement (noncompetitive proposals)**

The Uniform Guidance identifies procurement by noncompetitive proposals as permissible in certain circumstances discussed below. The Department interprets references to “noncompetitive proposals” in the Uniform Guidance at 2 CFR 200.320(f) to be read as sole source procurement for purposes of competitively selecting a one-stop operator.<sup>40</sup>

Non-Federal entities, including subrecipients (such as local boards) may select a one-stop operator through sole source selection when consistent with local procurement policies and procedures which conform to the Uniform Guidance set forth at 2 CFR 200.320.

The Uniform Guidance states that procurement by noncompetitive (sole source) proposals is procurement through solicitation of a proposal from only one source which may be used only when one or more of the following circumstances apply.<sup>41</sup>

- a. The item or service is available only from a single source.
- b. The public exigency or emergency for the item or service will not permit a delay resulting from competitive solicitation.
- c. The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity.
- d. After solicitation of a number of sources, competition is determined inadequate, whether for reasons of number or quality of proposals/bids.

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<sup>37</sup> 2 CFR § 200.318(h)

<sup>38</sup> 2 CFR § 200.213

<sup>39</sup> 2 CFR § 300.318(h)

<sup>40</sup> 20 CFR § 678.605(c)

<sup>41</sup> 2 CFR § 200.320(f)

### (vii) Recordkeeping

All entities must prepare written documentation explaining the determination concerning the nature of the competitive process to be followed in selecting a one-stop operator.<sup>42</sup> Local boards must also maintain records sufficient to detail the history of procurement.<sup>43</sup> These records must include, but are not limited to:

- a. all proposals/bids received;
- b. ratings of those proposals;
- c. rationale for the method of procurement;
- d. selection of agreement or contract type;
- e. selection or rejection of proposals/bids;
- f. appeals and disputes; and
- g. the basis for the contract price.

Record retention requirements, as specified at 2 CFR 200.333, are typically three (3) years from the date of submission of the final expenditures report.

Entities that make a sole source selection must prepare and maintain written documentation of the entire process of making a sole source selection.<sup>44</sup> Documentation must be retained and must clearly identify the review process in a Single State Local Area. The documentation should provide evidence that the review was performed by an impartial entity and detail the firewalls that were in place during the review of the proposals.

### (viii) Formal Competitive Procurement Process

A formal competitive process may generally include RFPs, IFBs, and other solicitations requiring formal advertising. As noted above, processes commonly used to select one-stop operators are sealed bids (formal advertising) procurement methods<sup>45</sup> and competitive proposals.<sup>46</sup>

### (b) Avoiding Conflicts of Interest<sup>47</sup>

Any organization or entity that has been selected to perform multiple functions in a local area must develop a written agreement with the local board and CEO to clarify how the organization will carry out its responsibilities while demonstrating compliance with WIOA and corresponding regulations, the Uniform Guidance, and conflict of interest policies of both the State and the organization or entity performing multiple functions.<sup>48</sup>

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<sup>42</sup> 20 CFR § 678.605(d)

<sup>43</sup> 2 CFR § 200.318(i)

<sup>44</sup> 20 CFR § 678.610(b)

<sup>45</sup> 2 CFR § 200.320(c)

<sup>46</sup> 2 CFR § 200.320(d)

<sup>47</sup> TEGL 15-16

<sup>48</sup> WIOA Sec. 121(d)(4)(A) and (C)

A conflict of interest can arise when actions are taken or may appear to be taken by any entity involved in more than one role, such that the performance of that entity in one role affects its interest in its other role, thereby making it difficult for the entity to perform the procurement process objectively and impartially. Therefore, proper firewalls must be in place to ensure the transparency and integrity of the procurement process and demonstrate to the public and to the Department that the selection process was impartial and that no preferential treatment was given to the awardee.

(i) **Recusal of Members of the Local Board**<sup>49</sup>

The local board must recuse individuals who have conflicts of interest from the one-stop operator competition. Such individuals must include those individuals with financial or other interests in the entities applying to be the one-stop operator. Recusal of individuals with conflicts of interest is a way to avoid conflicts of interest when a small number of decision makers have conflicts of interest. However, if the number of members who must be recused deprives the local board of quorum, the local board must follow an alternative process and outsource the selection to an outside entity. Best practice also requires local-board procurement policies and procedures to define the requirements for quorum for decisions of the local board.

- Local Board as One-stop Operator. If the local board competes for and is selected as the one-stop operator, the local board must have appropriate firewalls and conflict of interest policies and procedures in place which must conform to 20 CFR 679.430.<sup>50</sup>

One way to avoid a conflict of interest is to establish effective conflict of interest policies and maintain appropriate firewalls that apply when the local board competes to be the one-stop operator. This may include, for example, a requirement for an outside entity to conduct the competition. For example, the local board could contract with a separate and independent outside entity to conduct the competition. Outsourcing the entire process (including development of requirements, drafting the RFP or IFB, evaluation of proposals/bids, and identification of best entity) to an alternate entity would be the best practice in this circumstance to avoid a conflict of interest. These costs and activities would be allowable under WIOA.

- Outside Entity. If the local board chooses to have an outside entity conduct part of, or the entire one-stop operator competition, the outside entity must meet certain requirements. The outside entity must be an independent organization that is capable of exercising professional and ethical judgment. The outside entity must also be required to submit a conflict of interest statement. Payment for running the competition would be an allowable cost under WIOA.
- Public Disclosure. The local board must publicly disclose any conflicts of interest, real or apparent, and any recusal by individuals or organizations with real or apparent conflicts of interest. Regular public disclosure provides transparency to stakeholders in the procurement process for the selection of the one-stop operator. Best practice is to publicly disclose any conflicts of interest and recusals on the local board website.<sup>51</sup> Additional

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<sup>49</sup> WIOA Sec. 107(h)

<sup>50</sup> 20 CFR § 678.615(b)

<sup>51</sup> WIOA Sec. 107(e); 20 CFR § 679.390

methods, such as publication in newspapers, may also be used to ensure full and regular public disclosure.

### (c) Additional Mechanisms to Provide for a Full and Open Competition

There are additional steps that the local board can take in furtherance of a full and open competition for a one-stop operator. Some of the steps below are generally applicable requirements, while others are practices that may be appropriate in certain circumstances. Depending on the particular circumstances, the local board must combine multiple mechanisms, as appropriate, to avoid conflicts of interest or the appearance of conflicts of interest.

- Examination of competition processes by an outside party. Local boards may opt to retain an outside entity to conduct an objective review of the competition process, or parts of the competition process, such as: whether the RFP/IFB was unduly restrictive or whether the selection process was properly and fairly conducted. Likewise, local boards may opt to retain an outside entity to conduct an objective review of other aspects of the competition process, including a review of the entities selected as a one-stop operator, such as:
  - past performance;
  - compliance with Federal requirements and policies;
  - financial systems;
  - internal control framework; and
  - policies to perform and manage the one-stop operator services in accordance with WIOA.

Such a review of the competition process by an outside entity could help monitor whether the process remains equitable and transparent. The outside entity conducting such a review could be an independent organization, as described above, or a separate state agency, such as the office of the state auditor, or office of the state inspector general. If the results of the review process find weaknesses or barriers to effectively managing the competition or contract, the state agency and local board must work together to establish special conditions/criteria to monitor those barriers and to achieve timely or effective resolution.

- Documentation. The entities conducting the competition must prepare written documentation explaining the determination concerning the nature of the competitive process to be followed in selecting the one-stop operator.<sup>52</sup> As explained in several other parts of this guidance, documentation is required for several steps in the competition process. Documentation is key for ensuring transparency in the competition process.
- Revision of the original procurement solicitation (e.g. the RFP/IFB) or recompetition of the one-stop operator. If the entity conducting the competition determines there were defects in the competition process, the entity must re-compete the selection of the one-stop operator. Defects in the competition process include violation of the WIOA Joint Final Rule, Uniform Guidance, and/or failure to follow the local board's procurement policies and

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<sup>52</sup> 20 CFR 678.605(d)

procedures. The competition process may also be defective if the policies and procedures do not provide for a full and open competition, or if the procurement solicitation issued was inadequate to generate full and open competition. However, if the entity conducting the competition identifies defects in the procurement solicitation before the conclusion of the solicitation period, the entity must revise the procurement solicitation and extend the timeframe for the solicitation.

## **Section V. Essential Contract Elements<sup>53</sup>**

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All contracts, agreements, or MOUs between the one-stop operator and local board must include the essential elements of a legally executed and binding written agreement, and contain at a minimum the following:

- Statement of Work (SOW). The SOW specifies the period of performance or the start and end date of the contract. It also specifies the services to be performed including measurable performance goals to be delivered under the contract, agreement, or MOU.
- Authorized Officials and Purpose. Authorized officials are persons authorized to enter into and sign legally binding agreements and must be on record as the signatory official. Signatures of the offeror/bidder and offeree (local board or NDOL) must be contained as part of the written contract.
- Additional Contractual Terms and Conditions. Contracts, agreements, and MOUs must include such standard terms and conditions that are either required by the NDOL, the local board, or the Federal agency as national, State, or local policy requirements. The contract, agreement, or MOU must identify that one-stop operators are subrecipients of Federal funds.

## **Section VI. Monitoring of One-stop Operators**

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Oversight and monitoring is an integral function of the local board to ensure the one-stop operator's compliance with the:

- requirements of WIOA;
- activities defined under the SOW;<sup>54</sup>
- performance reporting requirements; and
- terms and conditions of the contract or agreement governing the one-stop operator.

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<sup>53</sup> TEGL 15-16

<sup>54</sup> Refer to [Section V](#) of this policy for information on the SOW.

Monitoring includes an attestation by the monitoring entity that it has examined compliance with the requirements of WIOA, the Uniform Guidance at 2 CFR part 200 and 2 CFR part 2900, and the terms and condition of the contract/agreement with the one-stop operator.

WIOA requires the local board to conduct monitoring of its one-stop operator. When the local board is the one-stop operator, there is an inherent conflict of interest in that the local board cannot effectively monitor itself. In such circumstances, an outside entity or a state agency, such as a state auditor or inspector general, must conduct the monitoring and report the monitoring results to the CEO. If the state agency is selected as the operator, an independent state agency, like an auditor or inspector general, should conduct the monitoring.

## Section VII. Timelines<sup>55</sup>

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Effective July 1, 2017:

- all existing and new one-stop operators must have been selected using a competitive process; and
- all contracts and agreements with one-stop operators must have been executed as the result of a competitive process, as required by WIOA.

The statutory requirement for the selection of the one-stop operation through the competitive selection process cannot be waived.

Some local boards may have already awarded contracts or agreements to a one-stop operator through a competitive process that is consistent with the requirements of WIOA and the Uniform Guidance.

For contracts or agreements that are currently in place but were not executed through a competitive process as required in WIOA and the Uniform Guidance, these contracts must be terminated no later than June 30, 2017.

Each local board must conduct a competitive process for one-stop operator selection no less frequently than once every four (4) years. NDOL reserves the right to require the competitive selection of one-stop operators more frequently.

A local board may choose to implement a competitive selection process that occurs more often than once every four (4) years.

## 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> 20 CFR § 678.635(a); TEGL 15-16

## State Policy

## Workforce Innovation and Opportunity Act (WIOA)

Nebraska Department of Labor (NDOL) Division of Reemployment Services 550 South 16 <sup>th</sup> Street Lincoln, NE 68508 402.471.9000 <a href="mailto:ndol.wioa_policy@nebraska.gov">ndol.wioa_policy@nebraska.gov</a>	Policy category
	One-stop Delivery System
	Effective date
	June 17, 2022
	Supersedes
	Priority of Service (effective date May 23, 2022)

### Priority of Service, Change 1

**WIOA Title IB Programs**  
**WIOA Title III Wagner-Peyser Employment Service**  
**Jobs for Veterans State Grant Program**  
**National Dislocated Worker Grant Programs**  
**Senior Community Service Employment Program**  
**Trade Adjustment Assistance Program**

## REFERENCE

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

## BACKGROUND

Federal laws, rules, regulations, and guidance require that certain individuals receive priority of service from WIOA Title IB programs, WIOA Title III Wagner-Peyser Employment Service, Jobs for Veterans State Grant program, National Dislocated Worker Grant programs, Senior Community Service Employment Program, and Trade Adjustment Assistance program.

## CHANGES

The Action section has been revised to clarify the responsibilities of local boards regarding requirements for implementation of priority of service for all WIOA Title IB programs, as well as oversight and monitoring of priority of service.

The Policy section has been revised.

- [Section II\(b\)](#) has been revised to clarify adult program priority of service requirements.
- [Section II\(d\)](#) has been added to address youth program priority of service requirements.

## ACTION

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This policy supersedes and cancels the State's *Priority of Service* (effective date May 23, 2022).

### (a) Title IB programs

Each local board must establish new or review and update existing policies and procedures that address implementation, oversight, and monitoring of priority of service for adult, dislocated worker, and youth programs as required under [Sections I, II](#), and [VIII\(a\)](#).

### (b) NDOL-administered programs

NDOL Administrators of Wagner-Peyser, JVSG, NDWG, SCSEP, and TAA programs must establish procedures that address implementation, oversight, and monitoring of priority of service for their respective programs as required under [Section I](#) and [Sections III, IV, V, VI](#), and [VII](#), respectively, as well as [Section VIII\(b\)](#).

## POLICY

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This policy establishes priority of service requirements for adult, dislocated worker, and youth programs, Wagner-Peyser, JVSG, NDWG, SCSEP, and TAA.

This policy has eight sections.

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## Section I. Federal priority-of-service mandates

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### (a) Section I definitions

Definitions for the italicized terms used in this section are provided below, along with definitions for terms used within the definitions. Please note that the definitions in this section may not fully

align with similar definitions provided in program-specific sections. Variations among definitions are based on program-specific discretionary or statutory priorities or preferences pursuant to Federal statutes or regulations.

### (1) Active duty

*Active duty*<sup>1</sup> means full-time duty in the active military service of the United States. *Active duty* 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.

*Active duty* does not include full-time National Guard duty, except as stated in program-specific sections of this policy.

### (2) Active military, naval, air, or space service

*Active military, naval, air, or space service* includes:<sup>2</sup>

- *active duty*;
- any period of *active duty* for training during which the individual concerned was disabled or died from a disease or injury incurred or aggravated in line of duty;
- any period of inactive duty training during which the individual concerned was disabled or died:
  - from an injury incurred or aggravated in line of duty; or
  - from an acute myocardial infarction, cardiac arrest, or a cerebrovascular accident occurring during such training;
- full-time duty in the National Guard or a Reserve component.

*Active military, naval, air, or space service* does not include full-time duty for training purposes, meaning training that is often referred to as “weekend” or “annual” training for National Guard or a Reserve components.<sup>3</sup>

### (3) Covered entrant

*Covered entrant*<sup>4</sup> means *covered persons* at the *point of entry* and includes two subgroups: *Veterans* and *eligible spouses*.

### (4) Covered person

*Covered person*<sup>5</sup> means a *Veteran* or *eligible spouse*.

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<sup>1</sup> 10 USC § 101(d)(1)

<sup>2</sup> 38 USC § 101(24); 38 CFR § 17.31

<sup>3</sup> 20 CFR § 1010.110

<sup>4</sup> 20 CFR § 1010.330(a)(3)

<sup>5</sup> 20 CFR § 1010.110

## (5) Eligible spouse

*Eligible spouse*,<sup>6</sup> as defined in [38 USC § 4215\(a\)](#), means the spouse of any of the following:

- any *Veteran* who died of a *service-connected disability*;
- any member of the Armed Forces serving on *active duty* who, at the time of application for priority, is listed in one or more of the following categories and has been so listed for a total of more than 90 days:
  - missing in action;
  - captured in line of duty by a hostile force; or
  - forcibly detained or interned in the line of duty by a foreign government or power;
- any *Veteran* who has a *total disability* resulting from a *service-connected disability*, as evaluated by the US Department of Veterans Affairs (USDVA);
- any *Veteran* who died while a *total disability* resulting from a *service-connected disability* was in existence, as evaluated by USDVA.

Note.<sup>7</sup> An *eligible spouse* whose eligibility is derived from a living *Veteran* or military service member would lose their eligibility if the *Veteran* or military service member were to lose the status that is the basis for *eligible spouse* eligibility (e.g., if a *Veteran* with a total *service-connected disability* were to receive a revised disability rating at a lower level). Similarly, for an *eligible spouse* whose eligibility is derived from a living *Veteran* or military service member, that *eligible spouse's* eligibility would be lost upon divorce from the *Veteran* or military service member.

## (6) Non-covered person

*Non-covered person*<sup>8</sup> means any individual who does not meet the definition of *Veteran* or *eligible spouse*.

## (7) Pass-through entity

*Pass-through entity*<sup>9</sup> (*PTE*) means a non-Federal entity that provides a *subaward* to a *subrecipient* to carry out part of a Federal program.

## (8) Personally identifiable information

*Personally identifiable information*<sup>10</sup> (*PII*) means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. Some information that is considered to be *PII* is available in public sources such as telephone books, public websites, and university

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<sup>6</sup> 20 CFR § 1010.110

<sup>7</sup> TEGL 07-09

<sup>8</sup> 20 CFR § 1010.110

<sup>9</sup> 2 CFR § 200.01

<sup>10</sup> Ibid.

listings. This type of information is considered to be public *PII* and includes, for example, first and last name, address, work telephone number, email address, home telephone number, or general educational credentials. The definition of *PII* is not anchored to any single category of information or technology. Rather, it requires a case-by-case assessment of the specific risk that an individual can be identified. Non-*PII* can become *PII* whenever additional information is made publicly available, in any medium and from any source, that could be used to identify an individual when combined with other available information.

#### (9) Point of entry

*Point of entry*<sup>11</sup> means an individual's entry into the one-stop delivery system and may include reception at a one-stop center, an application process for a specific program, or through any other method by which *covered persons* express an interest in receiving services, either in person or virtually.

#### (10) Qualified job training program

*Qualified job training program*<sup>12</sup> means any program or service for workforce preparation, development, or delivery that is directly funded, in whole or in part, by USDOL.

#### (11) Recipient

*Recipient*<sup>13</sup> means an entity to which Federal funding is awarded directly from USDOL or through a *subaward* for any *qualified job training program*.

#### (12) Service-connected disability

*Service-connected disability*<sup>14</sup> 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 *Active military, naval, air, or space service*.

#### (13) Subaward

*Subaward*<sup>15</sup> means an award provided by a *PTE* to a *subrecipient* for the *subrecipient* to carry out part of a Federal award received by the *PTE*. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program (i.e., a program participant). A *subaward* may be provided through any form of legal agreement, including an agreement that the *PTE* considers a contract.

#### (14) Subrecipient

*Subrecipient*<sup>16</sup> means an entity, usually but not limited to non-Federal entities, that receives a *subaward* from a *PTE* to carry out part of a Federal award but does not include an individual that

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<sup>11</sup> 20 CFR § 1010.330

<sup>12</sup> 20 CFR § 1010.110

<sup>13</sup> Ibid.

<sup>14</sup> 38 CFR § 3.1

<sup>15</sup> 2 CFR § 200.1

<sup>16</sup> Ibid.

is a beneficiary of such award (i.e., a program participant). A *subrecipient* may also be a *recipient* of other Federal awards directly from a Federal awarding agency.

#### (15) Total disability

The term *total disability*<sup>17</sup> means any disability rated total for the purposes of disability compensation which is based upon an impairment reasonably certain to continue throughout the life of the disabled person.

#### (16) Veteran

*Veteran*<sup>18</sup> means a person who served in the *active military, naval, air, or space service*, and who was discharged or released therefrom under conditions other than dishonorable, as specified in [38 USC § 101\(2\)](#).

#### (b) What is priority of service?

[20 CFR Part 1010](#) contains US Department of Labor (USDOL) regulations that mandate priority of service for *covered persons*. Priority of service for *covered persons* is authorized by [38 USC § 4215](#). As defined in [38 USC § 4215\(a\)](#), priority of service means a *covered person* shall be given priority over a *non-covered person* when it comes to receipt of employment, training, and placement services provided under *qualified job training programs*. Providing priority of service to *Veterans* and other *covered persons* in *qualified job training programs* means that *Veterans* and other *covered persons* have the right to take precedence over *non-covered persons* when obtaining services. Depending on the type of service or resource being provided, taking precedence means:

- *covered persons* receive access to the service or resource earlier in time than *non-covered persons*; or
- if the service or resource is limited, *covered persons* receives access to the service or resource instead of or before *non-covered persons*.

#### (c) Which programs are covered?<sup>19</sup>

Priority of service applies to every *qualified job training program* funded, in whole or in part, by USDOL, and includes any program or service:

- that uses technology to assist individuals to access workforce development programs, such as job and training opportunities, labor market information, career assessment tools, and related supportive services; and
- provided under the public employment service system, through one-stop centers, under the Workforce Innovation and Opportunity Act of 2014, through demonstration or other temporary programs, by any workforce development programs targeted to specific groups,

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<sup>17</sup> 38 USC § 3501(8)

<sup>18</sup> 20 CFR § 1010.110; 38 USC § 101(2)

<sup>19</sup> 20 CFR § 1010.210

and those programs implemented by states or local service providers based on Federal block grants administered by USDOL.

Implementation of priority of service does not change the intended function of a program or service. *Covered persons* must still meet all statutory eligibility and program requirements for participation in order to receive priority for a program or service.

(d) How are recipients and subrecipients required to implement priority of service?

Agreement to implement priority of service, as described in [20 CFR Part 1010](#) and in any applicable USDOL guidance, is a condition for receipt of all USDOL job training program funds.<sup>20</sup> All *recipients* are required to ensure that priority of service is applied by all *subrecipients* of USDOL funds.<sup>21</sup> All program activities, including those obtained through requests for proposals, solicitations for grant awards, subgrants, contracts, subcontracts, and (where feasible) memorandums of understanding or other service provision agreements that are issued or executed by *qualified job training program* operators must be administered in compliance with priority of service,<sup>22</sup> as well as this policy.

Priority of service requirements cannot be waived.<sup>23</sup>

(e) What processes are to be implemented to identify covered persons?<sup>24</sup>

*Recipients* and *subrecipients* of funds for *qualified job training programs* must implement processes to identify *covered persons* who physically access service delivery points or virtual service delivery programs or websites in order to provide *covered persons* with timely and useful information on priority of service at the *point of entry*.

Processes for identifying *covered persons* at the *point of entry* must be designed to:

- permit individuals to make known their *covered person* status; and
- permit those *qualified job training programs* specified in [20 CFR § 1010.330\(a\)\(2\)](#)<sup>25</sup> to initiate data collection for *covered entrants*.

Processes for identifying *covered persons* at the *point of entry* to must be designed to:

- allow *covered persons* to take full advantage of priority of service; and
- make *covered persons* aware of:
  - their entitlement to priority of service;

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<sup>20</sup> 20 CFR § 1010.220(a)

<sup>21</sup> 20 CFR § 1010.220(b)

<sup>22</sup> Ibid.

<sup>23</sup> 20 CFR § 1010.250

<sup>24</sup> 20 CFR § 1010.330

<sup>25</sup> Note that 20 CFR § 1010.330(a)(2) refers programs that were covered under the Workforce Investment Act of 1998, which was superseded by WIOA.

- the full array of employment, training, and placement services available under priority of service; and
- any applicable eligibility requirements for those programs and/or services.

Processes for identifying *covered persons* are not required to verify the status of an individual as a *Veteran* or *eligible spouse* at the *point of entry* unless they immediately undergo eligibility determination and enrollment in a program.

(f) How is priority of service to be applied?<sup>26</sup>

*Recipients* and *subrecipients* of funds for *qualified job training programs* must implement processes, in accordance with [20 CFR § 1010.300](#), to identify *covered persons* at the *point of entry*, whether in person or virtual, so the *covered person* can be notified of their eligibility for priority of service. Because *qualified job training programs* may offer various types of services, including staff-assisted services as well as self-services or informational activities, *recipients* and *subrecipients* also must ensure that priority of service is implemented throughout the full array of services provided to *covered persons* by the *qualified job training program*.

Three categories of *qualified job training programs* affect the application of priority of service: universal access programs, discretionary targeting programs, and statutory targeting programs. To obtain priority, a *covered person* must meet the statutory eligibility requirements applicable to the specific *qualified job training program* from which services are sought. For those *qualified job training programs* that also have discretionary or statutory priorities or preferences pursuant to a Federal statute or regulation, *recipients* and *subrecipients* must provide priority of service while applying those other priorities, as prescribed below in paragraphs 2 and 3.

1. *Universal access programs* operate or deliver services to the public as a whole; they do not target specific groups. *Universal access programs* are required to provide priority of service to *covered persons*.

Note. Wagner-Peyser is a *universal access program*.

2. *Discretionary targeting programs* focus on a particular group or make efforts to provide a certain level of service to such a group but do not specifically mandate that the favored group be served before other eligible individuals. Whether these provisions are found in Federal statute or regulation, priority of service applies. *Covered persons* must receive the highest priority for the program or service, and *non-covered persons* within the discretionary targeting will receive priority over *non-covered persons* outside the discretionary targeting.

Note. An NDWG may be a *discretionary targeting program*, depending on the conditions of the grant award.

3. *Statutory targeting programs* are programs derived from a Federal statutory mandate that requires a priority or preference for a particular group of individuals or requires spending a certain portion of program funds on a particular group of persons receiving services.

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<sup>26</sup> 20 CFR § 1010.310

These are mandatory priorities. *Recipients* and *subrecipients* must determine each individual's *covered person* status and apply priority of service as follows:

- a. *covered persons* who meet the program's mandatory priorities, including program eligibility, or spending requirements or limitations must receive the highest priority for the program or service;
- b. *non-covered persons* who meet the program's mandatory priorities, including program eligibility, or spending requirements or limitations must receive priority for the program or service over *covered persons* outside the program-specific mandatory priorities or spending requirement or limitation; and
- c. *covered persons* outside the program-specific mandatory priority or spending requirement or limitation must receive priority for the program or service over *non-covered persons* outside the program-specific mandatory priority or spending requirement or limitation.

Note. Adult and dislocated worker programs, JVSG, SCSEP, and TAA are *statutory targeting programs*. An NDWG may be a *statutory targeting program*, depending on the conditions of the grant award. All persons must still meet all statutory eligibility and program-specific requirements for participation in order to receive priority from the programs.

(g) What are the responsibilities of recipients and subrecipients to collect and maintain data on covered persons and non-covered persons?

Every *recipient* and *subrecipient* of funds for *qualified job training programs* must collect information, maintain records, and submit reports containing information related to the provision of priority of service, in formats as the Secretary of Labor may require.<sup>27</sup>

Excluding SCSEP, NDOL tracks implementation of priority of service in NEworks for adult and dislocated programs and NDOL-administered programs and reports data on implementation to USDOL. (SCSEP uses a separate management information system at this time.)

(1) General requirements

- a. *Recipients* and *subrecipients* must collect two broad categories of information.
  - i. For the *qualified job training programs* specified in paragraph b. below, information must be collected on *covered persons* from the *point of entry* (i.e. *covered entrants*), as defined in [20 CFR § 1010.300\(a\)](#).
  - ii. Also, for all *qualified job training programs*, including the programs specified in paragraph b., information must be collected on *covered persons* and *non-covered persons* who receive services, as prescribed by the respective *qualified job training programs*.

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<sup>27</sup> 20 CFR § 1010.320

- b. For purposes of paragraph a. above, adult and dislocated worker programs, Wagner-Peyser, NDWGs, and SCSEP, and TAA must collect the required information, as described below in [Section I\(g\)\(2\)](#), [Section I\(g\)\(3\)](#), and [Section I\(g\)\(4\)](#).

#### (2) Collection and maintenance of data on covered entrants

*Recipients and subrecipients* of funding for the *qualified job training programs* specified in [Section I\(g\)\(1\)](#) must collect and report individual record data for all *covered entrants* from the *point of entry*.

#### (3) Collection and maintenance of data on covered persons and non-covered persons who receive services

As described in [Section I\(g\)\(1\)](#), all *recipients and subrecipients* must collect and maintain data on *covered persons* and *non-covered persons* who receive services, including individual record data for those *qualified job training programs* that require establishment and submission of individual records for persons receiving services. The information to be collected must include, but is not limited to:

- *covered person* and *non-covered person* status of all individuals receiving services;
- types of services provided to *covered persons* and *non-covered persons*;
- dates that services were received by *covered persons* and *non-covered persons*; and
- employment outcomes experienced by *covered persons* and *non-covered persons* receiving services.

*Recipients and subrecipients* must apply the definitions set forth in [20 CFR § 1010.110](#) and provided in [Section I\(a\)](#) to distinguish *covered persons* from *non-covered persons* receiving services and to distinguish *Veterans* from *eligible spouses* within the *covered persons* group.

#### (4) Confidentiality and personally identifiable information

All information collected pursuant to [Section I\(g\)\(2\)](#) and [Section I\(g\)\(3\)](#) must be stored and managed in a manner that ensures confidentiality and protection of all *PII*.<sup>28</sup>

## Section II. Adult and dislocated worker programs

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### (a) Section II definitions

Definitions for the italicized terms used in this section are provided below, along with other definitions for terms used within the definitions. Please note that the definitions in this section may not fully align with similar definitions provided in [Section I](#). Variations among definitions between [Section I](#), and this section are based on program-specific discretionary or statutory priorities or preferences pursuant to Federal statutes or regulations.

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<sup>28</sup> 20 CFR § 1010.330(d)

### (1) Active duty

*Active duty*<sup>29</sup> means full-time duty in the active military service of the United States. *Active duty* 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.

*Active duty* does not include full-time National Guard duty.<sup>30</sup>

### (2) Active military, naval, air, or space service

*Active military, naval, air, or space service* includes:<sup>31</sup>

- *active duty*;
- any period of *active duty* for training during which the individual concerned was disabled or died from a disease or injury incurred or aggravated in line of duty;
- any period of inactive duty training during which the individual concerned was disabled or died:
  - from an injury incurred or aggravated in line of duty; or
  - from an acute myocardial infarction, a cardiac arrest, or a cerebrovascular accident occurring during such training;
- full-time duty in the National Guard or a Reserve component.

*Active military, naval, air, or space service* does not include full-time duty for training purposes, meaning training that is often referred to as “weekend” or “annual” training for National Guard or a Reserve components.<sup>32</sup>

### (3) Basic skills deficient

An individual who is *basic skills deficient* is:<sup>33</sup>

- a youth who has English reading or writing skills or computing skills at or below the 8<sup>th</sup> grade level based on a generally accepted standardized test; or
- a youth or adult who 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>29</sup> 10 USC § 101(d)(1)

<sup>30</sup> Ibid.

<sup>31</sup> 38 USC § 101(24); 38 CFR § 17.31

<sup>32</sup> 20 CFR § 1010.110

<sup>33</sup> WIOA Sec. 3(5)

#### (4) Covered person

*Covered person*<sup>34</sup> means a *Veteran* or *eligible spouse*.

#### (5) Eligible spouse

*Eligible spouse*,<sup>35</sup> as defined in [38 USC § 4215\(a\)](#), means the spouse of any of the following:

- any *Veteran* who died of a service-connected disability;
- any member of the Armed Forces serving on active duty who, at the time of application for the priority, is listed in one or more of the following categories and has been so listed for a total of more than 90 days:
  - missing in action;
  - captured in line of duty by a hostile force; or
  - forcibly detained or interned in the line of duty by a foreign government or power;
- any *Veteran* who has a total disability resulting from a service-connected disability, as evaluated by the US Department of Veterans Affairs (USDVA); or
- any *Veteran* who died while a total disability resulting from a service-connected disability was in existence, as evaluated by USDVA.

Note.<sup>36</sup> An *eligible spouse* whose eligibility is derived from a living *Veteran* or military service member would lose their eligibility if the *Veteran* or military service member were to lose the status that is the basis for the eligibility (e.g., if a *Veteran* with a total service-connected disability were to receive a revised disability rating at a lower level). Similarly, for an eligible spouse whose eligibility is derived from a living *Veteran* or military service member, that *eligible spouse's* eligibility would be lost upon divorce from the *Veteran* or military service member.

#### (6) Low-income individual

A *low-income individual* is one who meets one or more of the criteria described in Table 1.<sup>37</sup>

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<sup>34</sup>20 CFR § 1010.110

<sup>35</sup> Ibid.

<sup>36</sup> TEGL 07-09

<sup>37</sup> WIOA Sec. 3(36)

Table 1. Criteria for determining an individual is low-income

Low-income 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 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>38</sup> <ul style="list-style-type: none"> <li>a. the current Federally established poverty line; or</li> <li>b. 70 percent of the Federally established lower living standard income level (LLSIL).</li> </ul>
4. The individual is a homeless individual who: <sup>39</sup> <ul style="list-style-type: none"> <li>a. lacks a fixed, regular, and adequate nighttime residence; and is <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 Sections 4.a. and 4.b. of this table;</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 a person with a disability whose income meets the income requirement of Sections 3.a. or 3.b. of this table.

## (7) Military spouse

For purposes of dislocated worker program priority of service, *military spouse* means:<sup>40</sup>

- an individual who is married to an *active-duty* service member, including National Guard or Reserve personnel on *active duty*; or
- a surviving spouse of an *active-duty* service member who lost their life while on *active-duty* service in Afghanistan, Iraq or other combat-related areas.

<sup>38</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 notice on income guidelines for information on the current LLSIL.

<sup>39</sup> 42 USC §§ 14043e-2(6) and 11434a(2)

<sup>40</sup> TEGL 22-04

Further, the policy clarifications provided in [Section II\(b\)\(1\)](#) and [Section II\(b\)\(2\)](#) also apply.<sup>41</sup>

(8) Non-covered person

*Non-covered person*<sup>42</sup> means any individual who does not meet the definition of *Veteran* or *eligible spouse*.

(9) Qualified job training program

*Qualified job training program*<sup>43</sup> means any program or service for workforce preparation, development, or delivery that is directly funded, in whole or in part, by USDOL.

(10) Separating military service member

*Separating military service member*<sup>44</sup> means an individual that is being discharged under honorable conditions, either voluntarily or involuntarily.

(11) Service-connected disability

*Service-connected disability*<sup>45</sup> 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 *Active military, naval, air, or space service*.

(12) Veteran

*Veteran*<sup>46</sup> means a person who served in the *active military, naval, air, or space service*, and who was discharged or released therefrom under conditions other than dishonorable, as specified in [38 USC § 101\(2\)](#). *Active military, naval, air, or space service* includes full-time duty in the National Guard or a Reserve component, except for full-time duty for training purposes (i.e., that which often is referred to as “weekend” or “annual” training).

(b) Adult priority of service requirements

Adult programs, which meet the definition of *qualified job training program*, must prioritize delivery of individualized career services and training services to *Veterans*, *eligible spouses*, and certain *non-covered persons*.<sup>47</sup> Local boards and their respective adult programs must ensure that at least 75 percent of adult participants receiving individualized career and training services in the adult program are from at least one of the adult priority groups (recipients of public assistance, low-income individuals, or individuals who are basic skills deficient including English Language Learners), in addition to implementing overlying priority of service requirements for *Veterans* and

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<sup>41</sup> Ibid.

<sup>42</sup> 20 CFR § 1010.110

<sup>43</sup> Ibid.

<sup>44</sup> TEGL 22-04

<sup>45</sup> 38 CFR § 3.1

<sup>46</sup> 20 CFR § 1010.110; 38 USC § 101(2)

<sup>47</sup> It is important to note that there are no restrictions to providing basic career services (as permitted under [Section I\(f\)](#) regarding *statutory targeting programs*); basic career services may be provided to any eligible adult [TEGL 19-16].

*eligible spouses* as they relate to adult program priority.<sup>48</sup> NDOL will provide mandatory technical assistance to local area adult programs that fail to meet the 75 percent threshold described above.

#### (1) Order of priority

Individualized career services and training services for adult program participants must be provided in the following order:<sup>49</sup>

1. to *Veterans* and *eligible spouses* who are:
  - a. recipients of public assistance;
  - b. low-income individuals; or
  - c. basic-skills deficient;
2. to *non-covered persons* who are:
  - a. recipients of public assistance;
  - b. low-income individuals; or
  - c. basic-skills deficient
3. to *Veterans* and *eligible spouses* who are not:
  - a. recipients of public assistance;
  - b. low-income individuals; or
  - c. basic-skills deficient
4. to priority populations established by the local board, consistent with [Section II\(b\)\(2\)](#);
5. to *non-covered persons* who are not:
  - a. recipients of public assistance;
  - b. low-income individuals; or
  - c. basic-skills deficient.

#### (2) Excluded income and benefits when determining low-income individual status for *Veterans* and *eligible spouses*

As indicated in [20 CFR § 683.230](#), when past income is an eligibility determinant for Federal employment or training programs (i.e., *qualified job training programs*), any amounts received as military pay or allowances by any person who served on *active duty*, and certain other specified benefits, must be disregarded for *Veterans* and *eligible spouses* for whom those amounts would

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<sup>48</sup> TEGL 07-20

<sup>49</sup> WIOA Sec. 134(c)(3)(E); 20 CFR §§ 680.600 and 680.650; TEGLs 10-09, 19-16, and 07-20; VPL 07-09

normally be applied in making an eligibility determination. This applies when determining an individual's status as a *low-income individual* for eligibility purposes. This also applies when income is used as a factor when a local area provides priority of service for *low-income individuals* using adult program funds<sup>50</sup>. *Veterans* and *eligible spouses* must still meet adult program eligibility criteria to receive priority services under the program. Specifically, when determining *low-income individual* status for *Veterans* and *eligible spouses*, the following income and benefits must be disregarded:<sup>51</sup>

- any amounts received as military pay or allowances by any person while serving on *active duty*;
- any amounts received by *separating military service members*;
- any amounts received by a *Veteran* under the following chapters of Title 38 of the US Code:
  - Chapter 11, Compensation for Service-Connected Disability or Death;
  - Chapter 13, Dependency and Indemnity Compensation for Service-Connected Deaths;
  - Chapter 30, All-Volunteer Force Education Assistance Program;
  - Chapter 31, Training and Rehabilitation for Veterans with Service-Connected Disabilities;
  - Chapter 32, Post-Vietnam Era Veterans' Educational Assistance; and
  - Chapter 36, Administration of Educational Benefits;
- any amounts received by *Veterans* or *eligible spouses* under Title 10 of the US Code, Chapter 106, Educational Assistance for Members of the Selected Reserve.

### (3) Local priority populations<sup>52</sup>

A local board may establish policies and processes that give priority to other individuals eligible to receive the services described at the beginning of [Section II\(a\)](#) (i.e., individualized career services and training services), provided that the policies and processes are consistent with priority of service for *Veterans* and *eligible spouses* as required under [20 CFR § 680.650](#) and the priority provisions of WIOA Sec. 134(c)(3)(E); [20 CFR § 680.600](#) and [20 CFR § 683.230](#); and [Section I](#) of this policy. It is important to note that priority of service for locally established priority populations does not override statutory priorities for adult, *Veteran*, and *eligible spouse* priority populations.

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<sup>50</sup> Refer to 20 CFR §§ 680.600 and 680.650.

<sup>51</sup> 38 USC § 4213; TEGL 19-16

<sup>52</sup> TEGL 19-16

### (c) Dislocated worker priority of service requirements

Dislocated worker programs must prioritize delivery of basic and individualized career services and training services to *Veterans* and *military spouses*. Priority of service for dislocated worker program participants must be provided as follows.<sup>53</sup>

- First, individuals must meet eligibility criteria described in the State's program eligibility policy for the dislocated worker program.<sup>54</sup>
- Second, if individuals meet dislocated worker eligibility criteria defined in the State's program eligibility policy and they are *Veterans* or *military spouses*, the individuals must be given priority over dislocated workers who are not *Veterans* or *military spouses*.

#### (1) Policy clarification on separating military service members<sup>55</sup>

A basic requirement to qualify as a dislocated worker is that the worker be terminated or laid-off. "Terminated" is not defined in law or regulations. It is a USDOL policy that being discharged under honorable conditions, either voluntarily or involuntarily, terminates an employment relationship between the military service member and the military and, therefore, falls within the scope of the termination component of the definition of dislocated worker. The *separating military service member* must also satisfy other criteria for dislocated worker program eligibility, including the requirement that the individual is "unlikely to return to a previous industry or occupation". Additionally, under the priority of service provisions of the Jobs for Veterans Act, *separating military service members* who upon discharge meet the eligibility criteria for dislocated worker programs are afforded priority over individuals who are not *Veterans*.

#### (2) Policy clarification on military spouses

##### (i) Cessation of employment<sup>56</sup>

When a *military spouse* is unable to continue an employment relationship because of the military service member's permanent change of military station or the *military spouse* loses employment as a result of the military service member's discharge from the military, then the cessation of employment meets the termination component of the definition of dislocated worker. The *military spouse's* cessation of employment due to the military service member's permanent change of military station or their discharge from the military can also be considered to meet the "unlikely to return to a previous industry or occupation" criterion of the definition of dislocated worker. This criterion of the definition of dislocated worker recognizes the breadth of job types and considers whether the individual is likely to return to either their prior industry or (not "and") occupation. Furthermore, the phrase specifically uses the term "unlikely" to return; thus, the standard for determining the likelihood of return is not absolute; instead, it is a matter of judgment based on relevant circumstances. In the majority of cases, the circumstances in which *military spouses* are required to leave a job/occupation as a result of the military service member's transfer do not

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<sup>53</sup> TEGL 22-04

<sup>54</sup> The State's policy manual is accessible at <https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies>.

<sup>55</sup> TEGL 22-04

<sup>56</sup> TEGLs 22-04 and 22-04 Change 1

position the spouse to return immediately to their previous industry or occupation, particularly at the same level for one or more of following reasons.

- Spouses are generally not resuming employment with the same employer.
- Even if a *military spouse* resumes employment with the same employer, the employment is in a new location, and jobs/occupations will generally not be the same structurally or organizationally in the new location as in the prior location.
- When *military spouses* do get jobs in their new locations, it is likely, as new employees, that they will start at lower levels of seniority than the levels of their positions in their prior locations.
- There is frequently a gap in employment as *military spouses* make the move and search for new employment, which may lessen their likelihood of returning to the same level of job type or occupation.
- The skills of the *military spouse* may be obsolete or inadequate compared to the advancing competency needs of the current workforce and economy.
- The industry in which the *military spouse* has prior work experience may be in decline in the region to which the *military spouse* has relocated.
- There may be an excess in the number of workers with similar skill sets and experience to that of the *military spouse* who are also seeking limited employment opportunities in the region to which the *military spouse* has relocated.

Based upon the totality of these circumstances, it would be reasonable to conclude that in the vast majority of cases, *military spouses* impacted by a military service member's duty reassignment or discharge will meet the "unlikely to return to a previous industry or occupation" criterion and could thus be served as dislocated workers. *Military spouses* who meet eligibility criteria for dislocated workers must be afforded priority over *non-covered persons*.

#### (ii) Displaced homemakers<sup>57</sup>

A *military spouse* may qualify to be served as a dislocated worker if they meet the definitional requirements for a displaced homemaker. Surviving spouses of *Veterans* and military service members may be served with dislocated worker funds. If a surviving spouse of a *Veteran* or military service member qualifies generally as a dislocated worker or specifically as a displaced homemaker, they can be served under the dislocated worker program. If the surviving spouse does not meet those requirements, they can be served under the adult program. Under either program, a surviving spouse of a *Veteran* must receive priority of service over *non-covered persons* if they qualify for priority as an *eligible spouse*.

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<sup>57</sup> TEGLs 22-04. Refer to the State's policy on program eligibility for more information on displaced homemakers and the dislocated worker program. The State's policy manual is accessible at <https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies>.

#### (d) Youth priority of service requirements

As stated in the State's Title I program eligibility policy, all youth program participants must meet certain program eligibility requirements. One eligibility criterion that applies equally to in-school youth (ISY) and out-of-school youth (OSY) is that youth be low-income individuals.<sup>58</sup> There is, however, an exception to this rule. Up to five percent of all youth program participants (ISY and OSY combined), 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>59</sup> subject to the additional assistance limitation for ISY.<sup>60</sup>

In addition, for ISY only, not more than five percent of individuals may be eligible as ISY based solely on a need for additional assistance to complete an educational program or to secure or hold employment.<sup>61</sup>

### Section III. Wagner-Peyser

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#### (a) Section III definitions

Definitions for the italicized terms used in this section are provided below, along with other definitions for terms used within the definitions. Please note that the definitions in this section may not fully align with similar definitions provided in [Section I](#). Variations among definitions between [Section I](#) and this section are based on program-specific discretionary or statutory priorities or preferences pursuant to Federal statutes or regulations.

##### (1) Active duty

*Active duty*<sup>62</sup> means full-time duty in the active military service of the United States. *Active duty* 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.

##### (2) Eligible spouse

*Eligible spouse*,<sup>63</sup> as defined in [38 USC § 4215\(a\)](#), means the spouse of any of the following:

- any *Veteran* who died of a *service-connected disability*;

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<sup>58</sup> 20 CFR §§ 680.110(c), 681.210(a) – (b); and 681.220(a) – (c)

<sup>59</sup> 20 CFR § 681.250(c); TEGL 21-16. The 5% calculation must be based on the percent of newly enrolled youth in the local youth program during a given program year.

<sup>60</sup> Refer to the State's policy on program eligibility for more information on the ISY additional assistance limitation, which is accessible in the State's policy at <https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies>.

<sup>61</sup> 20 CFR § 681.310(b)

<sup>62</sup> 10 USC § 101(d)(1)

<sup>63</sup> 20 CFR § 1010.110

- any member of the Armed Forces serving on *active duty* who, at the time of application for the priority, is listed in one or more of the following categories and has been so listed for a total of more than 90 days:
  - missing in action;
  - captured in line of duty by a hostile force; or
  - forcibly detained or interned in the line of duty by a foreign government or power;
- any *Veteran* who has a total disability resulting from a service-connected disability, as evaluated by the US Department of Veterans Affairs (USDVA);
- any *Veteran* who died while a total disability resulting from a service-connected disability was in existence, as evaluated by USDVA.

Note.<sup>64</sup> An *eligible spouse* whose eligibility is derived from a living *Veteran* or military service member would lose their eligibility if the *Veteran* or military service member were to lose the status that is the basis for the eligibility (e.g., if a *Veteran* with a total service-connected disability were to receive a revised disability rating at a lower level). Similarly, for an eligible spouse whose eligibility is derived from a living *Veteran* or military service member, that *eligible spouse's* eligibility would be lost upon divorce from the *Veteran* or military service member.

### (3) Non-covered person

*Non-covered person*<sup>65</sup> means any individual who does not meet the definition of *Veteran* or *eligible spouse*.

### (4) Service-connected disability

*Service-connected disability*<sup>66</sup> 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 *active military, naval, air, or space service*.

### (5) Veteran

*Veteran*<sup>67</sup> means a person who served in the *active military, naval, air, or space service*, and who was discharged or released therefrom under conditions other than dishonorable, as specified in [38 USC § 101\(2\)](#).

### (b) Wagner-Peyser priority of service requirements

Wagner-Peyser must prioritize delivery of career services to *Veterans* and *eligible spouses* over *non-covered persons*.<sup>68</sup>

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<sup>64</sup> TEGL 07-09

<sup>65</sup> 20 CFR § 1010.110

<sup>66</sup> 38 CFR § 3.1

<sup>67</sup> 20 CFR § 1010.110; 38 USC § 101(2)

<sup>68</sup> TEGL 10-09; VPL 07-09

## Section IV. JVSG

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### (a) Section IV definitions

Definitions for the italicized terms used in this section are provided below, along with other definitions for terms used within the definitions. Please note that the definitions in this section may not fully align with similar definitions provided in [Section I](#). Variations among definitions between [Section I](#) and this section are based on program-specific discretionary or statutory priorities or preferences pursuant to Federal statutes or regulations.

#### (1) Active duty

*Active duty*<sup>69</sup> 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.

*Active duty* does not include full-time National Guard duty.<sup>70</sup>

#### (2) Active military, naval, air, or space service

*Active military, naval, air, or space service* includes:<sup>71</sup>

- *active duty*;
- any period of *active duty* for training during which the individual concerned was disabled or died from a disease or injury incurred or aggravated in line of duty;
- any period of inactive duty training during which the individual concerned was disabled or died:
  - from an injury incurred or aggravated in line of duty; or
  - from an acute myocardial infarction, a cardiac arrest, or a cerebrovascular accident occurring during such training;
- full-time duty in the National Guard or a Reserve component.

*Active military, naval, air, or space service* does not include full-time duty for training purposes (i.e., that which often is referred to as “weekend” or “annual” training).<sup>72</sup>

#### (3) Covered person

*Covered person*<sup>73</sup> means an *eligible Veteran* or *eligible spouse*.

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<sup>69</sup> 10 USC § 101(d)(1)

<sup>70</sup> Ibid.

<sup>71</sup> 38 USC § 101(24); 38 CFR § 17.31

<sup>72</sup> 20 CFR § 1010.110

<sup>73</sup> VPL 07-09

#### (4) Disabled Veteran

*Disabled Veteran* means:<sup>74</sup>

- a *Veteran* who is entitled to compensation or, who but for the receipt of military retired pay, would be entitled to compensation under laws administered by the Secretary of the military department concerned; or
- a person who was discharged or released from *active duty* because of a service-connected disability.

#### (6) Eligible spouse

*Eligible spouse*,<sup>75</sup> as defined in [38 USC § 4215\(a\)](#), means the spouse of any of the following:

- any *Veteran* who died of a service-connected disability;
- any member of the Armed Forces serving on active duty who, at the time of application for the priority, is listed in one or more of the following categories and has been so listed for a total of more than 90 days:
  - missing in action;
  - captured in line of duty by a hostile force; or
  - forcibly detained or interned in the line of duty by a foreign government or power;
- any *Veteran* who has a total disability resulting from a service-connected disability, as evaluated by the US Department of Veterans Affairs (USDVA);
- any *Veteran* who died while a total disability resulting from a service-connected disability was in existence, as evaluated by USDVA.

Note.<sup>76</sup> An *eligible spouse* whose eligibility is derived from a living *Veteran* or military service member would lose their eligibility if the *Veteran* or military service member were to lose the status that is the basis for the eligibility (e.g., if a *Veteran* with a total service-connected disability were to receive a revised disability rating at a lower level). Similarly, for an eligible spouse whose eligibility is derived from a living *Veteran* or military service member, that *eligible spouse's* eligibility would be lost upon divorce from the *Veteran* or military service member.

#### (7) Veteran

*Veteran*<sup>77</sup> means a person who served at least one day in the *active military, naval, air, or space service*, and who was discharged or released therefrom under conditions other than dishonorable, as specified in [38 USC § 101\(2\)](#). *Active military, naval, air, or space service* includes full-time

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<sup>74</sup> 38 USC § 4211(3)

<sup>75</sup> 20 CFR § 1010.110

<sup>76</sup> TEGL 07-09

<sup>77</sup> 20 CFR § 1010.110; 38 USC § 101(2)

duty in the National Guard or a Reserve component, other than full-time duty for training purposes. Active services does not include:<sup>78</sup>

- full-time duty performed strictly for training purposes (i.e., that which often is referred to as “weekend” or “annual” training); or
- full-time active duty performed by National Guard personnel who are mobilized by state rather than Federal authorities.

## (8) Homeless

For purposes of JVSG, an individual is *homeless* when they meet one or more of the criteria described in Table 2.<sup>79</sup>

Table 2. Criteria for determining an individual is homeless

Homeless criteria
1. an individual or family who lacks a fixed, regular, and adequate nighttime residence;
2. an individual or family with 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, including a car, park, abandoned building, bus or train station, airport, or camping ground;
3. an individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements, including hotels and motels paid for by Federal, State, or local government programs for low-income individuals or by charitable organizations, congregate shelters, and transitional housing;
4. an individual who resided in a shelter or place not meant for human habitation and who is exiting an institution where they temporarily resided;
5. an individual or family who: <ul style="list-style-type: none"> <li>a. will imminently lose their housing, including housing they own, rent, or live in without paying rent, are sharing with others, and rooms in hotels or motels not paid for by Federal, State, or local government programs for low-income individuals or by charitable organizations, as evidenced by: <ul style="list-style-type: none"> <li>i. a court order resulting from an eviction action that notifies the individual or family that they must leave within 14 days;</li> <li>ii. the individual or family having a primary nighttime residence that is a room in a hotel or motel and where they lack the resources necessary to reside there for more than 14 days; or</li> <li>iii. credible evidence indicating that the owner or renter of the housing will not allow the individual or family to stay for more than 14 days, and any oral statement from an individual or family seeking homeless assistance that is found to be credible shall be considered credible evidence for purposes of this clause; and</li> </ul> </li> <li>b. has no subsequent residence identified; and</li> <li>c. lacks the resources or support networks needed to obtain other permanent housing;</li> </ul>
6. unaccompanied youth and homeless families with children and youth defined as homeless under other Federal statutes who: <ul style="list-style-type: none"> <li>a. have experienced a long-term period without living independently in permanent housing;</li> <li>b. have experienced persistent instability as measured by frequent moves over such period; and</li> <li>c. can be expected to continue in such status for an extended period of time because of chronic disabilities, chronic physical health or mental health conditions, substance addiction, histories of domestic violence or childhood abuse, the presence of a child or youth with a disability, or multiple barriers to employment.</li> </ul>

<sup>78</sup> VPL 07-09

<sup>79</sup> 42 USC 11302(a); VPL 03-14 Change 2

Homeless criteria
<p>7. Any individual or family who:</p> <ul style="list-style-type: none"> <li>a. is experiencing trauma or a lack of safety related to, or fleeing or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous, traumatic, or life-threatening conditions related to the violence against the individual or a family member in the individual's or family's current housing situation, including where the health and safety of children are jeopardized;</li> <li>b. has no other safe residence; and</li> <li>c. lacks the resources to obtain other safe permanent housing.</li> </ul>

### (9) Low-income individual

A *low-income individual* is one who meets one or more of the criteria described in Table 3.<sup>80</sup>

Table 3. Criteria for determining an individual is low-income

Low-income criteria
<p>1. The individual currently receives or is a member of a family currently receiving assistance through:</p> <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>
<p>2. In the past 6 months, the individual has received or is a member of a family that has received assistance through:</p> <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>
<p>3. The individual is in a family whose total family income does not exceed the higher of:<sup>81</sup></p> <ul style="list-style-type: none"> <li>a. the current Federally established poverty line; or</li> <li>b. 70 percent of the Federally established lower living standard income level (LLSIL).</li> </ul>
<p>4. The individual is a homeless individual who:<sup>82</sup></p> <ul style="list-style-type: none"> <li>a. lacks a fixed, regular, and adequate nighttime residence; and is <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 Sections 4.a. and 4.b. of this table;</li> <li>d. lives in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; or</li> <li>e. is a runaway.</li> </ul>
<p>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.</p>
<p>6. The individual is a foster child on behalf of whom state or local government payments are made.</p>

<sup>80</sup> WIOA Sec. 3(36)

<sup>81</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 notice on income guidelines for information on the current LLSIL.

<sup>82</sup> 42 USC §§ 14043e-2(6) and 11434a(2)

Low-income criteria
7. The individual is a person with a disability whose income meets the income requirement of Sections 3.a. or 3.b. of this table.

#### (10) Offender

*Offender*<sup>83</sup> means an adult or juvenile who:

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

#### (11) Service-connected disability

*Service-connected disability*<sup>84</sup> 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 *active military, naval, air, or space service*.

#### (12) Significant barrier to employment

An *eligible Veteran* or *eligible spouse* is determined to have a *significant barrier to employment (SBE)* if they attest to having one or more of the following characteristics:<sup>85</sup>

- a *special disabled Veteran* or *disabled Veteran*;
- *homeless*;
- a recently separated service member who at any point in the previous 12 months has been unemployed for 27 or more weeks in the previous 12 months;
- an offender who is currently incarcerated or who has been released from incarceration within the last 12 months;
- lacking a high school diploma or its equivalent; or
- low-income (a *low-income individual*).

<sup>83</sup> WIOA Sec. 3(38)

<sup>84</sup> 38 CFR § 3.1

<sup>85</sup> TEGL 19-13; VPLs 03-14, 03-14 Change 1, and 03-14 Change 2

### (13) Special disabled Veteran

*Special disabled Veteran* means<sup>86</sup> a *Veteran* who is entitled to compensation or, who but for the receipt of military retired pay, would be entitled to compensation under laws administered by the Secretary of the military department concerned for a disability rated at:

- 30 percent or more;
- 10 or 20 percent in the case of a *Veteran* who has been determined under [38 USC § 3106](#) to have a serious employment handicap; or
- a person who was discharged or released from *active duty* because of *service-connected disability*.

### (b) JVSG priority of service requirements

As described under VPL 07-09 and TEGL 10-09, priority of service must be provided to *covered persons*. That means *Veterans* and *eligible spouses* (included in the definition of *covered persons*) are eligible for priority of service under JVSG, as described below.

- Disabled Veterans Outreach Program (DVOP) Specialists must provide career services to *eligible Veterans* and *eligible spouses*. DVOP Specialists must prioritize service delivery to:<sup>87</sup>
  - *special disabled Veterans*;
  - *other disabled Veterans*; and
  - *other eligible Veterans*, in accordance with priorities determined by the Secretary, taking into account applicable rates of unemployment and the employment emphases set for in 38 USC Chapter 42.

Note that in the provision of services, maximum emphasis in meeting the employment needs of *Veterans* must be placed on assisting economically or educationally disadvantaged *Veterans*.

- Further, DVOP Specialists must limit their service-delivery activities to providing services to *eligible Veterans* and *eligible spouses* who meet the definition of an individual with an *SBE*.<sup>88</sup>

### (1) Excluded income and benefits when determining low-income individual status for Veterans and eligible spouses

As indicated in [20 CFR § 683.230](#), when past income is an eligibility determinant for Federal employment or training programs (i.e., *qualified job training programs*), any amounts received as military pay or allowances by any person who served on *active duty*, and certain other specified benefits, must be disregarded for the *Veteran* and *eligible spouses* for whom those amounts

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<sup>86</sup> 38 USC § 4211(1)

<sup>87</sup> VPL 07-10

<sup>88</sup> VPLs 03-14, 03-14 Change 1, and 03-14 Change 2

would normally be applied in making an eligibility determination. This applies when determining an individual's status as a *low-income individual* for eligibility purposes. This also applies when income is used as a factor when a local area provides priority of service for *low-income individuals* using adult program funds<sup>89</sup>. *Veterans* and *eligible spouses* must still meet the adult program eligibility criteria to receive priority services under the program. Specifically, when determining *low-income individual* status for *Veterans* and *eligible spouses*, the following income and benefits must be disregarded:<sup>90</sup>

- any amounts received as military pay or allowances by any person while serving on *active duty*;
- any amounts received by transitioning service members (i.e., service members leaving *active duty*);
- any amounts received by a *Veteran* under the following chapters of Title 38 of the US Code:
  - Chapter 11, Compensation for Service-Connected Disability or Death;
  - Chapter 13, Dependency and Indemnity Compensation for Service-Connected Deaths;
  - Chapter 30, All-Volunteer Force Education Assistance Program;
  - Chapter 31, Training and Rehabilitation for Veterans with Service-Connected Disabilities;
  - Chapter 32, Post-Vietnam Era Veterans' Educational Assistance; and
  - Chapter 36, Administration of Educational Benefits;
- any amounts received by a *Veteran* or *eligible spouse* under Title 10 of the US Code, Chapter 106, Educational Assistance for Members of the Selected Reserve.

## Section V. NDWG

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### (a) Section I definitions

Definitions for the italicized terms used in this section are provided below, along with other definitions for terms used within the definitions. Please note that the definitions in this section may not fully align with similar definitions provided in [Section I](#). Variations among definitions for this section are based on program-specific discretionary or statutory priorities or preferences pursuant to Federal statutes or regulations. Also, there may be additional or differing definitions, discretionary or statutory priorities, or preferences depending on the conditions of the grant award.

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<sup>89</sup> Refer to 20 CFR §§ 680.600 and 680.650.

<sup>90</sup> 38 USC § 4213; TEGL 19-16

### (1) Covered person

*Covered person*<sup>91</sup> means a *Veteran* or *eligible spouse*.

### (2) Eligible spouse

*Eligible spouse*,<sup>92</sup> as defined in [38 USC § 4215\(a\)](#), means the spouse of any of the following:

- any *Veteran* who died of a service-connected disability;
- any member of the Armed Forces serving on active duty who, at the time of application for the priority, is listed in one or more of the following categories and has been so listed for a total of more than 90 days:
  - missing in action;
  - captured in line of duty by a hostile force; or
  - forcibly detained or interned in the line of duty by a foreign government or power;
- any *Veteran* who has a total disability resulting from a service-connected disability, as evaluated by the US Department of Veterans Affairs (USDVA);
- any *Veteran* who died while a total disability resulting from a service-connected disability was in existence, as evaluated by USDVA.

Note.<sup>93</sup> An *eligible spouse* whose eligibility is derived from a living *Veteran* or military service member would lose their eligibility if the *Veteran* or military service member were to lose the status that is the basis for the eligibility (e.g., if a *Veteran* with a total service-connected disability were to receive a revised disability rating at a lower level). Similarly, for an eligible spouse whose eligibility is derived from a living *Veteran* or military service member, that *eligible spouse's* eligibility would be lost upon divorce from the *Veteran* or military service member.

### (3) Veteran

*Veteran*<sup>94</sup> means a person who served in the *active military, naval, air, or space service*, and who was discharged or released therefrom under conditions other than dishonorable, as specified in [38 USC § 101\(2\)](#).

### (b) NDWG priority of service requirements

Like Title IB dislocated worker programs, the priority of service mandate described in [Section I](#) applies to NDWGs, which are considered *qualified job training programs*, as prescribed in [Section I\(c\)](#) and [Section I\(f\)](#). For that reason, priority of service must be implemented for *covered persons*, both *Veterans* and *eligible spouses*, who meet the eligibility requirements described in WIOA Sec.

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<sup>91</sup> 20 CFR § 1010.110

<sup>92</sup> Ibid.

<sup>93</sup> TEGL 07-09

<sup>94</sup> 20 CFR § 1010.110; 38 USC § 101(2)

170 (b)(1)(A) and the conditions of the grant award for each funded NDWG, which would be detailed in the project manual for the applicable NDWG.

## Section VI. SCSEP

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### (a) Section VI definitions

Definitions for the italicized terms used in this section are provided below, along with other definitions for terms used within the definitions. Please note that the definitions in this section may not fully align with similar definitions provided in [Section I](#). Variations among definitions for this section are based on program-specific discretionary or statutory priorities or preferences pursuant to Federal statutes or regulations. Also, there may be additional or differing definitions, discretionary or statutory priorities, or preferences depending on the conditions of the grant award.

#### (1) Eligible spouse

*Eligible spouse*,<sup>95</sup> as defined in [38 USC § 4215\(a\)](#), means the spouse of any of the following:

- any *Veteran* who died of a *service-connected disability*;
- any member of the Armed Forces serving on *active duty* who, at the time of application for the priority, is listed in one or more of the following categories and has been so listed for a total of more than 90 days:
  - missing in action;
  - captured in line of duty by a hostile force; or
  - forcibly detained or interned in the line of duty by a foreign government or power;
- any *Veteran* who has a total disability resulting from a service-connected disability, as evaluated by the US Department of Veterans Affairs (USDVA);
- any *Veteran* who died while a total disability resulting from a service-connected disability was in existence, as evaluated by USDVA.

Note.<sup>96</sup> An *eligible spouse* whose eligibility is derived from a living *Veteran* or military service member would lose their eligibility if the *Veteran* or military service member were to lose the status that is the basis for the eligibility (e.g., if a *Veteran* with a total service-connected disability were to receive a revised disability rating at a lower level). Similarly, for an eligible spouse whose eligibility is derived from a living *Veteran* or military service member, that *eligible spouse's* eligibility would be lost upon divorce from the *Veteran* or military service member.

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<sup>95</sup> 20 CFR § 1010.110

<sup>96</sup> TEGL 07-09

## (2) Homeless

An individual is *homeless* when they meet one or more of the criteria described in Table 4.<sup>97</sup>

Table 4. Criteria for determining an individual is homeless<sup>98</sup>

Homeless criteria
1. an individual or family who lacks a fixed, regular, and adequate nighttime residence;
2. an individual or family with 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, including a car, park, abandoned building, bus or train station, airport, or camping ground;
3. an individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including hotels and motels paid for by Federal, State, or local government programs for low-income individuals or by charitable organizations, congregate shelters, and transitional housing);
4. an individual who resided in a shelter or place not meant for human habitation and who is exiting an institution where they temporarily resided;
5. an individual or family who: a. will imminently lose their housing, including housing they own, rent, or live in without paying rent, are sharing with others, and rooms in hotels or motels not paid for by Federal, State, or local government programs for low-income individuals or by charitable organizations, as evidenced by: i. a court order resulting from an eviction action that notifies the individual or family that they must leave within 14 days; ii. the individual or family having a primary nighttime residence that is a room in a hotel or motel and where they lack the resources necessary to reside there for more than 14 days; or iii. credible evidence indicating that the owner or renter of the housing will not allow the individual or family to stay for more than 14 days, and any oral statement from an individual or family seeking homeless assistance that is found to be credible shall be considered credible evidence for purposes of this clause; and b. has no subsequent residence identified; and c. lacks the resources or support networks needed to obtain other permanent housing;
6. unaccompanied youth and homeless families with children and youth defined as homeless under other Federal statutes who: a. have experienced a long-term period without living independently in permanent housing; b. have experienced persistent instability as measured by frequent moves over such period; and c. can be expected to continue in such status for an extended period of time because of chronic disabilities, chronic physical health or mental health conditions, substance addiction, histories of domestic violence or childhood abuse, the presence of a child or youth with a disability, or multiple barriers to employment.

## (3) Veteran

*Veteran*<sup>99</sup> means a person who served in the *active military, naval, air, or space service*, and who was discharged or released therefrom under conditions other than dishonorable, as specified in [38 USC § 101\(2\)](#).

<sup>97</sup> 42 USC 11302(a)

<sup>98</sup> WIOA Sec. 3(36)

<sup>99</sup> 20 CFR § 1010.110; 38 USC § 101(2)

## (b) SCSEP priority of service requirements

When selecting eligible individuals for participation in SCSEP, SCSEP staff must give priority to individuals with one or more of the following characteristics:<sup>100</sup>

- are 65 years of age or older;
- have a disability;
- have limited English proficiency;
- have low literacy skills;
- reside in a rural area;
- are *Veterans* or *eligible spouses* for purposes of [38 USC § 4215\(a\)](#);
- have low employment prospects;
- have failed to find employment after using services provided under the Workforce Innovation and Opportunity Act (WIOA) of 2014;
- are *homeless* or at risk for homelessness; or
- are formerly incarcerated or on supervision from release from prison or jail within five years of the date of initial eligibility determination.

Among the priority groups listed above, SCSEP staff must apply priority of service in the following order:<sup>101</sup>

1. persons who qualify as *Veterans* or *eligible spouses* and who possess at least one of the other priority characteristics listed above; then
2. persons who qualify as a *Veteran* or *eligible spouse* who do not possess any of the other priority characteristics listed above; then
3. persons who do not qualify as a *Veteran* or *eligible spouse* and who possess at least one of the other priority characteristics listed above.

## Section VII. TAA

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### (a) Section VII definitions

Definitions for the italicized terms used in this section are provided below, along with other definitions for terms used within the definitions. Please note that the definitions in this section may not fully align with similar definitions provided in [Section I](#). Variations among definitions for

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<sup>100</sup> TEGL 17-20

<sup>101</sup> 20 CFR § 641.520

this section are based on program-specific discretionary or statutory priorities or preferences pursuant to Federal statutes or regulations. Also, there may be additional or differing definitions, discretionary or statutory priorities, or preferences depending on the conditions of the grant award.

### (1) Eligible spouse

*Eligible spouse*,<sup>102</sup> as defined in [38 USC § 4215\(a\)](#), means the spouse of any of the following:

- any *Veteran* who died of a *service-connected disability*;
- any member of the Armed Forces serving on *active duty* who, at the time of application for the priority, is listed in one or more of the following categories and has been so listed for a total of more than 90 days:
  - missing in action;
  - captured in line of duty by a hostile force; or
  - forcibly detained or interned in the line of duty by a foreign government or power;
- any *Veteran* who has a total disability resulting from a service-connected disability, as evaluated by the US Department of Veterans Affairs (USDVA);
- any *Veteran* who died while a total disability resulting from a service-connected disability was in existence, as evaluated by USDVA.

Note.<sup>103</sup> An *eligible spouse* whose eligibility is derived from a living *Veteran* or military service member would lose their eligibility if the *Veteran* or military service member were to lose the status that is the basis for the eligibility (e.g., if a *Veteran* with a total service-connected disability were to receive a revised disability rating at a lower level). Similarly, for an eligible spouse whose eligibility is derived from a living *Veteran* or military service member, that *eligible spouse's* eligibility would be lost upon divorce from the *Veteran* or military service member.

### (2) Veteran

*Veteran*<sup>104</sup> means a person who served in the *active military, naval, air, or space service*, and who was discharged or released therefrom under conditions other than dishonorable, as specified in [38 USC § 101\(2\)](#).

### (b) TAA priority of service requirements

The State must give priority for approval and funding of TAA Program benefits (including training, where the approval of training criteria are met) to a trade-affected worker meeting the definition *Veteran* or *eligible spouse*, as [38 USC § 4215\(a\)](#).<sup>105</sup>

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<sup>102</sup> 20 CFR § 1010.110

<sup>103</sup> TEGL 07-09

<sup>104</sup> 20 CFR § 1010.110; 38 USC § 101(2)

<sup>105</sup> 20 CFR § 618.848

## Section VIII. Priority-of-service oversight and monitoring requirements

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### (a) Adult and dislocated worker programs

#### (1) Oversight

Each local board must:

- ensure its adult and dislocated worker programs and local area administrative entity staff comply with the requirements of this section, as well as [Section I](#) and [Section II](#);
- ensure its local plan addresses the requirements of this policy, including the requirements of [Section II\(b\)\(2\)](#);
- ensure appropriate implementation of local priority-of-service policies and procedures at all one-stop centers in its respective local area;
- make all local area priority-of-service policies and procedures readily available to and easily accessible by the general public and adult and dislocated worker program participants, including those who are *covered entrants*, *Veterans*, and *eligible spouses*, by:
  - publishing them on local area websites in machine-readable format; and
  - making printed versions available at all one-stop centers in its respective local area;
- ensure that signage is prominently displayed in each one-stop center announcing the availability of priority of service for *covered persons* (*Veterans* and *eligible spouses*) through its adult and dislocated worker programs.

#### (2) Monitoring

Each local board must establish policies and procedures that address oversight and monitoring of priority of service for *covered entrants* and *covered persons* receiving services through its adult and dislocated worker programs. The local board's policies and procedures must, at a minimum, comply with the requirements of this policy and clearly define actions that must be taken by local area administrative entity staff when:

- performing quarterly monitoring of implementation of the requirements of this policy and the local board's priority-of-service policies and procedures by local area adult and dislocated worker program staff, in accordance with Federal laws and regulations and State policies, which must include review of randomly sampled<sup>106</sup> participant records in NEworks and source documentation in NEworks or ECM, as applicable;

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<sup>106</sup> To obtain sets of randomly sampled case files, contact the NEworks Help Desk at [ndol.newworkshelp@nebraska.gov](mailto:ndol.newworkshelp@nebraska.gov). The criteria for sampling are defined in the State's policy on records management, which is accessible at <https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies>.

- submitting accurate quarterly priority-of-service monitoring reports to the local board, subject to limitations necessary to protect *PII*; and
- developing and implementing corrective action as required to ensure priority of service for *covered entrants* and *covered persons* (*Veterans* and *eligible spouses*) under adult and dislocated worker programs.

## (b) NDOL-administered programs

### (1) Oversight

NDOL Administrators must:

- ensure its adult and dislocated worker programs and local area administrative entity staff comply with the requirements of this section, as well as [Section I](#) and the program-specific section applicable to their respective programs;
- ensure the implementation of priority-of-service procedures at all one-stop centers in the local areas in which their respective programs operate;
- make all procedures readily available to and easily accessible by the general public and program participants, including those who are *Veterans* and *eligible spouses*, by:
  - publishing them on local area websites in machine-readable format; and
  - making printed versions available at all one-stop centers in its respective local area;
- ensure that signage is prominently displayed in each one-stop center announcing the availability of priority of service for *covered persons* (*Veterans* and *eligible spouses*) under their respective programs.

### (2) Monitoring

NDOL Administrators must establish procedures that address oversight monitoring of priority of service for their respective programs. The procedures must, at a minimum, comply with the requirements of this policy and clearly define actions that must be taken by *administrative staff* when:

- performing quarterly monitoring and oversight of the implementation of the procedures by *program staff* in accordance with Federal laws and regulations and State policies, which must include review of randomly sampled<sup>107</sup> participant records in NEworks and source documentation in NEworks or ECM, as applicable;
- submitting accurate quarterly priority-of-service monitoring reports to the Reemployment Services Director, subject to limitations necessary to protect *PII*; and

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<sup>107</sup> To obtain sets of randomly sampled case files, contact the NEworks Help Desk at [ndol.newworkshelp@nebraska.gov](mailto:ndol.newworkshelp@nebraska.gov). The criteria for sampling are defined in the State's policy on records management, which is accessible at <https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies>.

- developing and implementing corrective action as required to ensure priority of service for *covered entrants* and *covered persons* (*Veterans* and *eligible spouses*) under respective programs.

## 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.

## State Policy

## Workforce Innovation and Opportunity Act (WIOA)

Nebraska Department of Labor (NDOL) Division of Reemployment Services 550 South 16 <sup>th</sup> Street Lincoln, NE 68508 402.471.9000 <a href="mailto:ndol.wioa_policy@nebraska.gov">ndol.wioa_policy@nebraska.gov</a>	Policy category
	One-stop Delivery System
	Effective date
	February 15, 2023
	Supersedes
	None

## Security and the One-stop Delivery System

### 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

NDOL recognizes that security issues, including behaviors, threats, and acts of violence, degrade mandatory physical and programmatic accessibility requirements regarding the one-stop delivery system, the overall effectiveness of the system,<sup>1</sup> and the ability of one-stop partner program staff to provide meaningful services.

WIOA assigns responsibilities at the Federal, state, and local levels to ensure the creation, maintenance, and accessibility of one-stop delivery systems that enhance the range and quality of employment and training services for jobseekers, workers, and employers.<sup>2</sup> WIOA requires that states establish objective criteria and procedures for local boards to use when assessing one-stop delivery systems and certifying one-stop centers for effectiveness, physical and programmatic accessibility, and continuous improvement. Pursuant to the State's current policy on one-stop delivery system assessment and one-stop center certification,<sup>3</sup> each local board must *annually* assess the physical and programmatic accessibility of all one-stop centers in its respective local area.<sup>4</sup> Further, during its annual assessment of the physical and programmatic accessibility of all one-stop centers in the local area, each local board must follow the requirements and procedures

<sup>1</sup> 20 CFR § 678.800(a)

<sup>2</sup> WIOA Sec. 121(e)(1); 20 CFR § 678.300(b)

<sup>3</sup> The State's policy on one-stop delivery system assessment and one-stop center certification is included in the State's policy manual, which is accessible at <https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies>.

<sup>4</sup> WIOA Sec. 107(d)(13); 20 CFR § 679.370(p)

established in the one-stop delivery system assessment and one-stop center certification policy and the requirements of WIOA and its implementing regulations, rules, and guidance, including WIOA Sec. 188 and 29 CFR Part 38, and the applicable provisions of the Americans with Disability Act of 1990 (42 USC 12101 et seq.).<sup>5</sup>

## ACTION

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Questions and comments on this policy may be submitted in writing to the WIOA policy mailbox at [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov).

Each local board must take or ensure the following actions have been taken according to the timelines established below.

- The local board must establish a safety committee, in accordance with its respective bylaws, that is responsible for developing and implementing physical security policies and procedures that:
  - comply with the requirements of this policy and the security framework defined in [Section I](#) regarding risk identification, risk mitigation, readiness, and response and recovery, including, but not limited to:
    - establishment of incident notification, documentation, response, and recovery protocols (refer to [APPENDIX II](#));
    - annual survey of one-stop partner program representatives to gauge their satisfaction with the implementation of security policies and procedures and effectiveness of the mandatory training *and* such survey must provide local area staff the opportunity to provide written input and suggestions to ensure continuous improvement; and
    - mandatory staff training requirements and schedules for local area administrative entity staff, one-stop operator staff, and one-stop partner program staff;
  - require annual review and updating of such policies and procedures based on their assessed effectiveness; and
  - require regular monitoring of local area administrative entity staff, one-stop operator staff, and one-stop partner program staff for compliance with such policies and procedures, including the training requirements and schedules, *and* such monitoring must occur on a regular basis;
  - require the safety committee to:
    - regularly update the full local board on security incidents during public meetings of the local board; and

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<sup>5</sup> 20 CFR §§ 678.800 and 679.370(p); TEGL 16-16

- work with local area administrative entity staff, one-stop operator staff, and one-stop partner program staff on procurement of security assets and creation and maintenance of incident and incident resolution logs.
- The local board must ensure that the physical security policies and procedures are developed by April 30, 2023.
- The local board must submit written documentation by May 1, 2023 to the WIOA policy mailbox at [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov) demonstrating that the security policies and procedures have been implemented.

## POLICY

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This policy:

- establishes a framework for design and implementation of local physical security policies and procedures by local boards that sufficiently mitigate the risk of security incidents throughout local one-stop delivery systems;
- describes requirements for incorporation of physical security measures into annual physical and programmatic accessibility assessments and triennial one-stop center certifications;
- provides operational guidance to local boards regarding development and implementation of physical security measures *and* assessment of the effectiveness of such measures;
- standardizes requirements for incident response and resolution procedures statewide to promote physical and programmatic accessibility throughout the State's one-stop delivery system; and
- introduces standard reporting protocols through which security incidents and subsequent resolutions are documented and communicated.

This policy has three sections and two appendices.

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## Section I. Security framework

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The purpose of this framework is to ensure local boards and local area administrative entities and one-stop operators have the foundation necessary to develop effective security policies and procedures that proportionately and adequately mitigate risk. Local boards must ensure that local one-stop delivery system security policies and procedures are modeled after the four-phase framework illustrated in Diagram 1. Each phase is defined in following subsections.

**Diagram 1. Four-phase security framework for the one-stop delivery system**



### (a) Risk identification

The identification of security risks cannot be achieved without conducting a risk assessment. Risk assessments are critical to both the design and continual modification of security policies and procedures. Risks to one-stop delivery system customers and program staff may vary significantly by facility throughout the statewide one-stop delivery system.

An example risk assessment tool is provided for considered use as [APPENDIX I](#). However, local areas may select an alternative methodology, including collaboration with local law enforcement entities or organizations.

## (b) Risk mitigation

Once risks and corresponding risk levels are assessed, mitigation is taken to reduce the likelihood of such risks from occurring and minimize the impact should such incidents occur. The selection of mitigation measures must be proportional to the likelihood and severity of risks present at a facility. Physical mitigation measures may include, but are not limited to:

1. staff training;
2. facility access control;
3. interior and exterior lighting;
4. digital and/or remote observation systems;
5. signage and public notices;
6. infrastructure hardening;
7. early detection systems;
8. public alert systems;
9. evacuation plans and designated shelter areas; and
10. contracted security services.

The cost of security equipment and services may be funded locally as an infrastructure cost under memorandums of understanding with required and additional one-stop partners.<sup>6,7</sup> Representatives from all local area one-stop center partners must be regularly consulted by the local board, local area administrator, and one-stop operator concerning risk mitigation.

## (c) Readiness

Mitigation efforts are effective only when properly planned, rehearsed, and maintained. Local area security policies and procedures must incorporate a process through which regular and effective staff training and rehearsals are provided. All facility staff must be trained on local security policies, procedures, and encouraged to participate in rehearsals. Local areas must maintain documentation of annual training schedules and events, training agendas, and staff attendance rosters.

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<sup>6</sup> 2 CFR § 200.457; 20 CFR § 678.760

<sup>7</sup> The cost of security equipment and contracted services may be considered *infrastructure costs*, provided such costs are not already included in a facility lease covering such costs. *Infrastructure costs* are non-personnel costs necessary for the general operation of one-stop centers. Refer to the State's policy on memorandums of understanding and funding agreements for information on *infrastructure costs*. The policy is included in the State's policy manual, which is accessible at <https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies>.

Training recommendations include, but are not limited to:

- de-escalation training;
- lifesaving first aid; and
- active shooter training.

Local areas must survey local one-stop partner program representatives on an annual basis to gauge their satisfaction with the implementation of security policies, procedures, and training effectiveness. Such surveys must provide local area staff the opportunity to provide written input and suggestions to ensure continuous improvement.

#### (d) Response and Recovery

The following behaviors, threats, and actions are considered security incidents within the context of accessibility to the one-stop delivery system:

##### (1) Behaviors

Individual instances of behavior or patterns of behavior may precede a threat or act of violence and are considered security incidents. Such behaviors include, but are not limited to:

- intoxication or possession of alcohol;
- drug use or possession of controlled substances;
- viewing or possession of pornography;
- lewd behavior, inappropriate bodily exposure, and nudity;
- unwanted physical contact;
- loitering;
- stalking;
- vulgar, discriminatory, or threatening language;
- possession of weapons; and
- reckless driving in designated facility parking areas.

##### (2) Threats

Individual instances of threats or patterns of threats are considered security incidents and may include, but are not limited to, verbal or non-verbal expressions of *intent* to:

- cause bodily harm to oneself or others;
- damage property or equipment;

- destroy property or equipment; and
- theft.

Non-verbal expressions may come in the form of emails, written letters, etc.

### (3) Actions

Individual instances of physical action or patterns of physical action that are considered security incidents may include, but are not limited to, actions that *cause* or *result* in:

- bodily harm to oneself or others;
- damage to property or equipment;
- destruction of property or equipment; and
- theft.

Such security incidents must be met by proper responses. The nature of such actions must be defined in the local area's physical security policies and procedures, and continually reinforced the training.

When a security incident has ended, regardless of the type (behavior, threats, or action) the local board, local area administrator, and one-stop operator are responsible for recovery activities, which must include:

1. incident documentation;
2. notification to NDOL *and* local area one-stop partners;
3. investigation, to include filing of police reports, as necessary;
4. application of corrective actions for offending individuals, to include full or partial restrictions on facility usage on a permanent or temporary basis;
5. presentation and review of incident logs at the next scheduled public local board meeting; and
6. annual risk re-assessment (to be included during annual one-stop delivery assessment of physical and programmatic accessibility).

## Section II. Integration into annual accessibility reviews and triennial site certification

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Implementing instructions as to the integration of physical security elements within both annual accessibility reviews and triennial site certification can be found in NDOL's current policy on one-stop delivery system assessment and one-stop center certification.<sup>8</sup>

## Section III. Monitoring

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### (a) Local-level monitoring

Local boards must ensure monitoring of local area administrative entity staff, one-stop operator staff, and one-stop partner program staff for compliance with established security policies and procedures, including training requirements and schedules *and* such monitoring must occur on a regular basis.

### (b) State-level monitoring

Compliance with all elements of this policy is subject to review by the NDOL State Monitoring Unit (SMU). Failure to comply with the requirements set forth in this policy will result in findings and the development of a corrective action plan or plans. During monitoring of compliance with the requirements of this policy, inspectable items include, but are not limited to, local:

- policies;
- procedure manuals;
- incident logs;
- training schedules and agendas;
- training attendance rosters;
- documentation of the procurement of security-related equipment and services; and
- the facility itself.

## DISCLAIMER

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This policy is based on NDOL's reading of the applicable statutes, regulations, rules, and guidance released by the US 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>8</sup> The policy is included in the State's policy manual, which is accessible at <https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies>.

## APPENDIX I. Example One-Stop Center Security Risk Assessment Tool

### General

#### 1. Facility information

Name of facility: \_\_\_\_\_  
Address of facility (street and city): \_\_\_\_\_  
Facility's primary point of contact: \_\_\_\_\_  
Title of primary point of contact: \_\_\_\_\_  
Phone number for primary point of contact: \_\_\_\_\_  
Email for primary point of contact: \_\_\_\_\_

#### 2. One-stop center partners located at the facility

Partner information	Response
Partner 1	Name of partner: Partner's primary point of contact: Title of partner's primary point of contact: Phone number: Email:
Partner 2	Name of partner: Partner's primary point of contact: Title of partner's primary point of contact: Phone number: Email:
Partner 3	Name of partner: Partner's primary point of contact: Title of partner's primary point of contact: Phone number: Email:
Partner 4	Name of partner: Partner's primary point of contact: Title of partner's primary point of contact: Phone number: Email:
Partner 5	Name of partner: Partner's primary point of contact: Title of partner's primary point of contact: Phone number: Email:
Partner 6	Name of partner: Partner's primary point of contact: Title of partner's primary point of contact: Phone number: Email:
Partner 7	Name of partner: Partner's primary point of contact: Title of partner's primary point of contact: Phone number: Email:
Partner 8	Name of partner: Partner's primary point of contact: Title of partner's primary point of contact: Phone number: Email:

Partner information	Response
Partner 9	Name of partner: Partner's primary point of contact: Title of partner's primary point of contact: Phone number: Email:
Partner 10	Name of partner: Partner's primary point of contact: Title of partner's primary point of contact: Phone number: Email:
Partner 11	Name of partner: Partner's primary point of contact: Title of partner's primary point of contact: Phone number: Email:
Partner 12	Name of partner: Partner's primary point of contact: Title of partner's primary point of contact: Phone number: Email:
Partner 13	Name of partner: Partner's primary point of contact: Title of partner's primary point of contact: Phone number: Email:
Partner 14	Name of partner: Partner's primary point of contact: Title of partner's primary point of contact: Phone number: Email:
Partner 15	Name of partner: Partner's primary point of contact: Title of partner's primary point of contact: Phone number: Email:
Partner 16	Name of partner: Partner's primary point of contact: Title of partner's primary point of contact: Phone number: Email:
Partner 17	Name of partner: Partner's primary point of contact: Title of partner's primary point of contact: Phone number: Email:

3. *If there other tenants at the facility that are not one-stop center partners, provide information for the tenants.*

Tenant information	Response
Tenant 1	Name of tenant organization: Tenant's primary point of contact: Title of tenant's primary point of contact: Phone number: Email:
Tenant 2	Name of tenant organization: Tenant's primary point of contact: Title of tenant's primary point of contact: Phone number: Email:
Tenant 3	Name of tenant organization: Tenant's primary point of contact: Title of tenant's primary point of contact: Phone number: Email:
Tenant 4	Name of tenant organization: Tenant's primary point of contact: Title of tenant's primary point of contact: Phone number: Email:
Tenant 5	Name of tenant organization: Tenant's primary point of contact: Title of tenant's primary point of contact: Phone number: Email:

### Facility infrastructure

4. *Is there adequate lighting for the facility's main entrance and staff-only entrances/exits and emergency exits that ensures safety and security?*

☐ Yes

☐ No

5. *Is there adequate lighting in facility parking areas from sunset and to sunrise?*

☐ Yes

☐ No

6. *Is facility landscaping maintained in a manner that allows for adequate visibility (i.e., shrubbery is not overgrown and providing a hiding place for an intruder)?*

☐ Yes

☐ No

7. *Is there adequate lighting in all interior areas of the facility?*

☐ Yes

☐ No

8. *Other than the main entrance, are all other facility entrances and exits (staff-only entrances/exits and emergency exits) secured at all times?*

☐ Yes

☐ No

9. *What methods are used to secure the main entrance? (Select all that apply.)*

- ☐None (unsecured)
- ☐Lock and key
- ☐Keypad
- ☐Electronic card/badge reader
- ☐Security guard
- ☐Deadbolt
- ☐Other (explain): \_\_\_\_\_

10. *What methods are used to secure all other entrance/exit doors? (Select all that apply.)*

- ☐None (unsecured)
- ☐Lock and key
- ☐Keypad
- ☐Electronic card/badge reader
- ☐Security guard
- ☐Deadbolt
- ☐Other (explain): \_\_\_\_\_

11. *Are written procedures in place to ensure the facility is always secured after business hours or when facility staff are not in the facility?*

- ☐Yes
- ☐No

12. *What are the facility's visitor management procedures? (Select all that apply.)*

- ☐None
- ☐Check in at front desk required
- ☐Sign in/sign out sheet
- ☐Issuance of visitor badge/ID
- ☐Escort only within facility
- ☐Other (explain): \_\_\_\_\_

13. *Are facility windows closed and locked after normal business hours?*

- ☐Yes
- ☐No
- ☐Other (i.e., non-operable/cannot be opened)

14. *Are there access points on the roof that can provide illegal entry to the facility?*

- ☐Yes
- ☐No

*If yes, are the access points secured?*

- ☐Yes
- ☐No

15. *Is US Mail delivered to a mailbox within the facility?*

- ☐Yes
- ☐No

16. *Is janitorial and/or security service provided by third parties?*

- ☐Yes
- ☐No

17. *Do facility staff and security service staff, US Postal workers, and other third parties have keys, badges, or other methods for accessing the facility?*

☐ Yes

☐ No

18. *Have facility and security service staff undergone background checks by an authorized government entity?*

☐ Yes

☐ No

#### Security measures (assets, facility, and staff protection)

19. *Does the facility have methods for secure disposal of confidential information, including information that includes personally identifiable information (aka PII)?*

☐ Yes

☐ No

20. *Does the facility have a written standard operating procedure for revocation privileges for accessing physical and digital assets once a facility staff member is no longer authorized to access such assets?*

☐ Yes

☐ No

21. *Does the facility have signage/public notices posted regarding security requirements that must be observed by facility staff and visitors?*

☐ Yes

☐ No

22. *Has the facility designated a custodian or custodians of all keys, badges, or other methods for physically accessing the facility?*

☐ Yes

☐ No

23. *Are all keys, badges, or other methods for accessing the facility physically accounted for thoroughly on an annual basis?*

☐ Yes

☐ No

24. *Does the facility have a written standard operating procedure for retrieval of keys and badges or revocation of other methods for accessing the facility once a facility staff member is no longer authorized to access the facility?*

☐ Yes

☐ No

25. *What type(s) of security measures are in place to protect assets (physical, digital, etc.) and facility staff and visitors? (Select all that apply.)*

☐None

☐Training and procedures for facility staff regarding security risks, including risks relating to visitors and other facility staff

☐Protected customer service counter (i.e., barrier to keep visitors on public side of office)

☐Entrance door chime

☐Duress alarm button

☐Video surveillance

☐Intrusion detection system (IDS) on doors

☐IDS on windows

☐Motion sensors in hallways

☐Motion sensors on perimeter lights

☐Other (explain): \_\_\_\_\_

26. *If present, how does the facility alarm monitoring system announce security events? (Select all that apply.)*

☐Not applicable

☐Pages designated personnel

☐Notifies monitoring center that then phones designated personnel, law enforcement, fire response, EMS response

☐Directly contacts law enforcement, fire response, EMS response

☐Other (explain): \_\_\_\_\_

27. *Have evacuation plans and designated shelter areas been established concerning physical security threats, including criminal, medical, fire, and severe weather events?*

☐Yes

☐No

## Emergency response and preparedness

### Law enforcement

28. *Does the facility have first aid kits and automated external defibrillators (aka AEDs) posted prominently throughout the facility?*

☐Yes

☐No

29. *Identify the local law enforcement agency responsible for investigating crime(s) occurring in and near your facility.*

Agency name: \_\_\_\_\_

Non-emergency number: \_\_\_\_\_

30. *Does the local law enforcement agency actively patrol the facility area?*

☐Yes

☐No

31. *What is the average response time to the facility by the local law enforcement agency?*

☐Less than 15 minutes

☐15 to 30 minutes

☐More than 30 minutes

☐Other (explain): \_\_\_\_\_

### *Emergency medical service*

**32. Identify the local emergency medical service (EMS) provider responsible for services to and near your facility.**

Provider name: \_\_\_\_\_

Non-emergency number: \_\_\_\_\_

**33. What is the average response time to the facility by the local EMS provider?**

☐ Less than 15 minutes

☐ 15 to 30 minutes

☐ More than 30 minutes

☐ Other (explain): \_\_\_\_\_

### *Fire prevention and emergency*

**34. What type of fire prevention and notification systems are in use at your facility? (Select all that apply)**

☐ None

☐ Sprinkler systems

☐ Fire extinguishers

☐ Smoke alarms

☐ Hard wired

☐ Battery powered

☐ Third-party systems that automatically alert the local fire prevention and emergency agency

**35. Identify the local fire prevention and emergency agency responsible for fire prevention and emergencies occurring in and near your facility.**

Agency name: \_\_\_\_\_

Non-emergency number: \_\_\_\_\_

**36. What is the average response time to your facility by the local fire prevention and emergency agency?**

☐ Less than 15 minutes

☐ 15 to 30 minutes

☐ More than 30 minutes

☐ Other (explain): \_\_\_\_\_

**37. How often does the local fire prevention and emergency agency conduct site inspections of your facility?**

☐ Monthly

☐ Quarterly

☐ Semi-annually

☐ Annually

☐ Biennially (every 2 years)

☐ Never

☐ Other (explain): \_\_\_\_\_

## **APPENDIX II. Statewide security incident report form and processes**

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The form provided in this appendix must be used to notify chairs of local boards, chairs of local board safety committees, local one-stop partners, and NDOL concerning security incidents occurring at or in relation to a one-stop center. The form must be completed and submitted as described in the form. The form will be provided to local area administrative entities separately by email.

## Statewide security incident report form and processes

### Notification requirements

In the event of any security incident that compromises the physical security of a one-stop center, including physical security of staff and/or visitors *and* physical security of the center itself, this form must be completed by local area administrative staff, to the extent possible, and submitted **within 24 hours of the initial security event** to:

- chair of the local board;
- chair of the local board's safety committee;
- all one-stop center partners; and
- NDOL (submit to the NDOL policy mailbox at [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov)).

Further, as stated in the [Response activities](#) and [Recovery activities](#) sections, this form must be resubmitted to all parties named directly above whenever the form is updated, until resolution of the security event described herein.

### Documentation requirements

#### *Security event description (select all that apply)*

##### BEHAVIORS

- ☐ Reckless driving in designated facility parking areas
- ☐ Possession of weapons
- ☐ Intoxication or possession of alcohol
- ☐ Drug use or possession of controlled substances
- ☐ Viewing or possession of pornography
- ☐ Lewd behavior, inappropriate bodily exposure, and nudity
- ☐ Vulgar, discriminatory, or threatening language

☐ Unwanted physical contact

☐ Loitering

☐ Stalking

☐ Other behavior (explain): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

##### THREATS

- ☐ Verbal intent to cause bodily harm to oneself or others
- ☐ Verbal intent to damage or destroy property or equipment
- ☐ Verbal intent to commit theft
- ☐ Other verbal intent (explain): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

☐ Non-verbal intent to cause bodily harm to oneself or others

☐ Non-verbal intent to damage or destroy property or equipment

☐ Non-verbal intent to commit theft

☐ Other non-verbal intent (explain): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

##### ACTIONS

- ☐ Caused by or resulting in bodily harm to oneself or others
- ☐ Caused by or resulting in destruction or damage to property or equipment
- ☐ Caused by or resulting in theft

☐ Caused by or resulting in other actions (explain): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## INDIVIDUALS INVOLVED

☐ Staff, provide name(s) whenever available: \_\_\_\_\_

☐ Visitors, provide name(s) whenever available: \_\_\_\_\_

☐ Other individuals, provide name(s) whenever available: : \_\_\_\_\_

## Response activities

*This section must be updated over time as response activities are taken and completed; and this form must be resubmitted to the chair of the local board, chair of the local board's safety committee, all one-stop center partners, and NDOL whenever this section is updated. This requirement applies until resolution of this security event is complete.*

☐ Law enforcement agency called

☐ Fire prevention agency called

☐ Emergency medical services called

☐ Other response (explain): \_\_\_\_\_

## Recovery activities

*This section must be updated over time as recovery activities are taken and completed; and this form must be resubmitted to the chair of the local board, chair of the local board's safety committee, all one-stop center partners, and NDOL whenever this section is updated. This requirement applies until resolution of this security event is complete.*

Provide date incident notification was provided to chair of local board, chair of local board safety committee, all one-stop partners, and NDOL: \_\_\_\_\_

Provide date incident documentation was provided to chair of local board, chair of local board safety committee, all one-stop partners, and NDOL: \_\_\_\_\_

Describe all investigation activities, including filing of police reports and fire marshal reports and any other investigatory activities: \_\_\_\_\_

Describe all corrective action(s) for offending individual(s), including full or partial restrictions on facility usage on a permanent or temporary basis: \_\_\_\_\_

Provide date(s) that corrective action(s) for offending individual(s) was applied: \_\_\_\_\_

### 3. Performance Accountability

## State Policy

## Workforce Innovation and Opportunity Act (WIOA)

Nebraska Department of Labor (NDOL) Division of Reemployment Services 550 South 16 <sup>th</sup> Street Lincoln, NE 68508 402.471.9000 <a href="mailto:ndol.wioa_policy@nebraska.gov">ndol.wioa_policy@nebraska.gov</a>	Policy category
	Performance Accountability
	Effective date
	June 17, 2022
	Supersedes
	Performance Accountability, Change 2 effective date May 28, 2020

### Performance Accountability, Change 3

## 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

The US Departments of Education and Labor have established performance accountability requirements to assess the effectiveness of the workforce development system's six core programs and 10 non-core programs (listed in Table 1) in achieving positive outcomes for individuals served by the programs.

Table 1. Programs participating in the WIOA Performance Accountability System<sup>1</sup>

Program type	Program name	Authorizing legislation
Core	Adult	WIOA Title I
Core	Dislocated worker	WIOA Title I
Core	Youth	WIOA Title I
Core	Adult Education and Family Literacy Act	WIOA Title II
Core	Wagner-Peyser Employment Service, including the Monitor Advocate System <sup>2</sup>	WIOA Title III
Core	Vocational Rehabilitation	WIOA Title IV

<sup>1</sup> TEGL 10-16 Change 1; TEGL 14-18

<sup>2</sup> The Monitor Advocate System is not a stand-alone program. Instead, the Monitor Advocate System protects the standards of services provided to migrant and seasonal farmworkers under the Title III Wagner-Peyser [TEGL 14-18].

Program type	Program name	Authorizing legislation
Non-core	Job Corps	WIOA Secs. 141 – 162
Non-core	Jobs for Veterans State Grants	38 USC Chapter 41
Non-core	H-1B Job Training (grants awarded July 1, 2016 and later)	29 USC § 3224a
Non-core	Indian and Native American	WIOA Sec. 166
Non-core	National Dislocated Worker Grants	WIOA Sec. 170
Non-core	National Farmworker Jobs Program	WIOA Sec. 167
Non-core	Reentry Employment Opportunities	WIOA Sec. 169
Non-core	Senior Community Service Employment Program	42 USC 3056 et seq.
Non-core	Trade Adjustment Assistance	19 USC 2271 et seq.
Non-core	YouthBuild	WIOA Sec. 171

## ACTION

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This policy supersedes and cancels the State's policy titled Performance Accountability, Change 1 (effective date January 13, 2020). Questions and comments on this policy may be submitted in writing to the WIOA policy mailbox at [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov).

## CHANGES

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[Section VI\(c\)\(1\)](#) has been revised to clarify that performance failure is based on failure to meet an adjusted level of performance during two consecutive program years on an:

- individual local-area single indicator score;
- overall local-area single program score; or
- overall local-area single indicator score.

## POLICY

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This policy establishes performance accountability requirements applicable to:

- Title I adult, dislocated worker, and youth programs;
- NDOL-administered programs:
  - Title III Wagner-Peyser Employment Service (Wagner-Peyser), including the Monitor Advocate System;
  - Jobs for Veterans State Grant program (JVSG);
  - Trade Adjustment Assistance program (TAA); and
- National Dislocated Worker Grant programs (DWG).

This policy has six sections and two appendices.

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## **Section I. Primary indicators of performance**

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The US Department of Labor (USDOL) measures performance of USDOL-funded programs using six primary indicators of performance.<sup>3</sup> This policy discusses how the performance indicators apply to:

- local adult, dislocated worker, and youth programs;
- Wagner-Peyser, including the Monitor Advocate System;
- JVSG;
- TAA; and
- DWG.

The six primary indicators of performance are described below in subsections (a) through (f).

### **(a) Employment rate, second quarter after exit**

For the programs listed below, this indicator measures program performance based on the percentage of participants who are in unsubsidized employment during the second quarter after exit.<sup>4</sup>

- local adult and dislocated worker programs;
- Wagner-Peyser;
- JVSG;
- TAA; and
- DWG.

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<sup>3</sup> WIOA Sec. 116(b)(2)(A)(i) – (ii); 20 CFR § 677.155(a)(1); TEGL 10-16 Change 1; TEGL 14-18

<sup>4</sup> TEGL 10-16 Change 1; TEGL 14-18 Appendix I and Attachments 4 and 10

For local youth programs, this indicator measures program performance based on the percentage of participants in unsubsidized employment *or* education or training activities during the second quarter after exit.<sup>5</sup>

#### (1) Monitor Advocate System<sup>6</sup>

For the Monitor Advocate System, USDOL monitors the equitable provision of employment services for migrant and seasonal farmworkers (MSFWs) by comparing outcomes on this indicator for MSFWs in Wagner-Peyser to outcomes for non-MSFWs in Wagner-Peyser. This is achieved by using outcomes on this indicator for non-MSFWs as a:

- proxy to calculate the minimum service level indicator for MSFWs placed in unsubsidized employment; and
- data point necessary for calculating the proxy for the minimum service level indicator for MSFWs placed long-term in unsubsidized non-agriculture employment for the fourth-quarter employment rate indicator.

#### (b) Employment rate, fourth quarter after exit

For the programs listed below, this indicator measures program performance based on the percentage of participants who are in unsubsidized employment during the fourth quarter after exit.<sup>7</sup>

- local adult and dislocated worker programs;
- Wagner-Peyser;
- JVSG;
- TAA; and
- DWG.

For local youth programs, this indicator measures program performance based on the percentage of participants in unsubsidized employment or education or training activities during the fourth quarter after exit.<sup>8</sup>

#### (1) Monitor Advocate System<sup>9</sup>

For the Monitor Advocate System, USDOL monitors the equitable provision of employment services for MSFWs by comparing outcomes on this indicator for MSFWs in Wagner-Peyser to outcomes for non-MSFWs in Wagner-Peyser. This is achieved by using outcomes on this indicator for non-MSFWs as a proxy to calculate the minimum service level indicator for MSFWs placed long-term in unsubsidized non-agriculture employment.

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<sup>5</sup> TEGL 10-16 Change 1; TEGL 14-18 Appendix I

<sup>6</sup> TEGL 14-18 Attachment 5

<sup>7</sup> TEGL 10-16 Change 1; TEGL 14-18 Appendix I and Attachments 4 and 10

<sup>8</sup> TEGL 10-16 Change 1; TEGL 14-18 Appendix I

<sup>9</sup> TEGL 14-18 Attachment 5

### (c) Median earnings rate, second quarter after exit

For the programs listed below, this indicator measures program performance based on the median earnings of participants who are in unsubsidized employment during the second quarter after exit:<sup>10</sup>

- local adult, dislocated worker, and youth programs;
- Wagner-Peyser;
- JVSG;
- TAA; and
- DWG.

### (1) Monitor Advocate System<sup>11</sup>

For the Monitor Advocate System, USDOL monitors the equitable provision of employment services for MSFWs by comparing outcomes on this indicator for MSFWs in Wagner-Peyser to outcomes for non-MSFWs in Wagner-Peyser. This is achieved by using outcomes on this indicator for non-MSFWs as a proxy to calculate the minimum service level indicator of median earnings for MSFWs placed in unsubsidized employment.

### (d) Credential attainment rate

For the programs listed below, this indicator measures program performance based on the percentage of participants enrolled in an education or training program who attain a recognized postsecondary credential or a secondary school diploma (or recognized equivalent) *during* program participation or within one year after exit:<sup>12</sup>

- local adult, dislocated worker, and youth programs;
- TAA; and
- DWG.

Participants who attain secondary school diplomas (or recognized equivalents) are included in performance calculations for this indicator only if they are also employed or enrolled in an education or training program leading to a recognized postsecondary credential within one year after exit.

This performance indicator *does not* apply to JVSG or Wagner-Peyser, including the Monitor Advocate System.<sup>13</sup>

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<sup>10</sup> TEGL 10-16 Change 1; TEGL 14-18 Appendix I and Attachments 4 and 10. Measurement of the performance of local youth programs on this indicator will begin once USDOL has collected baseline data sufficient to establish expected levels of performance.

<sup>11</sup> TEGL 14-18 Attachment 5

<sup>12</sup> TEGL 10-16 Change 1; TEGL 14-18 Appendix I and Attachment 10

<sup>13</sup> TEGL 10-16 Change 1; TEGL 14-18 Appendix I and Attachment 4

## (1) Types of credentials

The credential attainment indicator measures attainment of two types of credentials: (1) recognized postsecondary credentials and (2) secondary school diplomas or recognized equivalents.

### (i) Recognized postsecondary credentials

A recognized postsecondary credential is a credential that is awarded in recognition of an individual's attainment of measurable technical or industry/occupational skills necessary to obtain employment or advance within an industry/occupation.<sup>14</sup> These technical or industry/occupational skills generally are based on standards developed or endorsed by employers or industry associations. A variety of public and private entities issue recognized postsecondary credentials, examples of which include:

- state educational agencies or state agencies responsible for administering vocational and technical education within a state;
- institutions of higher education that are qualified to participate in Federal student financial aid programs authorized under the Higher Education Act, including community colleges, proprietary schools, and all other institutions of higher education that are eligible to participate in Federal student financial aid programs;
- institutions of higher education that are formally controlled, or have been formally sanctioned or chartered, by the governing body of Indian tribes;
- professional, industry, or employer organizations;
- product manufacturers or developers using valid and reliable assessments of individuals' knowledge, skills and abilities;
- USDOL Office of Apprenticeship or recognized state apprenticeship agencies;
- public regulatory agencies that award credentials based on an individual's fulfillment of educational, work experience, or skill requirements that are legally necessary for individuals to use occupational or professional titles or to practice occupations or professions;
- programs approved by the Department of Veterans Affairs to offer education benefits to Veterans and other eligible persons; and
- Job Corps, which issues certificates for completing career-training programs based on industry skills standards and certification requirements.

It is important to note that not all credentials offered by these entities meet the definition of recognized postsecondary credential.<sup>15</sup>

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<sup>14</sup> TEGL 10-16 Change 1; TEGL 14-18 Appendix I

<sup>15</sup> TEGL 10-16 Change 1; TEGL 14-18 Attachment 1

## (ii) Secondary school diploma or recognized equivalent<sup>16</sup>

A secondary school diploma is one that is recognized by a state. A recognized equivalent is one that signifies the student completed the requirements for a high school education as recognized by a state. Examples of secondary school diplomas and equivalents recognized by a state include:

- secondary school diplomas obtained through credit-bearing secondary education programs sanctioned by state law, code, or regulation;
- certification of passing state-recognized competency-based assessments, such as GED tests; and
- certification of attainment of passing scores on state-recognized high school equivalency tests.

## (2) Credentials that count toward the credential attainment rate<sup>17</sup>

The following are acceptable types of credentials that count toward the credential attainment rate *for local adult, dislocated worker, and youth programs, TAA, and DWG*:

- secondary school diplomas or recognized equivalents;
- associate degrees;
- bachelor degrees;
- occupational licenses (examples: Federal Aviation Administration aviation mechanic licenses, asbestos inspector licenses);
- occupational certificates (examples: Registered Apprenticeship certificates of completion, Career and Technical Education educational certificates);
- occupational certifications (examples: National Institute for Automotive Service Excellence certifications, National Institute for Metalworking Skills, Inc. Machining Level I credentials); and
- other recognized certificates of industry/occupational skills completion sufficient to qualify for entry-level or advancement in employment (example: Microsoft Information Technology certificates).

## (i) TAA only

In addition to the credentials listed above, the following are acceptable credentials types that count toward the credential attainment rate *for TAA only*:

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<sup>16</sup> TEGL 10-16 Change 1; TEGL 14-18 Appendix I

<sup>17</sup> 20 CFR § 680.420(a); TEGL 10-16 Change 1; TEGL 14-18 Appendix I

- post-baccalaureate certificate: an award that requires completion of an organized program of study equivalent to 18 semester credit hours beyond the bachelor's degree but does not meet the requirements of a master's degree;
- post-master's certificate: an award that requires completion of an organized program of study equivalent to 24 semester credit hours beyond a master's degree but does not meet the requirements of academic degrees at the doctor's level;
- first-professional certificate (post-degree): an award that requires completion of an organized program of study designed for persons who have completed the first-professional degree (examples: refresher courses or additional units of study in a specialty or subspecialty);
- graduate degrees:
  - master's: an award that requires the successful completion of a program of study that is at least the full-time equivalent of one or more academic years of work beyond the bachelor's degree; and
  - doctor's: highest award a student can earn for graduate study (examples: Doctor of Education, Doctor of Juridical Science, Doctor of Public Health, Doctor of Philosophy);
- first-professional degree: an award that requires completion of a program that meets all of the following criteria:
  - completion of the academic requirements to begin practice in a profession;
  - at least two years of college work prior to entering the program;
  - a total of at least six academic years of college work to complete the degree program, including prior required college work plus the length of the professional program itself; and
  - awarded in one of the following fields: Chiropractic (DC or DCM), Dentistry (DDS or DMD), Law (LLB or JD), Medicine (MD), Optometry (OD), Osteopathic Medicine (DO), Pharmacy (PharmD), Podiatry (DPM, DP, or PodD), Theology (MDiv, MHL, BD, or Ordination), or Veterinary Medicine (DVM).

### (3) Credentials that do not count toward the credential attainment rate<sup>18</sup>

*For local adult, dislocated worker, and youth programs, TAA, and DWG, the following types of credentials do not count toward the credential attainment rate:*

- certificates awarded by local boards and work readiness certificates, because they do not document measurable technical or industry/occupational skills necessary to gain employment or advance within an occupation; and

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<sup>18</sup> TEGL 10-16 Change 1; TEGL 14-18 Appendix I.

- certificates awarded for general skills, such as safety and hygiene, even if broadly required to qualify for entry-level employment or advancement in employment (examples: OSHA and food handler certificates).

In addition to the credentials listed above, the following types of credentials *do not* count toward the credential attainment rate *for local adult, dislocated worker, and youth programs and DWG*:<sup>19</sup>

- post-baccalaureate certificates;
- graduate degrees (master's and doctor's);
- post-master's certificates;
- first-professional certificates (post-degree); and
- first-professional degrees.

#### (e) Measurable skill gains

This indicator measures program performance based on the percentage of program participants who, *during a program year*, are (1) in an education or training program that leads to a recognized postsecondary credential or employment and (2) achieving measurable skill gains, which are defined as documented academic, technical, occupational, or other forms of progress towards such a credential or employment. This applies to the programs listed below:<sup>20</sup>

- local adult, dislocated worker, and youth programs;
- TAA; and
- DWG.

It is important to note that the measurable skill gains indicator *is not* an exit-based measure. In addition to using this indicator to measure program performance *during the program year*, this indicator has a secondary and equally important function: *Documenting measurable skill gains is a useful case-management tool for tracking interim progress of participants who are enrolled in education or training services during the program year.*

The measurable skill gains performance indicator *does not* apply to JVSG or Wagner-Peyser, including the Monitor Advocate System.<sup>21</sup>

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<sup>19</sup> Definitions for these 5 credential types are provided above in [Section I\(d\)\(2\)\(i\)](#).

<sup>20</sup> TEGL 10-16 Change 1; TEGL 14-18 Appendix I and Attachment 10. Measurement of performance on this indicator for local Title I programs and TAA will begin after USDOL has collected baseline data sufficient to establish expected levels of performance [TEGL 10-16 Change 1; TEGL 14-18 Appendix I].

<sup>21</sup> TEGL 10-16 Change 1 and TEGL 14-18 Appendix I and Attachment 4

### (1) Types of measurable skill gains<sup>22</sup>

Depending on the type of education or training program in which a participant is enrolled, documented progress is defined as one or more of the following:

1. documented achievement of at least one educational functioning level by a participant who is receiving instruction below the postsecondary education level;
2. documented attainment of a secondary school diploma or recognized equivalent;
3. secondary or postsecondary transcript or report card for a sufficient number of credit hours that shows a participant is meeting academic standards;
4. satisfactory (or better) progress report, from an employer or training provider who is providing training, towards established milestones, such as completion of OJT or completion of one year of an apprenticeship program or other similar milestones; or
5. successful passage of an exam that is required for a particular occupation or progress in attaining technical or occupational skills as evidenced by trade-related benchmarks, such as knowledge-based exams.

### (2) Measurable skill gains that count<sup>23</sup>

Skill gains that count for this indicator are those that meet the documentation requirements described below in subsections (i) through (v).

#### (i) Documented achievement of at least one educational functioning level of a participant who is receiving instruction below the postsecondary level

Achievement of educational-functioning gains can be documented in one of three ways:

1. comparing a participant's initial educational-functioning levels measured by pre-tests with the participant's educational functioning levels measured by post-tests;
2. adult basic education programs that lead to a recognized equivalent for a secondary school diploma or recognized equivalent and measure and report educational gains through the awarding of credits or Carnegie units; or
3. reporting an educational-functioning level gain for participants who exit a program below the postsecondary level<sup>24</sup> and then enroll in postsecondary education and training during the same program year.

#### (ii) Documented attainment of a secondary school diploma or recognized equivalent

Attainment of secondary school diplomas or recognized equivalents can be documented as a measurable skill gain if a participant obtains a:

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<sup>22</sup> Ibid.

<sup>23</sup> TEGL 10-16 Change 1 and TEGL 14-18 Appendix I

<sup>24</sup> *Program below the postsecondary level* refers to an adult basic education program [TEGL 10-16 Change 1; TEGL 14-18 Appendix I].

- secondary school diploma; or
- certification of passing state-recognized competency-based assessments, such as GED tests.

(iii) Secondary or postsecondary transcript or report card for a sufficient number of credit hours that shows a participant is meeting the state unit's academic standards

For secondary and postsecondary education, this gain may be documented based on transcripts or report cards showing that a participant is meeting academic standards for one semester.

#### *Full-time postsecondary education*

For participants enrolled in postsecondary education as full-time students, this gain must demonstrate participants are meeting academic standards by attaining 12 credit hours per one completed semester, or the equivalent for the applicable academic system in use by the postsecondary institution in which the participants are enrolled.

#### *Part-time postsecondary education*

For participants enrolled in postsecondary education as part-time students, this gain must demonstrate participants are meeting academic standards by attaining 12 credit hours over the course of two completed semesters during a 12-month period, or the equivalent for the applicable academic system in use by the postsecondary institution in which the participant is enrolled.

For example, if a participant completed six credit hours in one semester and six credit hours in another semester and both semesters occurred during the same program year, they would count as a skill gain during that program year. However, if a participant completed six credit hours in one semester and six credit hours in the next semester and those semesters crossed two program years, credit hours earned during the first semester would not count as a skill gain in the first program year but credit hours earned during the second semester would count as a skill gain in the second program year.

(iv) Satisfactory or better progress report toward established milestones, such as completion of OJT, completion of one year of an apprenticeship program, or similar milestones from an employer or training provider who is providing training

Documentation for this gain may vary based upon the nature of training services being provided but must be based on satisfactory or better progress reports from an employer or training provider. The report must verify substantive skill development achieved by the participant, such as a training report on milestones completed as the participant masters required job skills or completion of one year of an apprenticeship program. Increases in pay resulting from newly acquired skills or increased performance also may be used to document progress for this type of gain, based on pay stubs or similar wage records provided by the participant.

NOTE. In the description of this type of measurable skill gains, "completion of one year of an apprenticeship" is just one example of a timeframe that may be established for achieving a satisfactory or better progress report toward a specific milestone. In addition, the one-year timeframe should not be taken as a required timeframe or the only way participants in an apprenticeship may achieve a measurable skill gain.

- (v) Successful passage of an exam that is required for a particular occupation or progress in attaining technical or occupation skills as evidenced by trade-related benchmarks, such as knowledge-based exams

Documentation for this gain may include:

- passage of component exams in Registered Apprenticeship programs;
- employer-required knowledge-based exams;
- satisfactory attainment of an element of industry or occupational competency-based assessments; or
- other completion tests necessary to obtain credentials.

(f) Effectiveness in serving employers<sup>25</sup>

The US Departments of Education and Labor (the Departments) are piloting three approaches to measuring the effectiveness of the core programs<sup>26</sup> in serving employers.

1. Retention with the same employer. This approach addresses the programs' efforts to provide employers with skilled workers. Performance is measured based on the percentage of participants who exit the programs and are employed with the same employer during the second and fourth quarters after exit.
2. Repeat business customers. This approach addresses efforts to provide quality engagement and services to employers and sectors and establish productive relationships with employers and sectors over extended periods. Performance is measured based on the percentage of employers that use program services more than once during the last three reporting periods.
3. Employer penetration rate. This approach addresses efforts to provide quality engagement and services to all employers and sectors within a state and local economy. Performance is measured based on the percentage of employers using core program services out of all employers in the state.

Under this pilot program, the core programs in each state collectively choose two of the three approaches to measuring effectiveness. Nebraska's core programs selected approaches 1 and 2, retention with the same employer and repeat business customers. Performance on this indicator is measured only at the state level and expected levels of performance will be determined once the Departments have collected sufficient baseline data.

Starting in Program Year 2018 (or the point at which wage-matching data becomes available for this indicator) and throughout the duration of the pilot program, JVSG and DWG will begin tracking effectiveness in serving employers using approach 1.

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<sup>25</sup> TEGL 10-16 Change 1

<sup>26</sup> *Core programs* refers to the Title I youth, adult, and dislocated worker programs, Title I Adult and Family Literacy Act Program, Title III Wagner-Peyser Employment Service, and Title IV vocational rehabilitation programs.

## Section II. Categories of enrollment and exit

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There are two points to understand while reading the definitions for *reportable individual* and *participant*.<sup>27</sup>

1. All participants are reportable individuals but not all reportable individuals are participants.
2. An individual can be a:
  - a. participant in multiple programs;
  - b. reportable individual in multiple programs; or
  - c. participant in one program and only a reportable individual in another program.

### (a) Reportable individual<sup>28</sup>

A reportable individual is an individual who has taken action that demonstrates an intent to use local adult, dislocated worker, or youth, Wagner-Peyser, or DWG program services and who meets specific reporting criteria of the applicable program, including when the individual:

- provides identifying information;
- only uses the self-service system; or
- only receives information-only services or activities.

USDOL does not negotiate levels of performance or impose sanctions based on the outcomes of reportable individuals, because only participants are included in the performance indicators.<sup>29</sup> However, USDOL requires inclusion of certain information in states' quarterly performance reports and related WIOA performance reporting tools or program-specific performance reporting tools to track the number of reportable individuals served by the system.

The reportable individual category does not apply to JVSG or TAA.

### (b) Participant<sup>30</sup>

While the definition of participant is consistent across the core programs, there are slight differences to account for programmatic requirements. In general, for local adult, dislocated worker, and youth programs and Wagner-Peyser, a participant is a reportable individual who has received services other than self-service only or information-only services or activities after satisfying all applicable programmatic requirements for the provision of services. The following

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<sup>27</sup> TEGL 14-18

<sup>28</sup> 20 CFR § 677.150(b); TEGL 10-16, Change 1; TEGL 14-18 Attachment 6

<sup>29</sup> TEGL 10-16 Change 1; TEGL 14-18 Appendix I; ETA 9172 (OMB Control Number 1205-0521, expiration date: 06-30-2021)

<sup>30</sup> 20 CFR § 677.150(a)(3); TEGL 10-16 Change 1; TEGL 14-18

individuals are not participants of local adult, dislocated worker, and youth programs or Wagner-Peyser:

- those who only use the self-service system; and
- those who receive information-only services or activities, which provide readily available information that does not require an assessment of the individual's skills, education, or career objectives by a staff member.

For JVSG, TAA, and DWG in general, a participant is an individual who has received grant-funded services after satisfying all applicable programmatic requirements for the provision of program services, such as eligibility determination.

### (1) Local youth programs

For local youth programs, reportable individuals become participants when they have satisfied all of the following program requirements for the provision of services:<sup>31</sup>

- eligibility determination;
- an objective assessment;
- development of an individual service strategy; and
- received one or more of the 14 youth program elements.<sup>32</sup>

Refer to [Table A](#) in APPENDIX I for a list of the participant-level services that trigger a reportable individual's inclusion as a participant in local youth programs. It is important to note that ongoing provision of the services described in Table A results in ongoing inclusion of the individual as a youth program participant.

### (2) Local adult and dislocated worker programs

For local adult and dislocated worker programs, reportable individuals become participants when they receive any: <sup>33</sup>

- training service or individualized career service; or
- basic career service that is neither self-service only nor information-only.

Refer to [Table B](#) in APPENDIX I for a list of the participant-level services that trigger a reportable individual's inclusion as a participant in local adult and dislocated worker programs. It is important to note that ongoing provision of the services described in Table B results in ongoing inclusion of the individual as an adult or dislocated worker program participant.

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<sup>31</sup> TEGL 10-16 Change 1; TEGL 14-18

<sup>32</sup> Refer also to the state's current youth program policy for a list of the 14 youth program elements. The policy is accessible at <https://dol.nebraska.gov/EmploymentAndTraining/LCRWP/WIOA/Policies>.

<sup>33</sup> TEGL 10-16 Change 1; TEGL 14-18

### (3) Wagner-Peyser

For Wagner-Peyser, reportable individuals become participants when they receive any:<sup>34</sup>

- individualized career service; or
- basic career service that is neither self-service only nor or an information-only service or activity.

Refer to [Table B](#) in APPENDIX I for a list of the participant-level services that trigger a reportable individual's inclusion as a participant in Wagner-Peyser. It is important to note that ongoing provision of the services described in Table B results in ongoing inclusion of the individual as a Wagner-Peyser participant.

### (4) JVSG

JVSG defines a participant as an individual who has received a JVSG-funded service from a Disabled Veteran Outreach Program (DVOP) specialist, after satisfying all applicable programmatic requirements for the provision of services, such as an eligibility determination.<sup>35</sup>

### (5) TAA

TAA defines a participant as an individual who has received benefits or services funded by the TAA program, after satisfying all applicable programmatic requirements for the provision of services, such as an eligibility determination.<sup>36</sup>

### (6) DWG

DWG defines participant as a reportable individual who has:<sup>37</sup>

- received an employment or training service or disaster relief employment, funded in whole or in part with DWG funds authorized under WIOA Sec. 170(b) and described in 20 CFR § 687.180(a) for Employment Recovery DWGs or 20 CFR § 687.180(b) for Disaster Recovery DWGs; and
- satisfied all applicable programmatic requirements for the provision of services, including an eligibility determination.

Refer to [Table C](#) in APPENDIX I for a list of the participant-level services that trigger a reportable individual's inclusion as a participant in DWG. It is important to note that ongoing provision of the services described in Table C results in ongoing inclusion of the individual as a DWG participant.

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<sup>34</sup> Ibid.

<sup>35</sup> TEGL 14-18 Attachment 4

<sup>36</sup> TEGL 14-18 Attachment 10

<sup>37</sup> TEGL 14-18 Attachment 6

### (c) Period of participation<sup>38</sup>

For all performance indicators except measurable skill gains, a period of participation begins when an individual becomes a participant and ends on the participant's date of exit from the program.

For all performance indicators except measurable skill gains, states must count each participant's exit during the same program year as a separate period of participation for purposes of calculating levels of performance. In other words, a new period of participation is counted each time a participant enters and exits the program, even if more than one exit occurs during the same program year.

For the measurable skill gains indicator, a new period of participation is counted each time a participant enrolls, even if more than one enrollment occurs within the same program year. It is not necessary to wait until the participant exits the program to count a measurable skill gain because the measurable skill gains indicator is not an exit-based indicator. A measurable skill gain may be counted as soon as it is earned at any point during the program year in which it was earned.

### (d) Co-enrollment

Co-enrolling participants in partner programs maximizes use of program funding, as well as the number of individuals served by Nebraska's one-stop delivery system. Co-enrolling participants also ensures participants have access to and receive the full spectrum of services available through the one-stop delivery system, including follow-up services. Subsections (1) and (2) below outline state- and Federal-level co-enrollment requirements.

#### (1) State-level co-enrollment requirements

NDOL requires that co-enrollment of participants occur whenever eligibility permits. This co-enrollment requirement applies to:

- local adult, dislocated worker, and youth programs;
- Wagner-Peyser;
- JVSG;
- TAA; and
- DWG, whether administered at state or local levels.

All DWG and TAA participants must be, at a minimum, co-enrolled in a local dislocated worker program.

#### (2) Federal-level co-enrollment requirements

In addition to NDOL's co-enrollment requirements, there are Federal co-enrollment requirements.

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<sup>38</sup> TEGL 10-16 Change 1; TEGL 14-18

- Local youth programs must co-enroll any in-school youth (ISY) in an adult or dislocated worker program in order for the ISY to use an Individual Training Account for occupational skills training provided by an Eligible Training Provider.<sup>39</sup>
- Individuals participating in Nebraska's RESEA program (e.g., NEres) must be co-enrolled in Wagner-Peyser.<sup>40</sup>
- Homeless Veterans Reintegration Programs (HVRP) must co-enroll all HVRP participants in Wagner-Peyser, JVSG, or a local adult, dislocated worker, or youth program.<sup>41</sup>

It should be noted that the Monitor Advocate System does not have a co-enrollment requirement, because the Monitor Advocate System is a system that uses performance data within Wagner-Peyser and does not operate as a separate program.<sup>42</sup>

### (3) Partner programs

For the programs listed above in subsection (1), partner programs in which participants may be co-enrolled include, but are not limited to:

- local adult, dislocated worker, and youth programs;
- Adult Education and Family Literacy Act program;
- Wagner-Peyser;
- vocational rehabilitation programs provided by the:
  - Nebraska Commission for the Blind and Visually Impaired; and
  - Nebraska Vocational Rehabilitation Program;
- DWG;
- Indian and Native American (INA) employment and training programs;
- Job Corps;
- JVSG;
- National Farmworker Jobs Program provided by Proteus;
- Senior Community Service Employment Program;
- TAA;

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<sup>39</sup> TEGL 21-16

<sup>40</sup> UIPLs 8-18 and 7-19

<sup>41</sup> TEGLs 4-16 and 14-18

<sup>42</sup> TEGL 14-18

- Unemployment Insurance; and
- employment and training programs provided by:
  - Supplemental Nutrition Assistance Program (SNAP); and
  - Temporary Assistance for Needy Families program (TANF);
- YouthBuild.

#### (e) Exit

As described below, exit from a program generally occurs when an individual has not received services for a specified period and has no additional services scheduled.<sup>43</sup> Exit requirements for *reportable individuals* and *participants* differ.

##### (1) Reportable individuals and exit<sup>44</sup>

Reportable individuals do not *exit*, as defined in 20 CFR § 677.150(c), because reportable individuals are never considered participants. However, a new period of self-service activity occurs when more than 90 consecutive calendar days have elapsed since the last self-service or information-only service or activity. This is necessary to prevent reportable individuals who have stopped receiving services from remaining in the system indefinitely. Therefore, for tracking purposes, the date of exit for a reportable individual is determined when all of the following criteria are met.

1. The individual does not become a participant.
2. The individual is served under a local adult, dislocated worker, or youth program or Wagner-Peyser through receipt of services that do not result in the individual becoming a participant.
3. 90 days have elapsed since the date the individual was identified as a reportable individual and the individual has not received additional self-service or information-only services or activities during the 90-day period.

The date of exit for reportable individuals is applied retroactively based on the last date of service.

##### (2) Participants and program exit<sup>45</sup>

For participants in adult, dislocated worker, and youth programs, Wagner-Peyser, JVSG, TAA, and DWG, the date of *program* exit is the last date of service. The date of *program* exit cannot be determined until 90 days have elapsed since the participant last received *program* services *and* there are no plans to provide the participant with future services. At this point, the date of *program* exit is applied retroactively based on the last date of service.

There are three additional factors to consider in relation to exit:

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<sup>43</sup> 20 CFR § 677.150(c); TEGL 10-16 Change 1

<sup>44</sup> TEGL 10-16 Change 1

<sup>45</sup> TEGL 10-16 Change 1; TEGL 14-18 Attachments 4 and 10

- supportive services;
- follow-up services; and
- common exit.

These factors are described below in subsections (3) through (8).

### (3) Supportive services and youth participant exit

Supportive services do not delay exit from local youth programs. Under youth programs, supportive services may be provided as a follow-up service<sup>46</sup> and may take place after exit without delaying the exit date.

### (4) Supportive services and adult, dislocated worker, and DWG participant exit

Under adult, dislocated worker, and DWG programs, supportive services may be provide only when participants are participating in career or training services and unable to obtain supportive services through other programs that provide supportive services. In other words, individuals who have exited adult, dislocated worker, and DWG programs are not eligible for supportive services; so the provision of supportive services does not delay exit from these programs.

### (5) Supportive services and Wagner-Peyser, JVSG, and TAA participant exit

Supportive services, as defined under 20 CFR Part 680 Subpart G and 20 CFR § 681.570, are not provided under Wagner-Peyser, JVSG, and TAA programs and do not trigger a change in the exit date or delay exit when supportive services are provided through adult, dislocated worker, youth, and DWG programs.

### (6) Follow-up services and adult, dislocated worker, youth, and DWG participant exit

Follow-up services provided through adult, dislocated worker, youth, and DWG programs do not trigger a change in the exit date or delay exit.

### (7) Follow-up services and Wagner-Peyser, JVSB, and TAA program participant exit

Follow-up services are not provided by Wagner-Peyser, JVSG, and TAA programs and do not trigger a change in the exit date or delay exit when provided through adult, dislocated worker, youth, and DWG programs.

### (8) Common exit<sup>47</sup>

*Common exit* occurs when a participant enrolled in one or more partner programs has not received services from any program in which the individual is enrolled for at least 90 days and no future services are planned. A participant is exited from all co-enrolled programs only when all exit criteria are met for all co-enrolled programs. NDOL implemented a common-exit requirement that applies to all participants who are co-enrolled in:

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<sup>46</sup> Refer to the State's youth program policy for information on youth follow-up services. The policy is accessible at <https://dol.nebraska.gov/EmploymentAndTraining/LCRWP/WIOA/Policies>.

<sup>47</sup> 20 CFR § 677.150(c)(3)(i); TEGL 10-16 Change 1; TEGL 14-18

- local adult, dislocated worker, and youth programs;
- Wagner-Peyser;
- JVSG;
- TAA; and
- DWG.

This common exit requirement does not apply to participants who are co-enrolled in other partner programs.

(f) **Exclusion from participation**

A participant may be excluded from performance calculations under limited circumstances.<sup>48</sup> Table 2 describes those circumstances in detail. Program staff is responsible for determining when one or more of those circumstances have occurred and must provide source documentation that supports a request to exclude a participant from performance. A participant cannot be excluded from participation after program exit. (Refer to [Section II\(e\)\(2\)](#) for information on program exit.)

Table 2. Circumstances permitting exclusion from participation

Circumstance	Explanation	Applicable programs
Institutionalization	While receiving services as a participant, the individual must exit the program because the individual is incarcerated in a correctional institution or a resident of an institution or facility providing 24-hour support, such as a hospital or treatment center.	<ul style="list-style-type: none"> <li>▪ local adult, dislocated worker, and youth programs</li> <li>▪ Wagner-Peyser</li> <li>▪ JVSG</li> <li>▪ TAA</li> <li>▪ DWG</li> </ul>
Health/medical	The participant must exit the program because of medical treatment and that treatment is expected to last longer than 90 days and precludes entry into unsubsidized employment or continued participation in the program.	<ul style="list-style-type: none"> <li>▪ local adult, dislocated worker, and youth programs</li> <li>▪ Wagner-Peyser</li> <li>▪ JVSG</li> <li>▪ TAA</li> <li>▪ DWG</li> </ul>
Death	The participant is deceased.	<ul style="list-style-type: none"> <li>▪ local adult, dislocated worker, and youth programs</li> <li>▪ Wagner-Peyser</li> <li>▪ JVSG</li> <li>▪ TAA</li> <li>▪ DWG</li> </ul>
Reserve forces called to active duty	The participant must exit the program because the participant is a member of the National Guard or other reserve military unit of the Armed Forces <u>and</u> is called to <i>active duty</i> * for at least 90 days.	<ul style="list-style-type: none"> <li>▪ local adult, dislocated worker, and youth programs</li> <li>▪ Wagner-Peyser</li> <li>▪ JVSG</li> <li>▪ TAA</li> <li>▪ DWG</li> </ul>

<sup>48</sup> TEGL 10-16 Change 1; TEGL 14-18

Circumstance	Explanation	Applicable programs
Foster care	The participant is in the foster care system, as defined in 45 CFR 1355.20(a), and must exit the program because the participant has moved out of the local workforce development area.	<ul style="list-style-type: none"> <li>local youth programs</li> </ul>

\* *Active duty*<sup>49</sup> 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.

### Section III. Incumbent worker training and performance accountability<sup>50</sup>

Individuals receiving incumbent worker training are not considered *participants* for the purpose of inclusion in performance indicator calculations because of the unique eligibility requirements for incumbent worker training. Unlike other types of training, incumbent worker eligibility is determined at the employer level by the local board (i.e., whether the employer is eligible to have its employees receive incumbent worker training).<sup>51</sup> There is no separate determination of the eligibility of any particular employee to receive incumbent worker training. Therefore, an incumbent worker does not have to meet eligibility requirements for services for local adult, dislocated worker, or youth programs. However, if the incumbent worker meets eligibility requirements, the individual may be (a) enrolled as a participant and receive services from a local adult, dislocated worker, or youth program or (b) a participant in a separate WIOA program. In both cases, those individuals' participation would be reported under the appropriate indicators of performance for the local adult, dislocated worker, or youth program in which they are enrolled.

Even though individuals receiving incumbent worker training are not participants for the purpose of performance indicator calculations, states and local areas are still required to report certain participant and performance data on all individuals who receive only incumbent worker training. The required elements for reporting on these individuals are limited to basic information and the elements needed to calculate incumbent worker training performance indicators for:

- employment in the second and fourth quarters after exit;
- median earnings in the second quarter after exit;
- credential attainment; and
- measurable skill gains.

For purposes of calculating these metrics, the exit date for an individual who has received only incumbent worker training will be the last date of training, as defined in the training contract with the employer.

<sup>49</sup> 10 USC § 101(d)(1)

<sup>50</sup> TEGL 10-16 Change 1

<sup>51</sup> WIOA Sec. 134(d)(4)

NDOL and local boards may require reporting on other elements in order to collect additional information on incumbent workers, which should also be reported by NDOL if collected. All recipients of incumbent worker training, including incumbent worker training funded with statewide Rapid Response funds, must be reported in the USDOL-only PIRL (ETA Form 9172), regardless of whether the individuals become a participant in one or more WIOA programs. USDOL encourages the collection of incumbent worker Social Security Numbers (SSNs), as part of the training contract with the employer, so that wage records will be available for these individuals. If SSNs are not available, the local board may utilize supplemental wage information to verify the wages reported.

## **Section IV. Administrative requirements of performance accountability**

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### **(a) Reporting**

#### **(1) Adult, dislocated worker, and youth programs and Wagner-Peyser**

##### **(i) Quarterly statewide and local performance reports**

NDOL must submit quarterly statewide and local performance reports (ETA Form 9173) for local adult, dislocated worker, and youth programs and Wagner-Peyser within 45 days of the end of each quarter.<sup>52</sup> The report covers program performance for the previous full quarter.

##### **(ii) Annual statewide and local performance report**

In addition to quarterly reports, NDOL must submit an annual statewide and local performance report (ETA Form 9169) for local adult, dislocated worker, and youth programs and Wagner-Peyser by October 1, or the first business day thereafter should that date fall on a weekend.<sup>53</sup> The report covers performance data from the four full previous quarters.<sup>54</sup> Failure to submit the report by the due date will result in a five percent reduction of the Governor's reserve authorized under WIOA Sec. 128.<sup>55</sup>

##### **(iii) Annual statewide and local performance report narrative**

NDOL must submit an annual statewide performance report narrative for local adult, dislocated worker, and youth programs and Wagner-Peyser by December 1, or the first business day thereafter should that date fall on a weekend.<sup>56</sup> The narrative complements the annual statewide performance report described above. The narrative must be no more than 25 pages, excluding appendices. States have flexibility regarding the contents of the narrative, as long as they address the requested items and stay within the 25-page limit.

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<sup>52</sup> US Department of Labor, Employment and Training Administration, "Reporting Timeline," <https://www.dol.gov/agencies/eta/performance/reporting/timelines> [accessed May 21, 2020]

<sup>53</sup> TEGL 3-17

<sup>54</sup> WIOA Sec. 116(d)(2); TEGL 3-17

<sup>55</sup> TEGL 3-17

<sup>56</sup> TEGL 5-18

The requested items for the annual statewide performance report narrative include information on:<sup>57</sup>

- waivers that the state has had in place for at least one program year;
- approaches the state has chosen for the effectiveness in serving employers performance indicator pilot;
- completed, current, or planned evaluations and related research projects; state efforts to provide data, survey responses, and timely site visits for Federal evaluations; and any continuous improvement strategies utilizing results from studies and evidence-based practices; and
- the state's approach to customer satisfaction.

In the report, states should also consider providing information on:

- progress made in achieving the state's strategic vision and goals, as described in the state's Combined State Plan;
- progress made in implementing sector strategies and career pathways;
- the state's performance accountability system;
- activities provided by state funds;
- DWG awarded to or within the state;
- technical assistance needs of the state workforce system;
- promising practices, lessons learned, and success stories that focus on serving employers, communities, and individuals with barriers to employment;
- challenges the state workforce system faces; and
- strategies and policies relating to pay-for-performance contracting.

NDOL must also submit the annual statewide performance report narrative to the Governor, Nebraska Legislature, and Nebraska Workforce Development Board by November 30.<sup>58</sup>

#### (iv) Annual ETP performance report

NDOL must submit an annual Eligible Training Provider (ETP) performance report (ETA Form 9171) by October 1, or the first business day thereafter should that date fall on a weekend.<sup>59</sup> The

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<sup>57</sup> Refer to TEGL 5-18 for a detailed description of requested and suggested content for narratives.

<sup>58</sup> Neb. Rev. Stat. § 48-3304

<sup>59</sup> WIOA Sec. 116(d)(4) and (d)(6)(B); 20 CFR 677.260(a)(5); TEGL 3-18.

report must include the following information regarding each program on the Eligible Training Provider List:<sup>60</sup>

- total number of local adult, dislocated worker, and youth program participants who *received* training from an ETP, disaggregated by the type of entity that provided the training, during the most recent full program year and the three preceding program years;
- total number of local adult, dislocated worker, and youth program participants who *exited* from training from an ETP, disaggregated by the type of entity that provided the training, during the most recent full program year and the three preceding program years;
- average cost per participant for the local adult, dislocated worker, and youth program participants who *received* training from an ETP, disaggregated by the type of entity that provided the training, during the most recent full program year and the three preceding program years;
- total number of local adult, dislocated worker, and youth program participants who *received* training from an ETP, disaggregated by barriers to employment, race, ethnicity, sex, and age;
- total number of individuals *exiting* from the program of study (i.e., all students, not just local adult, dislocated worker, and youth program participants);<sup>61</sup> and
- levels of performance achieved for all individuals *engaging* in the program of study (i.e., all students, not just local adult, dislocated worker, and youth program participants), specifically:<sup>62</sup>
  - percentage who are in unsubsidized employment during the second and fourth quarters after exit from the program of study;
  - median earnings of individuals who are in unsubsidized employment during the second quarter after exit from the program of study; and
  - percentage who obtain a recognized postsecondary credential, or a secondary school diploma (or recognized equivalent), during participation in or within one year after exit from the program of study.

In addition, NDOL is required to make available and publish the annual ETP performance reports for Nebraska's ETPs who provide training services pursuant to WIOA Sec. 122 of WIOA.<sup>63</sup>

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<sup>60</sup> 20 CFR §§ 677.160(c) and 677.230(a); TEGL 3-18. The PY 2018 report, due October 1, 2019, will require only data collected in PY 2018 and each subsequent program year will add another year of data to the report until the requirement for data for the most recent program year and the previous three program years is met [TEGL 3-18]. Registered Apprenticeship programs are not required to submit ETP performance information. If a Registered Apprenticeship program voluntarily submits performance information to NDOL, the information must be included in the ETP performance report. [20 CFR § 677.230(b)]

<sup>61</sup> A state may be excluded from reporting on all-student data if the state has a waiver approved by USDOL.

<sup>62</sup> Ibid.

<sup>63</sup> 20 CFR § 677.230(a) and (c)

## (2) JVSG

JVSG is not required to submit an annual state report narrative. However, there are quarterly reporting requirements for JVSG. JVSG must submit a narrative report on a quarterly basis, the Manager's Report on Services to Veterans and Technical Performance Narrative (TPN).<sup>64</sup>

## (3) MSFW

NDOL must submit an annual narrative report for its Monitor Advocate System through the Labor Exchange Agricultural Reporting System (LEARS) on services provided to MSFWs.<sup>65</sup>

## (4) TAA

NDOL must submit quarterly performance reports (ETA Form 9173) for TAA programs within 45 days of the end of each quarter.<sup>66</sup> Each report covers program performance for the previous full quarter. Requirements relating to NDOL's the annual statewide performance report narrative, as described in [Section IV\(a\)\(1\)\(iii\)](#), do not apply to TAA.<sup>67</sup>

## (5) DWG

NDOL's annual statewide performance report narrative for local adult, dislocated worker, and youth programs and Wagner-Peyser must include information on DWGs awarded to Nebraska at state or local levels.<sup>68</sup>

### (b) Use of SSNs<sup>69</sup>

In general, SSNs are collected in order to report on primary indicators of performance:

- employment status in the second and fourth quarters after exit;
- median earnings in the second quarter after exit; and
- post-exit employment status for participants who attain secondary school diplomas or recognized equivalents.

SSNs are also collected for reporting on the effectiveness in serving employers indicator regarding Approach 1, retention with the same employer, which is described in [Section I\(f\)](#). Where a wage match is available, matching a participant's SSN against quarterly wage record information is the most efficient method for determining employment status and earnings for a program participant.

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<sup>64</sup> TEGL 14-18 Attachment 4; VPL 1-15

<sup>65</sup> 20 CFR § 653.108(s)

<sup>66</sup> US Department of Labor, Employment and Training Administration, "Reporting Timeline," <https://www.dol.gov/agencies/eta/performance/reporting/timelines> [accessed May 21, 2020]

<sup>67</sup> TEGL 14-18 Attachment 10

<sup>68</sup> TEGL 5-18; TEGL 14-18 Attachment 6

<sup>69</sup> TEGL 14-18

NOTE. Program services must not be withheld if an individual is unwilling or unable to disclose an SSN.<sup>70</sup> More specifically, program eligibility is not contingent on the provision of an SSN for any of the core programs.<sup>71</sup>

### (c) Supplemental wage data<sup>72</sup>

While the most efficient method for determining employment status and earnings for program participants is to obtain quarterly wage records for participants, wage records may not be available in all circumstances. Supplemental wage information may be used for the employment-related performance indicators only when wage records are not available or may not apply (e.g., for participants who are self-employed or are unwilling or unable to provide a social security number). In such circumstances, the applicable program must gather supplemental wage information to determine employment and earnings status for performance reporting purposes. In addition, supplemental wage information must be well documented for monitoring and data validation purposes and is subject to records retention policies.<sup>73</sup> When it is determined that supplemental wage information is needed, acceptable forms of supplemental wage information, include, but are not limited to:<sup>74</sup>

- employment records from Federal and state sources, such as:
  - state departments of revenue or taxation; or
  - Railroad Retirement System;
- tax documents, payroll records, and employer records such as:
  - copies of quarterly tax payment forms to the internal revenue service, such as a form 941 (employer's quarterly tax return);
  - copies of pay stubs (minimum of two pay stubs required); or
  - signed letter or other information from employer on company letterhead attesting to an individual's employment status and earnings;
- other supplemental wage records:
  - income earned from commission in sales or other similar positions;
  - automated database systems or data matching with other partners with which data sharing agreements exist;

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<sup>70</sup> Sec. 7(a)(1) of the Privacy Act of 1974 [5 USC 552a note]

<sup>71</sup> *Core programs* refers to Title I programs (youth, adult, and dislocated worker), Title I programs (Adult Education and Family Literacy Act), Title III (Wagner-Peyser Employment Service), and Title IV programs (vocational rehabilitation).

<sup>72</sup> TEGL 10-16 Change 1; TEGL 14-18

<sup>73</sup> Refer to the State's policy on records management. The State's policies are accessible at <https://dol.nebraska.gov/EmploymentAndTraining/LCRWP/WIOA/Policies>.

<sup>74</sup> TEGL 26-16

- detailed case notes, verified by the employer and signed by the case manager, if appropriate to the program;
- administrative records of one-stop operating systems, such as current records of eligibility for programs with income-based eligibility, such as TANF and SNAP;
- self-employment worksheets signed and attested to by program participants; or
- follow-up survey from program participants (i.e., self-reported).

Program staff conducting supplemental wage information follow-up should be trained in the implementation of follow-up procedures, including:

- what to say to former participants or their employers to encourage their cooperation;
- ways to encourage voluntary and truthful disclosure;
- how to document the information received; and
- how to respond to questions related to the supplemental wage information follow-up process.<sup>75</sup>

Program staff should be thoroughly familiar with all follow-up procedures established for their respective program *before* beginning the follow-up process.

NDOL will provide technical assistance to programs regarding the collection of supplemental wage information.

## **Section V. Negotiating levels of performance for Title I and Title III programs**

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### **(a) Governing law, regulations, and guidance**

TEGL 11-19 defines the process for negotiating levels of performance at the *state level*, as required under WIOA Sec. 116(b)(3)(A)(iv). TEGL 11-19 also defines the process for negotiating levels of performance at the *local level*, as required under WIOA Sec. 116(c).

### **(b) Definitions relating to performance negotiations**

The following definitions apply to state-level and local-level performance negotiations for adult, dislocated worker, and youth programs and Wagner-Peyser.<sup>76</sup>

1. *Expected levels of performance* are the levels of performance for each primary indicator of performance described in [Section I](#). Prior to negotiations, the state proposes its

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<sup>75</sup> TEGL 14-18, Appendix VI

<sup>76</sup> TEGL 11-19. Administrators of JVSG, TAA, and DWG programs must refer to program-specific laws, regulations, and guidance regarding performance levels for their respective programs.

*expected levels of performance* in the initial submission of Nebraska's Combined State Plan and in the required two-year modification of the plan.<sup>77</sup>

2. *Negotiated levels of performance* are the levels of performance mutually agreed to by NDOL and USDOL for each program, based on the four factors described below in [Section V\(d\)\(2\)](#). The *negotiated levels of performance* must be incorporated into the Combined State Plan and two-year modification of the plan prior to approval of the plans.<sup>78</sup>
3. *Adjusted levels of performance* are levels of performance determined by adjusting the *negotiated levels of performance* at the end of a program year to reflect actual characteristics of participants served and actual economic conditions experienced using the *statistical adjustment model*.<sup>79</sup>
4. The *statistical adjustment model* is run before a program year and after the close of a program year to account for actual economic conditions and characteristics of participants served. The difference between projected levels of performance (estimated by USDOL) before and after a program year yield an adjustment factor. The adjustment factor is added to the *negotiated level of performance* to determine the *adjusted level of performance*.
5. *Actual levels of performance* are the outcomes reported by NDOL in the statewide performance report (ETA-9169) for each primary indicator of performance.<sup>80</sup> *Actual levels of performance* are compared to the *adjusted levels of performance* at the close of each program year to determine the state's performance success or failure.
6. *Adjustment factor* is the positive or negative difference that will be added to the *negotiated level of performance* to determine the *adjusted level of performance*. The *adjustment factor* is the difference between the estimated levels of performance predicted by the *statistical adjustment model* prior to the start of the program year and the levels of performance re-estimated by the *statistical adjustment model* after the close of the program year. This calculation yields a positive or negative difference, which will be used as the *adjustment factor* for the program year.
7. *Individual indicator score* is the proportion the *actual level of performance* represents of the *adjusted level of performance* for a single performance indicator for a single program. It is calculated by dividing the *actual level of performance* achieved by the *adjusted level of performance*.
8. *Overall state program score* is the average of the *individual indicator scores* for a single program across all performance indicators.
9. *Overall state indicator score* is the average of the *individual indicator scores* for a single performance indicator across all WIOA core programs.<sup>81</sup>

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<sup>77</sup> WIOA Sec. 116(b)(3)(A)(iii)

<sup>78</sup> WIOA Sec. 116(b)(3)(A)(iv); TEGL 11-19

<sup>79</sup> WIOA Sec. 116(b)(3)(A)(vii)

<sup>80</sup> WIOA Sec. 116(d)(2)

<sup>81</sup> WIOA core programs refers to Title I adult, youth, and dislocated worker programs; Title II adult education program; Title III Wagner-Peyser; and Title IV vocational rehabilitation programs.

10. *Statistical adjustment model* refers to an objective regression model developed by the US Departments of Education and Labor and used to *expected levels of performance* and *adjusted levels of performance*. Before the program year begins, the *statistical adjustment model* determines estimates that are used as a factor in the negotiations process. After the program year, the estimates derived from the *statistical adjustment model* are applied to the actual economic conditions and characteristics of participants served to determine the adjustment factor.<sup>82</sup> The statistical adjustment model also takes into account other factors that are determined to have an effect on predicting the state's outcomes.

- a. Characteristics of participants include, but are not limited to, indicators of poor work history, lack of work experience, lack of educational or occupational skills attainment, dislocation from high-wage and high-benefit employment, low levels of literacy or English proficiency, disability status, homelessness, ex-offender status, and dependency on public assistance.
- b. Economic conditions include differences in unemployment rates and job losses or gains in particular industries.

#### (c) Negotiations process overview

NDOL must reach agreement with USDOL on levels of performance for each primary indicator of performance for adult, dislocated worker, and youth programs and Wagner-Peyser.<sup>83</sup> The agreed-upon levels are the *negotiated levels of performance*. The *negotiated levels of performance* cover the first two program years of the Combined State Plan. NDOL must also reach agreement with USDOL on *negotiated levels of performance* for each of the primary indicators of performance for adult, dislocated worker, and youth programs and Wagner-Peyser for the third and fourth years of the plan. As mentioned above in [Section V\(b\)](#), *negotiated levels of performance* must be incorporated into the Combined State Plan and two-year modification of the plan prior to their approval.<sup>84</sup> It is important to note that the primary indicator for *effectiveness in serving employers* has not yet been defined. For this reason, the negotiations process described below does not include this indicator. NDOL will continue to report performance on this indicator, which is described above in [Section I\(f\)](#), until performance negotiation requirements for this indicator are defined by USDOL.

#### (d) State-level negotiations process for adult, dislocated worker, and youth programs and Wagner-Peyser

The state-level negotiations process for adult, dislocated worker, and youth programs and Wagner-Peyser occurs as described below in items 1 through 4.<sup>85</sup>

1. As stated above, NDOL must submit *expected levels of performance* in its Combined State Plan and in the two-year modification of that plan. *Expected levels of performance* for the first two years of a state plan must be submitted in the initial submission of the Combined State Plan and in the initial submission of the two-year modification of the plan for years three and four, as described in 20 CFR § 677.170(a). *Expected levels of performance* must be stated to the nearest tenth of a percent (XX.X %), or to the nearest whole dollar

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<sup>82</sup> WIOA section 116(b)(3)(A)(viii)

<sup>83</sup> WIOA Sec. 116(b)(3)(A)(iv)

<sup>84</sup> WIOA Sec. 116(b)(3)(A)(iv); TEGL 11-19

<sup>85</sup> TEGL 11-19. A negotiations/performance process flow chart is provided in Attachment III of TEGL 11-19.

for median earnings. In addition, the expected levels of performance proposed by NDOL must be published for public comment prior to plan submission in accordance with state laws and regulations.

2. After submission of the Combined State Plan and the two-year modification of the plan, NDOL must negotiate and reach agreement with USDOL on *negotiated levels of performance* for each primary indicator of performance for adult, dislocated worker, and youth programs and Wagner-Peyser.<sup>86</sup> The factors that will be taken into account during the negotiations process are described in detail below in [Section V\(d\)\(2\)](#).
3. USDOL will use the *statistical adjustment model* as a tool in the negotiations process to estimate the NDOL's levels of performance prior to the program year to help reach agreement on the *negotiated levels of performance*. The negotiation factors outlined in WIOA Sec. 116(b)(3)(A)(v) and the factors described below in [Section V\(d\)\(2\)](#) will be taken into account during this process.
4. Once *negotiated levels of performance* are agreed upon, NDOL must incorporate the negotiated levels of performance into the Combined State Plan and the two-year modification of that plan prior to approval of the plan and two-year modification.<sup>87</sup>

#### (1) Use of the statistical adjustment model

As required under WIOA Sec. 116(b)(3)(A)(viii), USDOL will use the *statistical adjustment model* to insure the impact of participant characteristics and economic conditions in the state are accounted for when determining *negotiated levels of performance*. The *statistical adjustment model* serves two major functions in performance negotiations and assessment of state performance.

1. First, the *statistical adjustment model* is one of four factors used to come agreement on *negotiated levels of performance*. It is used to account for economic conditions and characteristics of participants served in the state and local areas.<sup>88</sup>
2. Second, it is used at the close of a program year to:<sup>89</sup>
  - a. adjust the *negotiated levels of performance* for the actual economic conditions experienced and actual characteristics of participants served; and
  - b. develop *adjusted levels of performance*.

#### (2) Negotiation factors

While reaching agreement on the *negotiated levels of performance*, NDOL and USDOL must apply the factors listed below.<sup>90</sup>

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<sup>86</sup> WIOA Sec. 116(b)(3)(A)(iv); TEGL 11-19

<sup>87</sup> WIOA Sec. 116(b)(3)(A)(iv); TEGL 11-19

<sup>88</sup> WIOA Sec. 116(b)(3)(A)(v)(II); TEGL 11-19

<sup>89</sup> WIOA Sec. 116(b)(3)(A)(vii); TEGL 11-19

<sup>90</sup> WIOA Sec. 116(b)(3)(A)(v); TEGL 11-19. According to TEGL 11-19, WIOA Sec. 116(b)(3)(A)(v) does not specify more or less weight on any specific factor.

1. *Take into account how the levels involved compare with negotiated levels of performance established for other states.*<sup>91</sup> USDOL will provide the most recent performance data for all states, including previous actual, negotiated, and adjusted levels of performance and will use this information throughout the negotiations process.
2. *Ensure that the levels involved are adjusted using an objective statistical adjustment model provided by USDOL.*<sup>92</sup> Before the negotiations process begins, USDOL will provide the estimated outcomes produced by the *statistical adjustment model*, including the coefficients and state-specific values for each variable. This information will include levels of performance, as estimated by USDOL, to be used to inform the negotiations process. NDOL and USDOL must negotiate using the levels of performance estimated by the model for each primary indicator of performance. The *estimated levels of performance* may not be altered for the purposes of negotiations, including any changes in participant characteristics or economic conditions anticipated by NDOL that would result in changes to the levels of performance predicted by the statistical model. Any changes in participant characteristics or economic conditions will be reflected in the model by using the actual participant characteristics and economic conditions after the close of the program year, and they will not be factored into the negotiations process.
3. *Take into account the extent to which the levels involved promote continuous improvement in performance accountability measures by the state and ensure optimal return on the investment of Federal funds.*<sup>93</sup> USDOL considers continuous improvement to be a critical factor in the negotiations process and will consider continuous improvement factors that ensure optimal return on investment of Federal funds. USDOL acknowledges that there are many ways to define continuous improvement in relation to state or national program circumstances. For example, continuous improvement may reflect:
  - increase from the levels of performance previously attained;
  - increases in percentile rankings of levels of performance either nationally or among similar states;
  - change in service strategy and delivery, including more progressive or innovative approaches;
  - change in the intensity or comprehensiveness with which customers are served; or
  - maintenance of previous performance for the top performing states.

USDOL acknowledges that changes to service strategy or customers served do not always lead to increases in performance levels.

NOTE. States and local areas must adhere to the priority of service requirements of WIOA Title I programs, as established under WIOA.<sup>94</sup> Additionally, USDOL encourages all other WIOA title programs to serve more individuals with barriers to employment who may need

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<sup>91</sup> WIOA Sec. 116(b)(3)(A)(v)(I)

<sup>92</sup> WIOA Sec. 116(b)(3)(A)(v)(II); TEGL 11-19

<sup>93</sup> WIOA Sec. 116(b)(3)(A)(v)(III)

<sup>94</sup> WIOA Sec. 134(c)(3)(E) and TEGL 19-16 provide additional information regarding priority of service populations and service requirements.

more intensive services to achieve a positive outcome. The effect of serving more of these customers will be accounted for in the *adjusted levels of performance* calculated after the program year.

4. *Take into account the extent to which the levels involved will assist the state in meeting the performance goals established by the Secretary of Labor in accordance with the Government Performance and Results Act of 1993 (GPRA).*<sup>95</sup> WIOA Sec. 116(b)(3)(A)(vi) requires that USDOL establish long-term goals for *adjusted levels of performance* for adult, dislocated worker, and youth programs and Wagner-Peyser through GPRA expectations. GPRA is a mechanism through which Congress and the US Office of Management and Budget evaluate the success of Federal programs, including those operated by states and local areas. During negotiations, USDOL will consider levels of performance that will assist USDOL in meeting its established GPRA goals.

#### (e) Local-level performance negotiations for adult, dislocated worker, and youth programs<sup>96</sup>

In addition to negotiating state levels of performance with USDOL, NDOL must work with local workforce development areas to establish performance goals for local adult, dislocated worker, and youth programs. Specifically, the local board, the local area Chief Elected Official (CEO), and NDOL must:

- negotiate and reach agreement on local levels of performance based on the NDOL's negotiated levels of performance;
- use the four factors described in [Section V\(d\)\(2\)](#) for local-level negotiations; and
- reach agreement on local levels of performance no later than September 30 of each year during which state negotiations occur (i.e., biennially), based on NDOL's negotiated levels of performance.

In addition, NDOL must:

- use the USDOL *statistical adjustment model* framework and develop a model that satisfies NDOL's needs for local-level for biennial performance negotiations;
- notify the USDOL Employment and Training Administration Regional Office that local area negotiations are complete, no later than September 30 of each year during which state negotiations occur (i.e., biennially); and
- use the USDOL *statistical adjustment model* framework and develop a model that satisfies NDOL's needs at the local level for the year-end adjustment of local levels of performance, in order to reflect actual economic conditions experienced in the local area and the characteristics of the actual individuals served.

TEGL 11-19 states that negotiated and adjusted levels of performance, as well as the established policies for local performance assessment, should be made available to local boards and the

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<sup>95</sup> WIOA Sec. 116(b)(3)(A)(v)(IV)

<sup>96</sup> WIOA Sec. 116(b)(3)(A)(v)(IV); TEGL 11-19

USDOL Employment and Training Administration Regional Office prior to the start of the program year in which the policies will be applied.

Local-level performance negotiation processes established this policy begin with biennial negotiations for Program Years 2020 and 2021.

## **Section VI. Sanctions and corrective actions<sup>97</sup>**

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### **(a) Governing law, regulations, and guidance**

TEGL 11-19 explains the two instances in which a state may be sanctioned for performance failure or failure to report, as required under WIOA Sec. 116(f). WIOA Sec. 116, its implementing regulations (20 CFR Part 677 Subpart B), and the TEGL govern how USDOL will determine when it is necessary to sanction the state. TEGL 11-19 also explains the corrective actions that must be taken when a local area fails to meet adjusted levels of performance, as required under WIOA Sec. 116(g). WIOA Sec. 116, its implementing regulations (20 CFR Part 677 Subpart D), the TEGL, and this policy govern how NDOL will determine when it is necessary to take corrective actions against a local area.

### **(b) Sanctions against the state**

Two types of failure lead to sanctions:<sup>98</sup>

- failure to report; and
- failure to meet adjusted levels of performance.

A discussion of both failure types is provided below in subsections (1) and (2).

#### **(1) Sanctions for failure to report<sup>99</sup>**

USDOL implemented sanctions provisions for failure to report beginning with submission of the Program Year 2017 annual statewide performance report, which was due on October 1, 2018.<sup>100</sup> Sanctions will be applied when NDOL fails to submit an annual statewide performance report to USDOL, as required under WIOA Sec. 116(d).<sup>101</sup> Consistent with 20 CFR § 677.185(a), NDOL will be considered as failing to submit an annual statewide performance report if NDOL:

- does not submit the report by 11:59p local time<sup>102</sup> on October 1; or
- submits the report by the date required for timely submission (October 1) but the report is incomplete.

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<sup>97</sup> 20 CFR § 677.190

<sup>98</sup> WIOA Sec. 116(f); TEGL 11-19

<sup>99</sup> TEGL 11-19

<sup>100</sup> Requirements regarding submission of ETP performance reports began with the PY 2018 Annual Report, which was due on October 1, 2019.

<sup>101</sup> WIOA Sec. 116(f)(1)(B); TEGL 11-19

<sup>102</sup> Local time means the State Capital's time zone (TEGL 11-19).

In the event of failure to report on time or completely, the Governor's discretionary funds provided under WIOA Sec. 128(a) will be reduced by five percent of the maximum available allotment for the succeeding program year.<sup>103</sup> To clarify, this sanction is equal to five percent of the maximum allotment percentage that could be reserved by the Governor for the succeeding program year, rather than a five-percentage point reduction from the percentage that the Governor elects to reserve.<sup>104</sup> This sanction will be enforced for each year during which the state fails to report on time or completely.

(i) **Timeliness of reports**<sup>105</sup>

An annual statewide performance report is considered to be on time when NDOL submits the report by 11:59p local time on October 1.

(ii) **Completeness of reports**<sup>106</sup>

An annual statewide performance report is considered complete when NDOL:

- attests the report is complete and accurate to the best of its knowledge;
- submits the report (ETA-9169) for Title I adult, dislocated worker, and youth programs and Title III Wagner-Peyser;
- reports all elements of the report as data are available, according to the reporting period for each indicator;
- makes available a mechanism of electronic access to local area performance reports for Title I adult, dislocated worker, and youth programs;
- makes available a mechanism of electronic access to the annual Eligible Training Provider (ETP) performance report for Title I adult, dislocated worker, and youth programs; and
- submits at least one annual statewide performance report that includes *effectiveness in serving employers* performance results reflecting all six of the core programs.<sup>107</sup>

If an annual statewide performance report submitted by NDOL does not meet all of the above requirements by the reporting deadline, the report will be considered incomplete.

(iii) **Exceptional circumstances**<sup>108</sup>

Consistent with WIOA Sec. 116(f)(1)(B), sanctions will not be applied in cases where failure to report is due to exceptional circumstances outside NDOL's control, as determined by USDOL. USDOL defines exceptional circumstances in 20 CFR § 677.185(b). Exceptional circumstances may include, but are not limited to:

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<sup>103</sup> WIOA Sec. 116(f)(1)(B)

<sup>104</sup> 20 CFR § 677.195

<sup>105</sup> TEGL 11-19

<sup>106</sup> TEGL 11-19

<sup>107</sup> *Core programs* includes Title I adult, dislocated worker, and youth; Title II adult education, Title III Wagner-Peyser, and Title IV vocational rehabilitation programs.

<sup>108</sup> TEGL 11-19

- natural disasters;
- unexpected personnel transitions; and
- unexpected technology related issues.

When exceptional circumstances occur, NDOL may request an extension of the submission deadline, as described below in subsection (iv).

#### (iv) Extension requests<sup>109</sup>

In the event of exceptional circumstances, NDOL must notify the Secretary of Labor in writing of the potential impact on NDOL's ability to submit an annual statewide performance report. If the Secretary is not notified, NDOL will be considered as having failed to report.<sup>110</sup>

When exceptional circumstances occur *more than 30 calendar days* before the established deadline, NDOL must submit an extension request to the Secretary no later than 30 calendar days prior to the established submission deadline.<sup>111</sup> The annual reporting deadline is October 1 of each year; therefore, extension requests must be submitted no later than September 1, or the next business day if September 1 falls on a holiday or weekend.

When exceptional circumstances occur *within 30 calendar days* of the established deadline, NDOL must submit an extension request to the Secretary of Labor as soon as possible but no later than the established annual reporting deadline (October 1).<sup>112</sup>

Extension requests should include a detailed account identifying the unexpected events preventing timely reporting that is sufficient for USDOL to make a determination on the request.

- All extension requests must include the names of and contact information for each responsible state designee or designated point of contact who will ensure that the extension deadline will be met.
- The request must include sufficient detail regarding the unexpected circumstances that will lead to late or incomplete reporting that may warrant an extension.
- The request must include NDOL's proposed extension period, which must be fitting of the circumstances causing the delay. Proposed reporting extensions should not exceed 30 calendar days after the established annual reporting deadline (October 1) and should be appropriate to and commensurate with the cause of the requested extension.
- When exceptional circumstances occur *within 30 calendar days* of the established deadline, the request must also include sufficient explanation as to why notification of the delay could not be provided 30 calendar days prior to the established annual reporting deadline (October 1).

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<sup>109</sup> TEGL 11-19

<sup>110</sup> 20 CFR § 677.185(c)

<sup>111</sup> 20 CFR § 677.185(c)(1)

<sup>112</sup> 20 CFR § 677.185(c)(2)

- NDOL's request may include any other information it deems relevant to help explain the need for the extension.

The extension request will be reviewed by USDOL for completeness and thoroughness of the explanation of exceptional circumstances. USDOL may grant the extension request as submitted, grant the extension request with revisions, or reject the extension request.

## (2) Sanctions for failure to meet adjusted levels of performance

NDOL's failure to meet adjusted levels of performance occurs when:<sup>113</sup>

- any single *Individual Indicator Score* for any single adult, dislocated worker, or youth program or Wagner-Peyser falls below 50 percent of the adjusted level of performance;
- the *Overall State Program Score* falls below 90 percent for a single program; or
- the *Overall State Indicator Score* falls below 90 percent for a single primary indicator of performance.

If NDOL fails to meet adjusted levels of performance for the primary indicators of performance for any year, technical assistance will be provided by the Secretary of Labor, including assistance in the development of a performance improvement plan.<sup>114</sup> If the same performance failure occurs for two consecutive program years, USDOL will apply sanctions.

### (i) Determining state performance success or failure

USDOL determines NDOL's performance success or failure at the end of each program year. In order to make a determination of success or failure, the *negotiated levels of performance* for the program year are adjusted using the *statistical adjustment model*, which will factor in data on the actual economic conditions in the state and the actual characteristics of the populations served by the program during that year. This adjustment will be calculated as described above in the definitions of *adjustment factor* and *adjusted levels of performance*. This will determine the *adjusted levels of performance* for the program year against which NDOL's *actual levels of performance* will be evaluated through the calculation of the performance score. (Refer to TEGL 11-19 for detailed descriptions and examples of calculations.)

### (ii) Phasing in sanctions for performance failure

USDOL used its transition authority under WIOA Sec. 503(a) to implement a phased-in approach for determining performance success or failure for each indicator or program, due to data availability.<sup>115</sup> Table 3 summarizes the first program years each performance indicator will be evaluated for performance success or failure, excluding the *effectiveness in serving employers* performance indicator, which is currently being piloted and will be established under subsequent guidance.

Table 3. Implementation of performance determination by program and indicator

<sup>113</sup> 20 CFR § 677.190(d); TEGL 11-19

<sup>114</sup> 20 CFR § 677.190(b); TEGL 11-19

<sup>115</sup> 20 CFR § 677.190(c)

Program	Indicators of performance	First program year (PY) for which performance success/failure can be determined
Title I adult, dislocated worker, and youth	<ul style="list-style-type: none"> <li>• Employment 2<sup>nd</sup> quarter after exit</li> <li>• Median earnings 2<sup>nd</sup> quarter after exit</li> <li>• Measurable skill gains</li> </ul>	PY 2020
Title I adult, dislocated worker, and youth	<ul style="list-style-type: none"> <li>• Employment 4<sup>th</sup> quarter after exit</li> <li>• Credential attainment</li> </ul>	PY 2022
Title III Wagner-Peyser	<ul style="list-style-type: none"> <li>• Employment 2<sup>nd</sup> quarter after exit</li> <li>• Median earnings 2<sup>nd</sup> quarter after exit</li> </ul>	PY 2020
Title III Wagner-Peyser	<ul style="list-style-type: none"> <li>• Employment 4<sup>th</sup> quarter after exit</li> </ul>	PY 2022

### (c) Corrective action against local areas for failure to meet adjusted levels of performance<sup>116</sup>

NDOL must use local performance goals for Title I adult, dislocated worker, and youth programs to determine when corrective action must be taken against a local area for failure to meet adjusted levels of performance. In addition, NDOL is required to establish thresholds for local area failure to meet adjusted levels of performance before coming to agreement on local-area negotiated levels of performance.<sup>117</sup> NDOL's established thresholds are described below in subsection (1).

#### (1) Determining local area performance success or failure

NDOL has established the following thresholds for determining a local area's failure to meet adjusted levels of performance.<sup>118</sup>

- *Individual local-area single indicator score.* For any single adult, dislocated worker, or youth program, failure to meet an adjusted level of performance occurs when any *local-area single individual indicator score* falls below 50 percent of the local area's adjusted level of performance for that single indicator during the previous two consecutive program years.
- *Overall local-area single program score.* For any single adult, dislocated worker, or youth program, failure to meet overall adjusted levels of performance for the program occurs when the *overall local-area single program score* falls below 90 percent of the overall adjusted levels of performance for that single program during the previous two consecutive program years.
- *Overall local-area single indicator score.* For any single performance indicator across all local area adult, dislocated worker, and youth programs, failure to meet adjusted levels of performance for the indicator occurs when the *overall local-area single indicator score* falls below 90 percent of the adjusted levels of performance for that indicator during the previous two consecutive program years.

<sup>116</sup> 20 CFR § 677.220; TEGL 11-19

<sup>117</sup> TEGL 11-19

<sup>118</sup> 20 CFR § 677.190(d); TEGL 11-19

## (2) Technical assistance following initial failure to meet local area adjusted levels of performance<sup>119</sup>

NDOL must provide technical assistance when a local area fails to meet adjusted levels of performance, as described above in subsection (1). Technical assistance provided by NDOL may include:

- assistance in the development of a performance improvement plan;
- development of a modified local or regional plan; or
- other actions designed to assist the local area in improving performance.

Upon request to the Secretary of Labor, USDOL may also provide technical assistance.

## (3) Corrective actions following consecutive failures to meet local area adjusted levels of performance<sup>120</sup>

If a local area fails to meet adjusted levels of performance for the same *individual local-area single indicator* for the same Title I program for a *third* consecutive program year, NDOL must take corrective actions. If NDOL takes corrective actions, NDOL should advise its Federal Project Officer of this action. Corrective actions must include the development of a reorganization plan under which the Governor:

- requires the appointment and certification of a new local board, consistent with the criteria established under 20 CFR § 679.350;
- prohibits the use of eligible [service] providers and one-stop partners that have been identified as achieving poor levels of performance; or
- takes such other significant actions as the Governor determines appropriate.

## (4) Appeal<sup>121</sup>

The local board and CEO for a local area subject to a reorganization plan under WIOA Sec. 116(g)(2)(A) may appeal to the Governor, not later than 30 days after receiving notice of the reorganization plan and request that the reorganization plan be rescinded or revised. The Governor must make a final decision within 30 days after receipt of the appeal. The local board and CEO may appeal the final decision of the Governor to the Secretary of Labor (Secretary) no later than 30 days after receiving the decision from the Governor.

NOTE: The Governor's final decision on the appeal becomes effective at the time it is issued and remains in effect, unless the Secretary rescinds or revises the reorganization plan pursuant to WIOA Sec. 116(g)(2)(C).

Any appeal of the Governor's final decision must be:

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<sup>119</sup> TEGL 11-19

<sup>120</sup> TEGL 11-19

<sup>121</sup> 20 CFR § 677.225

- appealed jointly by the local board and CEO to the Secretary, as required under 20 CFR § 683.650;
- submitted by *certified mail, return receipt requested* to :
  - Secretary of Labor, US Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210, Attention: ASET; and
- simultaneously submitted to:
  - Governor of Nebraska, 1445 K Street, Lincoln, Nebraska, 68508; and
  - Commissioner of Labor, Nebraska Department of Labor, 550 South 16<sup>th</sup> Street, Lincoln, NE 68508.

Upon receipt of the appeal from the local board and CEO, the Secretary must make a final decision within 30 days. In making this determination, the Secretary may consider any comments submitted by the Governor in response to the appeal.

## DISCLAIMER

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

## APPENDIX I. Participation level services charts

Table A. Participation-level services chart for Title I youth programs<sup>122</sup>

Service type (WIOA Sec.129(c)(2))	Service triggers inclusion as a participant <sup>1</sup>	Category of Service <sup>2</sup>
Tutoring, study skills training, dropout prevention	Yes	Career Service
Alternative secondary school services	Yes	Career Service
Paid and unpaid work experience	Yes	Career Service
Occupational skills training	Yes	Training
Education offered concurrently with workforce preparation	Yes	Career Service
Leadership development	Yes	Career Service
Supportive Services	Yes	Career Service
Adult mentoring	Yes	Career Service
Follow-up services	No	Career Service
Comprehensive guidance and counseling	Yes	Career Service
Financial literacy education	Yes	Career Service
Entrepreneurial skills training	Yes	Career Service
Services that provide labor market information	Yes	Career Service
Postsecondary preparation and transition activities	Yes	Career Service

<sup>1</sup> All youth program services, except follow-up services, trigger participation following eligibility determination, objective assessment, and completion of the individual service strategy. Additionally, these services do not indicate whether an individual is a participant, but rather which services trigger an individual to become a participant. The ongoing provision of services results in ongoing inclusion as a participant.

<sup>2</sup> Please note that the categorization of career services and training services for the youth program differs from the adult and dislocated worker programs.

Table B. Participation-level services chart for Title I Adult and Dislocated Worker programs and Title III Wagner-Peyser Employment Service<sup>123</sup>

Service type (WIOA Sec. 134(c))	Service triggers inclusion as a participant <sup>1</sup>	Category of service
Eligibility Determination	No	Basic Career Service
Outreach, Intake, Orientation	No	Basic Career Service
Initial assessment of skill levels & supportive service needs	Yes	Basic Career Service
Job search assistance (Self-directed)	No	Basic Career Service
Job search assistance (Staff-assisted)	Yes	Basic Career Service
Placement assistance (includes "Referred to Employment") (Staff-assisted)	Yes	Basic Career Service
Career Counseling (includes "Staff-assisted career guidance")	Yes	Basic Career Service

<sup>122</sup> TEGL 14-18 Appendix III

<sup>123</sup> Ibid.

Service type (WIOA Sec. 134(c))	Service triggers inclusion as a participant <sup>1</sup>	Category of service
Providing info on in-demand sectors, occupations, or nontraditional employment	No	Basic Career Service
Provision of referrals and associated coordination of activities with other programs and services	No	Basic Career Service
Provision of workforce and labor market employment statistics information	No	Basic Career Service
Provision of info on job vacancies	No	Basic Career Service
Provision of info on job skills necessary to fill vacancies	No	Basic Career Service
Provision of info on local demand occupations, with earnings, skill requirements, and opportunities for advancement for those jobs	No	Basic Career Service
Provision of performance and program cost info for providers of education and training	No	Basic Career Service
Provision of info on local performance	No	Basic Career Service
Provision of info on availability of supportive services or assistance	No	Basic Career Service
Referral to supportive services	No	Basic Career Service
Provision of information and meaningful assistance filing for UI	Yes	Basic Career Service
Assistance establishing eligibility for financial aid	Yes	Basic Career Service
Comprehensive and specialized assessments	Yes	Individualized Career Service
Development of IEP	Yes	Individualized Career Service
Group Counseling	Yes	Individualized Career Service
Individual Counseling	Yes	Individualized Career Service
Career Planning	Yes	Individualized Career Service
Short-term prevocational services	Yes	Individualized Career Service
Internships and work experiences (including transitional jobs)	Yes	Individualized Career Service
Workforce preparation activities	Yes	Individualized Career Service
Financial literacy services	Yes	Individualized Career Service
Out-of-area job search assistance and relocation assistance	Yes	Individualized Career Service
English-language acquisition and integrated education and training programs	Yes	Individualized Career Service
Follow up services	NA (must be a participant first to receive)	Follow up Service
Training services under Sec. 134(c)(3)(D) with exception of Sec. 134(c)(3)(D)(iii) (incumbent worker training)	Yes	Training
Incumbent Worker Training	No <sup>2</sup>	Training

<sup>1</sup> This chart does not include all available services that may be provided, but rather those services specifically authorized under WIOA Sec. 134(c)(2). Additionally, these services do not indicate whether an individual is a participant, but rather which services trigger an individual to become a participant. The ongoing provision of services results in ongoing inclusion as a participant.

<sup>2</sup> Although Incumbent Worker Training is not a self-service or information-only service, individuals are not required to meet eligibility requirements for the Adult or Dislocated Worker programs to receive Incumbent Worker Training.

Table C. Participation-level services chart for DWG<sup>124</sup>

Service Type (WIOA Secs. 134(c) and 170(d))	Does this service trigger inclusion as a participant?	Category of service
Eligibility Determination	No	Basic Career Service
Outreach, Intake, Orientation	No	Basic Career Service
Initial assessment of skill level & other service needs	Yes	Basic Career Service
Job search assistance (Self-directed)	No	Basic Career Service
Job search assistance (Staff-assisted)	Yes	Basic Career Service
Placement assistance (includes "Referred to Employment") (Staff-assisted)	Yes	Basic Career Service
Career Counseling (includes "Staff-assisted career guidance")	Yes	Basic Career Service
Providing info on in-demand sectors, occupations, or nontraditional employment	No	Basic Career Service
Provision of referrals and associated coordination of activities with other programs and services	Yes	Basic Career Service
Provision of workforce and labor market employment statistics information	No	Basic Career Service
Provision of info on job vacancies	No	Basic Career Service
Provision of info on job skills necessary to fill vacancies	No	Basic Career Service
Provision of info on local demand occupations, with earnings, skill requirements, and opportunities for advancement for those jobs	No	Basic Career Service
Provision of performance and program cost info for providers of education and training	No	Basic Career Service
Provision of info on local performance	No	Basic Career Service
Provision of info on availability of supportive services or assistance	No	Basic Career Service
Referral to supportive services	Yes	Basic Career Service
Provision of information and meaningful assistance filing for UI	Yes	Basic Career Service
Assistance establishing eligibility for financial aid	Yes	Basic Career Service
Comprehensive and specialized assessments	Yes	Individualized Career Service
Development of IEP	Yes	Individualized Career Service
Group Counseling	Yes	Individualized Career Service
Individual Counseling	Yes	Individualized Career Service
Career Planning	Yes	Individualized Career Service
Short-term prevocational services	Yes	Individualized Career Service

<sup>124</sup> Note that the DWG Participation Level Services Chart aligns with WIOA Title I Dislocated Worker program definitions.

Service Type (WIOA Secs. 134(c) and 170(d))	Does this service trigger inclusion as a participant?	Category of service
Internships and work experiences (including transitional jobs)	Yes	Individualized Career Service
Workforce preparation activities	Yes	Individualized Career Service
Financial literacy services	Yes	Individualized Career Service
Out-of-area job search assistance and relocation assistance	Yes	Individualized Career Service
English-language acquisition and integrated education and training programs	Yes	Individualized Career Service
Training services under WIOA Sec. 134(c)(3)(D) with exception of section 134(c)(3)(D)(iii) (incumbent worker training)	Yes	Training
Received Disaster Relief Employment on projects as defined in WIOA Sec. 170(d)(1)(A) (Disaster Recovery DWG only)	Yes	Disaster Relief Employment
Safety orientation, safety training, equipment training (for Disaster Relief Employment under Disaster Recovery DWG only)	Yes	Disaster Relief Employment
Supportive Services authorized in WIOA Sec. 134(d)(2) and defined in 20 CFR 680.900	No	Supportive Services

## APPENDIX II. Statistical adjustment model explanatory variables<sup>125</sup>

Table A. Explanatory variables on participant characteristics

Variable description	Adult	Dislocated worker	Youth	Wagner-Peyser
Female	X	X	X	X
14<=Age<=15	NA	NA	X	NA
16<=Age<=17	NA	NA	X	NA
Age=18	NA	NA	X	NA
19<=Age<=20	NA	NA	X	NA
26<=Age<=35	X	X	NA	X
36<=Age<=45	X	X	NA	X
46<=Age<=55	X	X	NA	X
56<=Age<=65	X	X	NA	X
66<=Age	X	X	NA	X
Hispanic ethnicity	X	X	X	X
Race: Asian (not Hispanic)	X	X	X	X
Race: Black (not Hispanic)	X	X	X	X
Race: Hawaiian/Pacific Islander (not Hispanic)	X	X	X	X
Race: American Indian or Native Alaskan (not Hispanic)	X	X	X	X
Race: More than one (not Hispanic)	X	X	X	X
Highest grade completed: Less than High School graduate	X	X	X	X
Highest grade completed: High school equivalency	X	X	X	X
Highest grade completed: Some college	X	X	X	X
Highest grade completed: Certificate or Other Post-Secondary Degree	X	X	X	X
Highest grade completed: Associate degree	X	X	NA	X
Highest grade completed: Bachelor degree	X	X	NA	X
Employed at participation	X	X	X	NA
Individual with a disability	X	X	X	NA
Veteran	X	X	NA	NA
Had earnings in 2nd and 3rd preprogram quarters	X	X	NA	X
Had earnings in 3rd preprogram quarter	X	X	NA	X
Had earnings in 2nd preprogram quarter	X	X	NA	X
Received services financially assisted under the Wagner-Peyser Act	X	X	X	NA
Limited English-language proficiency	X	X	X	NA
Single parent	X	X	NA	NA
Low income	X	X	X	NA
TANF recipient	X	X	X	NA
Other public assistance recipient	X	X	X	NA
Homeless	X	X	X	NA
Offender	X	X	X	NA
Unemployment insurance claimant, non-exhaustee	X	X	X	NA
Unemployment insurance claimant, exhaustee	X	X	X	NA
Received supportive services	X	X	NA	NA

<sup>125</sup> TEGL 26-15 Attachment II

Variable description	Adult	Dislocated worker	Youth	Wagner-Peyser
Received needs-related payments	X	X	NA	NA
Received intensive services	X	X	NA	NA
Received training services	X	X	NA	NA
Established Individual Training Account (ITA)	X	X	NA	NA
Pell grant recipient	X	X	X	NA
Received pre-vocational activity services	X	X	NA	NA
Pregnant or parenting youth	NA	NA	X	NA
Youth who needs additional assistance	NA	NA	X	NA
Youth enrolled in education at or during program participation	NA	NA	X	NA
Youth enrolled in education at exit	NA	NA	X	NA
Youth enrolled in education at participation	NA	NA	X	NA
Youth with basic literacy skills deficiency (at or below 8th grade)	NA	NA	X	NA
Youth that is or was in foster care	NA	NA	X	NA
Youth that received educational achievement services	NA	NA	X	NA
Youth that received employment opportunities	NA	NA	X	NA
Youth participated in an alternative school	NA	NA	X	NA
Average educational functioning level for Youth participants	NA	NA	X	NA
Average standardized pre-test score	NA	NA	X	NA
Average standardized post-test score	NA	NA	X	NA

Table B. Explanatory variables on economic conditions

Variable	Definition
UnempRate	Not seasonally adjusted quarterly unemployment rate
NatResEmp	Percentage of total employment in NAICS 1133-Logging, and Sector 21-Mining
ConstEmp	Percentage of total employment in Sector 23-Construction
ManfEmp	Percentage of total employment in Sectors 31, 32, 33-Manufacturing
TechEmp	Percentage of total employment in Sector 51-Information, Sector 52-Finance and Insurance, Sector 53-Real Estate and Rental and Leasing, Sector 54-Professional, Scientific, and Technical Services, Sector 55-Management of Companies and Enterprises, and Sector 56-Administrative and Waste Services
EdHealthEmp	Percentage of total employment in Sector 61-Educational Services, and Sector 62-Health Care and Social Assistance
LeisHospEmp	Percentage of total employment in Sector 71-Arts, Entertainment, and Recreation, and Sector 71-Accommodations and Food Services
OtherServEmp	Percentage of total employment in Sector 81-Other Services
PublicAdminEmp	Percentage of total employment in Federal, State, and Local Government

## 4. Administrative Requirements

## 4.1. Administrative Rules, Costs, and Limitations

## 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 402.471.9000 <a href="mailto:ndol.wioa_policy@nebraska.gov">ndol.wioa_policy@nebraska.gov</a>	Policy category Administrative Requirements
	Effective date March 27, 2022
	Supersedes WIOA Title IB Program Funding (effective date May 23, 2022)

### WIOA Title IB Program Funding, Change 1

## 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

NDOL must establish a policy to address the following areas relating to WIOA Title IB program funding:

- allocation, obligation, disbursement, and availability WIOA Title IB adult, dislocated worker, and adult program funds;
- transfer of adult and dislocated worker funds;
- quarterly financial reporting requirements, including procedures and timelines;
- recapture and reallocation of unobligated funds; and
- return and reallocation of unexpended funds.

## ACTION

This policy supersedes and cancels the State's WIOA Title IB Program Funding policy (effective date May 2, 2022). Questions and comments on this policy may be submitted in writing to the WIOA policy mailbox at [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov).

## CHANGES

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The following material changes to the superseded policy are established under this policy change.

- Section III has been updated and now indicates that transfer requests between Title IB adult and dislocated worker programs must be submitted to:
  - John O'Keefe, Director of Reemployment Services ([john.o'keefe@nebraska.gov](mailto:john.o'keefe@nebraska.gov)); and
  - WIOA policy mailbox ([ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov)).
- Footnote references to email addresses for primary points-of-contact for technical assistance relating to the following topic areas must now be sent to [ndol.accountspayable@nebraska.gov](mailto:ndol.accountspayable@nebraska.gov):
  - Title I quarterly financial report forms;
  - templates to be used by local areas when requesting draw-down of Title I funds; and
  - processes and requirements for submitting acceptable Title I supporting documentation in relation to draw-down of Title I funds.

## POLICY

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This policy has six sections and one appendix.

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Section III.	Transfer of adult and dislocated worker funds.....	5
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### Section I. Allocation of funds

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#### (a) Adult and youth programs

Allocation of adult and youth funds to local areas is based on the formulas described in WIOA Secs. 133(b)(2) and 128(b)(2), respectively.<sup>1</sup>

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<sup>1</sup> 20 CFR § 683.120(a)(2)(i)

### (b) Dislocated worker program

Allocation of dislocated worker funds to local areas is based on factors and weights determined appropriate by the Governor, which are listed in Table 1.

Table 1. Dislocated worker allocation factors and weights<sup>2</sup>

Factor	Weight
1. Insured unemployment data	15%
2. Unemployment concentrations	15%
3. Plant closings and mass layoff data	20%
4. Declining industries data	5%
5. Farmer-rancher economic hardship data	5%
6. Long-term unemployment data	20%
7. Dislocated worker program enrollment data	20%
Total	100%

Calculation of dislocated worker program allocations is made in two steps.

1. NDOL determines the portion of the State's allotment of dislocated worker funds to be assigned to each allocation factor described in Table 1 (the assigned portion).
2. NDOL determines the percentage amount of the assigned portion to be applied to each local area for each allocation factor.

### (c) Minimum allocations<sup>3</sup>

For each of the adult, dislocated worker, and youth programs, a local area must not receive an allocation percentage for a fiscal year that is less than 90 percent of the average allocation percentage of the local area for the preceding two fiscal years. Amounts necessary to increase allocations to local areas to comply with the minimum allocation percentage requirement must be obtained by ratably reducing the allocations to be made to other local areas. If the amounts of WIOA funds appropriated in a fiscal year are not sufficient to meet the minimum percentage allocation requirement, the amounts allocated to each local area must be ratably reduced.

## Section II. Obligation, disbursement, and availability of Title IB funds

### (a) Obligation of funds

Adult and dislocated worker funds are available for obligation by local areas beginning July 1.<sup>4</sup> Youth funds may be made available for obligation by local areas beginning April 1 for the Program Year that begins the following July 1.<sup>5</sup>

<sup>2</sup> 20 CFR § 683.120(e)(2)(i) – (vi). The terms used in the first column of Table 1 are defined in [APPENDIX I](#).

<sup>3</sup> 20 CFR § 683.125(a), (b), (d), and (e)

<sup>4</sup> 20 CFR §§ 683.100(a)

<sup>5</sup> 20 CFR §§ 683.100(b)

## (b) Disbursement of funds

Adult and dislocated worker program year funds (i.e., base funds) are typically available for disbursement on July 1 and fiscal year funds (i.e., advance funds) are typically available on October 1. Youth funds are typically available for disbursement to local areas on July 1.

More specifically, Title IB program funds are available for disbursement by NDOL to a local area on the latter of:<sup>6</sup>

- 30 days after the funds are made available to the State; or
- seven days after the date of approval of the local plan or local plan modification.

Note that local areas must use funds available from program income, rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before invoicing NDOL for disbursements.<sup>7</sup>

### (1) Process

Effective June 1, 2022, the Financial Request and Reporting System will be decommissioned and all disbursements will be based on local area invoicing. The local board's fiscal agent must submit invoices *once per calendar month* by email to NDOL Accounts Payable at [ndol.accountspayable@nebraska.gov](mailto:ndol.accountspayable@nebraska.gov), using NDOL's approved invoice template.<sup>8,9</sup>

- All invoices must be securely transmitted using encrypted email to ensure the protection of potential PII.
- All invoices must be accompanied by supporting documentation for:
  - expenses previously incurred and paid; and
  - expenses that will be incurred and paid in the week following the request for disbursement.
- Separate invoices must be submitted for expenses to be paid from differing funding sources: Program Year funds (i.e., base funds) and Fiscal Year funds (i.e., advance funds).
  - For example, if a local area intends to cover expenses using Program Year 2021 funds (base funds) and Fiscal Year 2022 funds (advance funds), two separate invoices must be submitted and each must indicate which funding source is to be used in relation to the requested disbursement.

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<sup>6</sup> WIOA Sec. 182(e); 20 CFR § 683.120(a)(2)(iii)

<sup>7</sup> 2 CFR § 200.305(b)(5)

<sup>8</sup> Invoice templates are available separately by email upon request to [ndol.accountspayable@nebraska.gov](mailto:ndol.accountspayable@nebraska.gov). For technical assistance with invoice templates, send an email to [ndol.accountspayable@nebraska.gov](mailto:ndol.accountspayable@nebraska.gov).

<sup>9</sup> This does not apply to the Greater Nebraska Workforce Development Area as requests for disbursements to Greater Nebraska are processed using NDOL's internal financial management information systems.

### (c) Availability of funds (period of performance)<sup>10</sup>

Subject to the requirements of [Section V](#) and [Section VI](#), funds allocated to local areas for a Program Year for Title IB programs are available for expenditure by local boards during that Program Year and one succeeding Program Year. This two-year period is referred to as the period of performance. During the period of performance, local boards must expend funds with the shortest period of availability first (e.g., first in first out) unless otherwise authorized in the grant agreement (or any subsequent modification of the grant agreement) issued to NDOL by a Federal Contracting Officer, in compliance with the Federal Acquisition Regulations.

## Section III. Transfer of adult and dislocated worker funds

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A local board may transfer up to 100 percent of a Program Year allocation between its adult and dislocated worker programs.<sup>11</sup> The local board must submit a completed and signed transfer request form<sup>12</sup> and obtain NDOL's written approval before the transfer will be made.

### (a) Submission of transfer requests

The local board must submit a written request to transfer funds using NDOL's transfer request form.<sup>13</sup> The completed and signed request form must be submitted by email to :

- John O'Keefe, Director of Reemployment Services, at [john.o'keefe@nebraska.gov](mailto:john.o'keefe@nebraska.gov); and
- WIOA policy mailbox at [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov).

### (b) Criteria and factors

In its evaluation of a transfer request, NDOL may take into account the following criteria and factors:<sup>14</sup>

- Federal, State, and local laws, rules, regulations, guidance, and policies;
- program from/to which funds are to be transferred;
- amounts to be transferred and the availability of funds to support the transfer;
- employment and service needs of job seekers, workers, and employers in the local area;
- demographic information for job seekers and workers in the local area;
- current labor market information relating to employer needs in the local area;

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<sup>10</sup> 20 CFR § 683.110(c)

<sup>11</sup> 20 CFR § 683.130(a). Transfer of youth program funds to an adult or dislocated worker program is not permitted [20 CFR § 683.130(b)].

<sup>12</sup> 20 CFR § 681.130(c)

<sup>13</sup> The transfer request form has been provided separately by email. For technical assistance with the transfer request determinations, email the WIOA policy mailbox at [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov).

<sup>14</sup> TEGL 19-16

- consistency with broader strategies in the state plan and local plan;
- the number of enrollments for the adult and dislocated worker programs during the eight most recently completed performance quarters preceding the date of the request;
- whether the local area is meeting negotiated levels of performance<sup>15</sup> for its adult and dislocated worker programs for the eight most recently completed performance quarters preceding the date of the request;
- the requirement that career and training services must continue to be made available to both adults and dislocated workers; and
- any other factors NDOL deems necessary to determine the appropriateness of the transfer, including monitoring reports issued by the NDOL State Monitoring Unit.

Any transfer request that is incomplete or conflicts with Federal, State, or local laws, rules, regulations, guidance, or policies will not be approved.

#### (c) Determinations on transfer requests

Absent extenuating circumstances, a determination on a transfer request will be made in writing within 30 calendar days of NDOL's receipt of a fully completed and signed transfer request form.

## Section IV. Quarterly financial reporting requirements, procedures, and timelines

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### (a) General requirement

Each local board's fiscal agent must submit quarterly financial reports and acceptable supporting documentation according to the requirements, procedures, and timelines described in this section. Financial data provided by local areas in quarterly financial reports, including acceptable supporting documentation, are used to support NDOL's mandatory quarterly submission of ETA-9130 Financial Report forms regarding State and local area use of Title IB program funds.<sup>16</sup>

### (b) Content requirements

Each local board's fiscal agent must submit quarterly financial reports using NDOL's WIOA Title IB quarterly reporting forms,<sup>17</sup> along with acceptable supporting documentation.<sup>18</sup> Quarterly financial reports must include financial data and acceptable supporting documentation detailing local area obligations, program income, indirect costs, expenditures (including training expenditures), disbursements, cash on hand, and matching funds, as described in Table 2.<sup>19</sup>

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<sup>15</sup> Refer to the State's performance accountability policy for information on negotiated levels of performance. The State's policy manual is accessible at <https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies>.

<sup>16</sup> WIOA Sec. 185(e)(1) – (2); 20 CFR § 683.300(a); TEGL 20-19

<sup>17</sup> NDOL's WIOA Title IB quarterly reporting forms are controlled by NDOL's Finance Division. The forms are available in Excel format and may be obtained by email request to [ndol.accountspayable@nebraska.gov](mailto:ndol.accountspayable@nebraska.gov).

<sup>18</sup> The process for submitting acceptable supporting documentation is determined by NDOL's Finance Division. Send an email to [ndol.accountspayable@nebraska.gov](mailto:ndol.accountspayable@nebraska.gov) for technical assistance.

<sup>19</sup> 20 CFR § 683.300(c)(4) – (5); TEGL 20-19

Table 2. Quarterly financial reports: Required financial data and acceptable supporting documentation

Reporting category	Required financial data	Acceptable supporting documentation
Obligations	a listing of all newly incurred and ongoing obligations	completed Obligations Report <sup>20</sup>
Program income	total amount of program income earned during the reporting quarter	written documentation clearly detailing the source(s) and amount(s) of program income
Indirect costs	total amount of indirect costs incurred during the reporting quarter based on the local board's approved indirect cost rate	supporting documentation not required
Expenditures	total amount of expenditures made during the reporting quarter, including training expenditures	copies of invoices or other evidence of expenditures
Cash on hand	automatically calculated by NDOL	not applicable
Matching funds	Federal funds awarded for WIOA Title IB programs DO NOT include matching funds	not applicable

### (c) Program income reporting

Program income must be reported on an accrual basis and cumulatively by fiscal year of appropriation.<sup>21</sup> In addition, the following uniform administrative requirements apply to the use of Title IB funds regarding program income.<sup>22</sup>

1. The addition method described at [2 CFR § 200.307](#) must be used for all program income earned.
  - a. When the cost of generating program income has been charged to the program, the gross amount earned must be added to the program under which it was earned.
  - b. When the cost of generating program income has not been charged to the program, the cost of generating program income must be subtracted from the amount earned in order to establish the net amount of program income available for use.
2. Any excess of revenue over costs incurred for services provided by a governmental or non-profit entity must be included in program income.
3. Revenue resulting from employers' use of local area services or facilities or equipment to provide employment and training activities to incumbent workers must be included in program income.
4. Interest income earned on local area Title IB funds must be included in program income.

Additional forms of program income are described in the definition of *program income* in [APPENDIX I](#).

<sup>20</sup> Send an email to [ndol.accountspayable@nebraska.gov](mailto:ndol.accountspayable@nebraska.gov) for information on reporting local area obligations.

<sup>21</sup> 20 CFR § 683.300(c)(5)

<sup>22</sup> 20 CFR § 683.200(c)(6) – (9)

#### (d) Cash on hand reporting

Cash on hand is automatically calculated by NDOL by subtracting local area expenditures from disbursements.

#### (e) Matching funds reporting

Federal funds awarded for Title IB programs are formula based and do not require or include matching funds.

#### (f) Submission of quarterly financial reports

Each local board's fiscal agent must submit quarterly financial reports by email to:

- NDOL Accounts Payable at [ndol.accountspayable@nebraska.gov](mailto:ndol.accountspayable@nebraska.gov); and
- NDOL State Monitoring Unit at [ndol.state\\_monitor@nebraska.gov](mailto:ndol.state_monitor@nebraska.gov).

#### (g) Timelines

Accurate quarterly reports must be submitted no later than 30 calendar days after the end of each quarter. Due dates for submission of quarterly reports are listed in Table 3.

Table 3. Due dates for quarterly financial reports

Reporting quarter	Due date
Quarter 1 (July 1 – September 30)	October 30
Quarter 2 (October 1 – December 31)	January 30
Quarter 3 (January 1 – March 31)	April 30
Quarter 4 (April 1 – June 30)	July 30

#### (h) Records retention requirements

Each local board must ensure that all quarterly reports submitted to NDOL are retained locally, as required under the State's current policy on records management. Record retention requirements under the State's current policy on records management apply equally to the supporting documentation on which local area quarterly financial reports are based.

### Section V. Recapture and reallocation of unexpended/unobligated funds

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#### (a) Obligation of funds<sup>23</sup>

At least 80 percent of the funds allocated to a local area for a Program Year for each of the adult, dislocated worker, and youth programs should be expended/obligated by the end of that Program Year (June 30). If more than 20 percent of the funds remain unexpended or unobligated at the conclusion of the Program Year, the State may recapture the amount that exceeds 20 percent.

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<sup>23</sup> 20 CFR § 683.140(b)

Any recaptured amount is separately determined for each program. Calculation of the 20 percent amount must adjust for:

- funds reserved by the local board for administrative costs (up to 10 percent); and
- any transfer of funds between the local area adult and dislocated worker programs.

Example. Funds are allocated to a local area for the dislocated worker program for a Program Year. At the conclusion of the Program Year, 27 percent of the funds remain unexpended or unobligated. Of the 27 percent, the State may recapture an amount equal to the excess 7 percent and the local board may retain the remaining 20 percent.

#### (b) Recapture of unobligated funds<sup>24</sup>

In the event that a local board does not expend or obligate at least 80 percent of the funds allocated to the local area for a Program Year for each of its youth, adult, and dislocated worker programs, the State may recapture the amount that exceeds 20 percent and reallocate that amount to another local area for the same program from which the funds were recaptured, following consultation with the state board.

#### (c) Reallocation of unobligated funds<sup>25</sup>

To be eligible for reallocation of unobligated funds, a local board must have expended or obligated at least 80 percent of the prior Program Year's allocation for its applicable program, less any amount reserved for the costs of administration (up to 10 percent). A local board's eligibility to receive a reallocation must be separately determined for each program. A local board that receives the reallocated funds must fully expend the funds by June 30 of the Program Year during which it received the funds.

#### (d) Pay-for-performance exception

Funds obligated by a local board to carry out WIOA pay-for-performance contract strategies remain available until expended.<sup>26</sup>

### Section VI. Return and reallocation of unexpended funds<sup>27</sup>

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Funds not expended by a local board during a two-year period of performance must be returned to NDOL. The returned funds may be used by the State during the following Program Year for:

- expenditure on statewide projects; or
- reallocation to eligible local boards.

An eligible local board is one that has fully expended its allocated funds for the same program within the same two-year period of performance. An eligible local board that receives the

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<sup>24</sup> 20 CFR § 683.140(a)

<sup>25</sup> 20 CFR § 683.140(c)

<sup>26</sup> WIOA Sec. 189(g)(2)(D); 20 CFR § 683.110(c)(1)(ii)

<sup>27</sup> 20 CFR § 683.110(c)(2)

reallocated unexpended funds must fully expend the reallocated funds by June 30 of the following Program Year.

## **DISCLAIMER**

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

## APPENDIX I. Definitions

**PURPOSE.** Definitions in this appendix are provided as supplemental information that supports the provisions of the policy. The terms and phrases defined in this appendix, which appear in *italics* on the policy, should be read and understood in the context in which they are used in the policy and not as stand-alone information independent of that context.

### 1. Contract

*Contract*<sup>28</sup> means a legal instrument by which a non-Federal entity, such as a local board, purchases property or services needed to carry out the project or program under a Federal award.

### 2. Contractor

*Contractor*<sup>29</sup> is an entity that receives a contract.

### 3. Costs of administration

The term *costs of administration*<sup>30</sup> are the costs associated with the functions listed in Table 4.

Table 4. Costs of administration

Description
1. Performing the following overall general administrative functions and coordination of those functions described under WIOA Title IB: a. accounting, budgeting, financial and cash management functions b. procurement and purchasing functions c. property management functions d. personnel management functions e. payroll functions f. coordinating the resolution of findings arising from audits, reviews, investigations and incident reports g. audit functions h. general legal services functions i. developing systems and procedures, including information systems, required for administrative functions j. fiscal agent responsibilities
2. Performing oversight and monitoring responsibilities related to WIOA Title IB administrative functions
3. Costs of goods/services required for administrative functions of WIOA Title IB programs, including goods/services such as equipment rental or purchase, utilities, office supplies, postage, and rental/maintenance of office space
4. Travel costs incurred for official business in carrying out administrative functions
5. Costs for information systems related to administrative functions, including the purchase, systems development, and operating costs of the systems

<sup>28</sup> 2 CFR § 200.22

<sup>29</sup> 2 CFR § 200.23

<sup>30</sup> 20 CFR § 683.215(b)

#### 4. Declining industries data

*Declining industries data* refers to data that identifies reductions in the number of jobs within given industries.

#### 5. Dislocated worker program enrollment data

*Dislocated worker program enrollment data* means data collected by the State regarding local area enrollments in local dislocated worker programs.

#### 6. Expenditures

*Expenditures*<sup>31</sup> means charges made to the local area's projects or programs in support of authorized WIOA Title IB activities.

#### 7. Farmer-rancher economic hardship data

*Farmer-rancher economic hardship data* refers to data that identifies the number of:

- Chapter 12 farm bankruptcies in a local area; and
- farmers and ranchers in a local area whose net earnings are equal to or less than 70 percent of the Lower Living Standard Income Level for a family of three.

#### 8. Federal award

Depending on the context, *Federal award*<sup>32</sup> means either the:

- Federal financial assistance that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity; or
- instrument setting forth the terms and conditions of Federal financial assistance, including a grant agreement, cooperative agreement, or other agreement for assistance.

#### 9. Indirect costs

The term *indirect costs*<sup>33</sup> means those costs incurred for common or joint purposes. Indirect costs are those that benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned directly to WIOA Title IB programs and other activities, indirect costs are those remaining to be allocated to the cost objectives that benefitted from the expenditures. Indirect costs are charged to WIOA Title IB programs based on an indirect cost rate. A cost may not be allocated to a WIOA Title IB program as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to the WIOA Title IB program as a direct cost.

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<sup>31</sup> 20 CFR § 683.215(b)

<sup>32</sup> 2 CFR § 200.38

<sup>33</sup> 2 CFR Part 200, Section A of Appendix VII – States and Local Government and Indian Tribe Indirect Cost Proposals

## 10. Insured unemployment data

*Insured unemployment data* refers to data that identifies the relative average number of unemployed individuals who reside in the local area as compared to the total average number of unemployed individuals in the State.

## 11. Long-term unemployed data

*Long-term unemployed*<sup>34</sup> data refers to data that identifies the number individuals in a local area who have been looking for work for 27 weeks or longer according to State unemployment insurance records.

## 12. Obligations

When used in connection with the local board's utilization of WIOA Title IB funds, the term *obligations*<sup>35</sup> means:

- orders placed for property and services;
- contracts and subawards made; and
- similar transactions during a given period that require payment by the local board during the same period or a future period.

An obligation occurs when a binding agreement has been entered into and may occur at the time the services are rendered or before services are rendered. In other words, *obligations* are legal commitments to pay.<sup>36</sup>

An Individual Training Account established for the benefit of a Title IB program participant is not an obligation.

## 13. Pass-through entity (PTE)

*Pass-through entity (PTE)*<sup>37</sup> means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.

## 14. Period of performance

For WIOA Title IB funds expended by a local area, the *period of performance*<sup>38</sup> is the program year during which the funds are first awarded plus the following program year.

## 15. Plant closings and mass layoff data

*Plant closings and mass layoff data* means data that is manually collected by the State through Rapid Response activities.

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<sup>34</sup> The term *long-term unemployed* is defined in TEGL 19-16.

<sup>35</sup> 2 CFR § 200.71, TEGL 28-10

<sup>36</sup> Ibid.

<sup>37</sup> 2 CFR § 200.74

<sup>38</sup> 20 CFR § 683.110(c)

## 16. Program income

*Program income*<sup>39</sup> means gross income earned by a non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance. *Program income* includes forms of income described in Table 5. The list in Table 5 is not exhaustive.

Table 5. Forms of program income

Description
1. Income from the: <sup>40</sup> <ul style="list-style-type: none"> <li>a. use or rental of real or personal property acquired under Federal awards</li> <li>b. sale of commodities or items fabricated under a Federal award</li> <li>c. license fees and royalties on patents and copyrights, subject to the requirements of 37 CFR Part 401</li> <li>d. principal and interest on loans made with Federal award funds</li> </ul>
2. Any excess of revenue over costs incurred for services provided through use of WIOA Title IB funds by a governmental or non-profit entity <sup>41</sup>
3. Revenue resulting from employers' use of local area services, facilities, or equipment to provide employment and training activities to incumbent workers <sup>42</sup>
4. Interest income earned on funds received under WIOA Title IB <sup>43</sup>
5. Income from fees for services performed, including fees charged for the following business services: <sup>44</sup> <ul style="list-style-type: none"> <li>a. customized screening and referral of qualified participants in training services to employers</li> <li>b. customized services to employers, employer associations, or other employer organizations on employment-related issues</li> <li>c. customized recruitment events and related services for employers including targeted job fairs</li> <li>d. human resource consultation services, including assistance with: <ul style="list-style-type: none"> <li>i. writing/reviewing job descriptions and employee handbooks</li> <li>ii. developing performance evaluation and personnel policies</li> <li>iii. creating orientation sessions for new workers</li> <li>iv. honing job interview techniques for efficiency and compliance</li> <li>v. analyzing employee turnover</li> <li>vi. creating job accommodations and using assistive technologies</li> <li>vii. explaining labor and employment laws to help employers comply with discrimination, wage/hour, and safety/health regulations</li> </ul> </li> <li>e. customized labor market information for specific employers, sectors, industries or clusters</li> <li>f. developing and implementing industry sector strategies (including strategies involving industry partnerships, regional skills alliances, industry skill panels, and sectoral skills partnerships)</li> <li>g. customized assistance or referral for assistance in the development of a registered apprenticeship program</li> <li>h. developing and delivering innovative workforce investment services and strategies for area employers, including career pathways, skills upgrading, skill standard development and certification for recognized postsecondary credential or another employer use</li> <li>i. assistance to area employers in managing reductions in force in coordination with Rapid Response activities and strategies for aversion of layoffs, including strategies like early identification of firms at risk of layoffs, use</li> </ul>

<sup>39</sup> 2 CFR § 200.80

<sup>40</sup> Ibid.

<sup>41</sup> 20 CFR § 683.200(c)(7)

<sup>42</sup> 20 CFR § 683.200(c)(9)

<sup>43</sup> 20 CFR § 683.200(c)(8)

<sup>44</sup> 20 CFR § 678.435(b) – (c) and 678.440. Any fees earned are recognized as program income and must be expended by the Title IB program in accordance with the WIOA Title I and its implementing regulations, and Federal cost principles identified in Uniform Guidance, including 2 CFR § 200.307.

Description
of feasibility studies to assess needs of and options for at-risk firms, and delivery of employment and training activities to address risk factors j. marketing of business services to appropriate area employers, including small and mid-sized employers k. assisting employers with accessing local, State, and Federal tax credits

## 17. Subaward (or subgrant)

*Subaward (or subgrant)* means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity.<sup>45</sup>

## 18. Subrecipient

*Subrecipient*<sup>46</sup> means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program, such as a local board. *Subrecipient*<sup>47</sup> also refers to any entity to which a local board provides a subaward for the administration of some or all of the requirements of the subaward provided to the local board by NDOL for administration of Title IB programs.

## 19. Training expenditures

The term *training expenditures*<sup>48</sup> refers to all costs for training, including, but not limited to, all tuition costs and materials, including books, tools, etc. All forms of training expenditures must be accounted for, including but not limited to:<sup>49</sup>

- occupational skills training;
- school equivalency training (examples: GED, high school equivalency tests, testing that assess secondary education completion);
- Registered Apprenticeship programs;
- industry recognized apprenticeship programs;
- on-the-job training;
- incumbent worker training; and
- customized training.

## 20. Unemployment concentrations data

*Unemployment concentrations data* means data that identifies the average unemployment rate in each county as compared with the average unemployment rate for the State.

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<sup>45</sup> 20 CFR § 675.300

<sup>46</sup> 2 CFR § 200.93

<sup>47</sup> Ibid.

<sup>48</sup> TEGL 20-19

<sup>49</sup> Ibid.

## 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
	Administrative Requirements
	Effective date
	February 23, 2018
	Supersedes
	Interim Policy on Procurement (Rev. 6/15/2015)

## Procurement

## 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

WIOA<sup>1</sup> and the Uniform Guidance<sup>2</sup> establish administrative requirements, procurement standards, and methods of procurement for WIOA Title I programs (youth, adult, and dislocated worker).

## ACTION

This policy supersedes and cancels the State's<sup>3</sup> Interim Policy on Procurement Standards (Rev. 7/6/2015).

Questions and comments on this policy may be submitted in writing to the WIOA policy mailbox at [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov).

Each local board must establish local procurement policies and procedures for procurement of property and services required to carry out WIOA Title I programs (youth, adult, and dislocated

<sup>1</sup> WIOA refers to the Workforce Innovation and Opportunity Act of 2014.

<sup>2</sup> *Uniform Guidance* refers to 2 CFR Parts 200 and 2900, which are accessible at [www.ecfr.gov](http://www.ecfr.gov) and on the WIOA Resources page (<https://dol.nebraska.gov/EmploymentAndTraining/LCRWP/WIOA/Resources>).

<sup>3</sup> *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).

worker). The policies and procedures must adhere to state and local procurement laws and the following laws, regulations, and guidance:<sup>4</sup>

- 2 CFR Parts 200 and 2900 (the Uniform Guidance);
- 2 CFR Part 180, guidelines on debarment and suspension;<sup>5</sup> and
- other applicable Federal laws, regulations, and guidance, including requirements for procurement established under WIOA and its implementing rules.

## POLICY

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This policy establishes requirements that apply to administrative entities<sup>6</sup> regarding procurement of property and services required to carry out WIOA Title I programs, except for the procurement of one-stop operators. (Procurement of one-stop operators is addressed in the State's policy on one-stop operator competitive selection.<sup>7</sup>)

Please note, this policy focuses on key provisions of the Uniform Guidance and must be used as a supplement to the Uniform Guidance, not a replacement.

This policy has three sections and one appendix.

Section I.	Administrative requirements .....	2
Section II.	Procurement standards .....	3
Section III.	Procurement methods .....	4
APPENDIX I.	Definitions.....	6

## Section I. Administrative requirements

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The provisions of this policy apply to administrative entities in their role as pass-through entities that award:

- subawards to subrecipients to carry out part of the local WIOA Title I program; and
- contracts to contractors for purchasing property or other services needed to carry out WIOA Title I programs.

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<sup>4</sup> 2 CFR § 200.318; 20 CFR § 681.400

<sup>5</sup> 2 CFR § 200.213

<sup>6</sup> The CEO, local board, administrative representatives, and fiscal agent(s) for a local area are collectively referred to as *administrative entity* throughout this policy to improve readability and are individually identified when necessary.

<sup>7</sup> The State's policies are accessible at <https://dol.nebraska.gov/EmploymentAndTraining/LCRWP/WIOA/Policies>.

## Section II. Procurement standards

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Administrative entities must follow the procurement standards established in the Uniform Guidance, key provisions of which are summarized below to stress their importance.

Each administrative entity must:

1. use its own documented procurement policies and procedures, provided they conform to the standards identified in the Uniform Guidance;<sup>8</sup>
2. maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of subawards and contracts;<sup>9</sup>
3. maintain written standards of conduct covering organizational conflicts of interest if the administrative entity has a parent, affiliate, or subsidiary organization that is not a state or local government;<sup>10</sup>
4. maintain, retain, and provide access records detailing the history of procurement;<sup>11</sup>
5. make case-by-case determinations on:
  - a. whether the third party qualifies as a subrecipient or a contractor based on the substance of the administrative entity's relationship with that party;<sup>12</sup> and
  - b. the appropriate legal instrument for procurement (grant agreement, pay-for-performance contract, cooperative agreement, contract) and ensure that the provisions required under the Uniform Guidance are included;<sup>13</sup>
6. conduct all procurement transactions in a manner providing full and open competition;<sup>14</sup>
7. take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and firms in labor surplus areas<sup>15</sup> are used when possible;<sup>16</sup>
8. ensure that subawards and contracts are not awarded to third parties that are debarred, suspended, or excluded from or ineligible for participation in Federal programs;<sup>17</sup>

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<sup>8</sup> 2 CFR § 200.318

<sup>9</sup> Refer to 2 CFR § 200.318(c) and the State's policy on workforce development boards and CEOs for additional information on conflict of interest requirements.

<sup>10</sup> Ibid.

<sup>11</sup> Refer to 2 CFR §§ 200.318(c)(1), 200.333, 200.336, 200.337, and the State's policy on records management for information on requirements regarding records maintenance, retention, and access.

<sup>12</sup> 2 CFR § 200.330

<sup>13</sup> Refer to the Uniform Guidance, including 2 CFR §§ 200.331 and 200.326, and Appendix II to Part 200 for information on required provisions. In addition, refer to 20 CFR Parts 680, 681, and 683 for regulations on pay-for-performance contracts contract strategies.

<sup>14</sup> Refer to 2 CFR § 200.319 for standards on competition.

<sup>15</sup> For information on *labor surplus areas*, refer to the US Department of Labor "Labor Surplus Area: Frequent Asked Questions" webpage at [https://www.doleta.gov/programs/lssa\\_faq.cfm](https://www.doleta.gov/programs/lssa_faq.cfm).

<sup>16</sup> 2 CFR § 200.321

<sup>17</sup> 2 CFR § 200.213

9. award subawards and contracts only to third parties capable of successful performance under the provisions of their respective agreement or contract;<sup>18</sup>
10. maintain oversight to ensure that subrecipients perform according to the provisions of their respective grant agreement, pay-for-performance contract, or cooperative agreement;<sup>19</sup> and
11. be responsible for the settlement of all contractual and administrative issues arising out of agreements and contracts.<sup>20</sup>

### Section III. Procurement methods

Table 1 provides an overview of permitted procurement methods, which are described in detail in 2 CFR § 200.320. Local boards must use one of these methods or the leveraged-resources method described in [Section III\(a\)](#).

*Table 1. Methods of procurement<sup>21</sup>*

Method	Description
1. Micro-purchase	Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold. <sup>22</sup> To the extent possible, local boards <u>must</u> distribute micro-purchases equitably among qualified third parties. Micro-purchases may be awarded without soliciting competitive quotations if the local board considers the price to be reasonable.
2. Small purchase procedure	The small purchase procedure is the relatively simple and informal procurement method for securing services that do not cost more than the Simplified Acquisition Threshold. <sup>23</sup> If small purchase procedure is used, price or rate quotations <u>must</u> be obtained from an adequate number of qualified third parties.
3. Sealed bid (formal advertising)	Under the sealed bid procedure, bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the third party whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price.
4. Competitive proposal	The technique of the competitive proposal is normally conducted with more than one provider submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids.
5. Noncompetitive (sole-source) proposal	The noncompetitive (sole-source) proposal method is procurement through solicitation of a proposal from only one third party. Noncompetitive procurement may be used <u>only</u> when:

<sup>18</sup> 2 CFR § 200.318

<sup>19</sup> 2 CFR § 200.318

<sup>20</sup> Ibid.

<sup>21</sup> 2 CFR § 200.320; 20 CFR § 681.400(b)(4); TEGL 21-16

<sup>22</sup> As of the effective date of this policy, the micro-purchase threshold is \$3,000. This threshold is periodically adjusted for inflation. [2 CFR § 200.67]

<sup>23</sup> As of the effective date of this policy, the simplified acquisition threshold is \$150,000. This threshold is periodically adjusted for inflation. [2 CFR § 200.88]

Method	Description
	<ul style="list-style-type: none"> <li>▪ the item is available only from a single source;</li> <li>▪ public exigency or emergency will not permit a delay resulting from competitive solicitation;</li> <li>▪ the US Department of Labor Employment and Training Administration or NDOL expressly authorizes noncompetitive proposals in response to a written request from the administrative entity;</li> <li>▪ after solicitation of a number of sources, competition is determined inadequate; or</li> <li>▪ there are an insufficient number of eligible youth providers or Eligible Training Providers in the local area, which is determined according to local procurement policies and procedures.<sup>24</sup></li> </ul>

#### (a) Leveraged resources<sup>25</sup>

Local WIOA Title I programs are not required to use program funds for procurement of program services and may leverage partner resources to provide some or all services. If a program service is not funded with program funds, the local board or applicable Title I program provider must:

- have a written agreement with the partner to ensure that the service will be offered; and
- ensure that the service is closely connected to and coordinated with the program.

## DISCLAIMER

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

<sup>24</sup> 20 CFR §§ 679.370(l)(1), 680.320(a)(2), and 681.400(b)(4)

<sup>25</sup> 20 CFR § 681.470

## APPENDIX I. Definitions

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**PURPOSE.** Definitions in this appendix are provided as supplemental information that supports the provisions of the policy. The terms and phrases defined in this appendix should be read and understood in the context in which they are used in the policy and not as stand-alone information independent of that context.<sup>26</sup>

### 1. contract<sup>27</sup>

*Contract* means a legal instrument by which an administrative entity purchases property or services needed to carry out WIOA Title I programs. The term *contract* does not apply to transactions that meet the definition of a Federal award or subaward, even if the administrative entity considers it a contract.

### 2. contractor

*Contractor* means an entity that receives a contract (defined above).<sup>28</sup>

### 3. cooperative agreement

*Cooperative agreement* means a legal instrument of financial assistance between a pass-through entity and a non-Federal entity that is:<sup>29</sup>

- used to enter into a relationship, the principal purpose of which is to transfer anything of value (typically money) from the pass-through entity to the non-Federal entity to carry out a public purpose authorized by a law of the United States (*i.e.*, WIOA);
- not used to acquire property or services for the pass-through entity's direct benefit or use;
- distinguished from a grant in that it provides for substantial involvement between the pass-through entity and the non-Federal entity in carrying out the activity contemplated by the Federal award.

### 4. grant agreement

*Grant agreement* means a legal instrument of financial assistance between a pass-through entity and a non-Federal entity that is:<sup>30</sup>

- used to enter into a relationship, the principal purpose of which is to transfer anything of value (typically money) from the pass-through entity to the non-Federal entity to carry out a public purpose authorized by a law of the United States (*i.e.*, WIOA);

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<sup>26</sup> Definitions for terms used in this policy that are not included in this appendix are provided in 2 CFR Part 200 Subpart A. Also, different definitions may be found in Federal statutes, regulations, and TEGLs that apply more specifically to particular WIOA Title I programs or activities.

<sup>27</sup> 2 CFR § 200.22

<sup>28</sup> 2 CFR § 200.23

<sup>29</sup> 2 CFR § 200.24

<sup>30</sup> 2 CFR § 200.51

- not used to acquire property or services for the pass-through entity's direct benefit or use;
- distinguished from a cooperative agreement in that it does not provide for substantial involvement between the pass-through entity and the non-Federal entity in carrying out the activity contemplated by the Federal award.

## 5. pass-through entity

*Pass-through entity* means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program (*i.e.*, WIOA Title I).<sup>31</sup>

## 6. pay-for-performance contract

A *pay-for-performance* contract is a type of performance-based contract that are entered into only when they are part of a WIOA pay-for-performance contract strategy.<sup>32</sup>

## 7. subaward<sup>33</sup>

*Subaward* means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity (*i.e.*, WIOA Title I Federal award). It does not include contracts with contractors or payments or benefits provided to WIOA Title I program participants.

## 8. subrecipient<sup>34</sup>

*Subrecipient* means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program (*i.e.*, WIOA Title I programs). The term does not include WIOA Title I program participants.

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<sup>31</sup> 2 CFR § 200.74

<sup>32</sup> 2 CFR §§ 683.510 and 683.520

<sup>33</sup> 2 CFR § 200.92

<sup>34</sup> 2 CFR § 200.93

## State Policy

## Workforce Innovation and Opportunity Act (WIOA)

Nebraska Department of Labor (NDOL) Division of Reemployment Services 550 South 16 <sup>th</sup> Street Lincoln, NE 68508 402.471.9000 <a href="mailto:ndol.wioa_policy@nebraska.gov">ndol.wioa_policy@nebraska.gov</a>	Policy category
	Administrative Requirements
	Effective date
	June 30, 2022
	Supersedes
	Records Management, Change 1 (effective July 31, 2019)

## Records Management, Change 2

### 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

Recipients and subrecipients of Federal financial assistance are required to keep records that are sufficient to:<sup>1</sup>

- trace funds to a level of expenditure adequate to ensure that funds have been spent lawfully;
- prepare accurate required reports on program performance and outcomes; and
- verify that the reported performance data are valid, accurate, reliable, and comparable across programs.

<sup>1</sup> WIOA Secs. 116(d)(5) and 185(a) – (g)

## CHANGES

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This policy establishes the following material changes to the superseded policy.

1. In [Section I\(b\)](#), the Senior Community Service Employment Program has been added to the list of NDOL-administered programs.
2. [Section III](#) has been revised to clarify conditions, limitations, and requirements relating to record corrections.
3. [Section IV\(a\)](#) has been revised to provide a new point of contact for local Title I programs that are requesting the date of NDOL's submission of the final expenditure report for a given program year.
4. [Section VI\(a\)](#) has been revised to provide specific information on required data validation requirements, including timelines and reporting requirements, for manual data validation by the NDOL Quality Control Unit, local Title I programs, and NDOL-administered programs.
5. [Section VI\(b\)](#) has been revised to clarify staff training for manual data validation activities.
6. [APPENDIX I](#) now includes definitions for PII and protected PII.
7. [APPENDIX II](#) has been revised to refer to TEGL 23-19 Attachment II, which addresses acceptable source documentation for WIOA core and non-core programs.

## ACTION

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This policy supersedes and cancels the State's *Records Management, Change 1* policy (effective date July 31, 2019). Questions and comments on this policy may be submitted in writing to the WIOA policy mailbox at [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov).

### (a) Local WIOA Title I programs

Each local board and its administrative entity must ensure creation, management, and maintenance of records according to the requirements of this policy, as well as the requirements of WIOA and its implementing regulations, related subregulatory guidance, subawards, and the Uniform Guidance.<sup>2</sup>

### (b) NDOL-administered programs

Administrators of NDOL-administered programs listed in [Section I\(b\)](#) must ensure creation, management, maintenance of records according to the requirements of this policy, as well as the requirements of WIOA and its implementing regulations, related subregulatory guidance, subawards, and the Uniform Guidance.

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<sup>2</sup> WIOA Secs. 116(d)(5) and 185(a) – (g). In the context of this policy, *Uniform Guidance* refers to 2 CFR Parts 200 and 2900.

## POLICY

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This policy establishes records management requirements for local Title I programs and NDOL-administered programs. This policy has six sections and two appendices.

Section I.	General records management requirements .....	3
Section II.	Required records management systems .....	5
Section III.	Records corrections .....	5
Section IV.	Records retention.....	6
Section V.	Records access .....	8
Section VI.	Data monitoring and quality control .....	9
APPENDIX I.	Definitions .....	16
APPENDIX II.	Acceptable source documentation for data elements .....	20

### Section I. General records management requirements

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As Nebraska's recipient of funding for Title I programs, NDOL is required to submit reports to the US Department of Labor (USDOL) concerning the operations and expenditures of the programs at state and local levels.<sup>3</sup> The required reports must include information necessary to comply with the nondiscrimination provisions of WIOA Sec. 188 and 29 CFR Part 38, as well as information about:<sup>4</sup>

- demographic characteristics (including race, ethnicity, sex, and age) and other related information regarding participants;
- programs and activities in which participants are enrolled and the length of time participants are engaged in the programs and activities;
- outcomes for participants taking part in programs and activities, including information on participant occupations and placement of participants in nontraditional employment; and
- costs of programs and activities.

In addition, NDOL is required to submit reports to USDOL concerning the operations and expenditures of NDOL-administered programs. Reporting requirements for these programs are defined in each program's authorizing legislation, implementing regulations, subregulatory guidance, subawards, and the Uniform Guidance.

In order for NDOL to prepare and submit the required reports, local Title I programs and NDOL-administered programs must create, manage, and maintain records concerning the operations and expenditures of their respective programs as described in this policy.

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<sup>3</sup> WIOA Sec. 185(c)

<sup>4</sup> WIOA Sec. 185(d)

#### (a) Local Title I programs

Each local board and its local area administrative entity must, for reporting, monitoring, data validation, and evaluation purposes:<sup>5</sup>

- ensure the utilization of NDOL's required records management systems to enable uniform compilation, cross tabulation, and analysis of programmatic, participant, and financial data, including data necessary to comply with the nondiscrimination provisions of WIOA Sec. 188 and 29 CFR Part 38; and
- submit and make available through electronic means all case management records, source documentation, and data.

Records regarding activities performed and services provided by local Title I programs must be created, managed, and maintained according to the requirements established in this policy, as well as the requirements of each program's authorizing legislation, implementing regulations, subregulatory guidance, subawards, and the Uniform Guidance.<sup>6</sup>

#### (b) NDOL-administered programs

NDOL administers the following Federally funded programs:

- Jobs for Veterans State Grant program;
- Senior Community Service Employment Program;
- Trade Adjustment Assistance program;
- Wagner-Peyser Employment Service, which includes the Monitor Advocate System; and
- from time to time:
  - discretionary grant programs, including Dislocated Work Grant programs (DWGs) authorized under WIOA Sec. 170; and
  - other Federally funded discretionary grants programs.

The overseeing administrator of each NDOL-administered program must, for reporting, monitoring, data validation, and evaluation purposes:

- ensure utilization of NEworks and NDOL's approved source documentation management systems (described below), except as otherwise required by a Federal partner, to enable uniform compilation, cross tabulation, and analysis of programmatic, participant, and financial data, including data necessary to comply with the nondiscrimination provisions of WIOA Sec. 188 and 29 CFR Part 38; and

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<sup>5</sup> WIOA Sec. 185(c); TEGL 10-16 Change 1

<sup>6</sup> NEworks is the State's management information system of record, as stated in [Section II](#).

- submit and make available through electronic means all required case management records, source documentation, and data.

Records regarding activities performed and services provided by NDOL-administered programs, except as otherwise required by Federal partners, must be created, managed, and maintained according to the requirements established in this policy, as well as the requirements of each program's authorizing legislation, implementing regulations, subregulatory guidance, subawards, and the Uniform Guidance.

## **Section II. Required records management systems**

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### **(a) Management information system**

NEworks is the management information system of record for the State of Nebraska for Federal reporting purposes regarding local Title I programs and NDOL-administered programs. The Enterprise Content Management system (ECM) and NEworks Document Manager (NDM) are NDOL's source documentation management systems. Local Title I programs and NDOL-administered programs must use NEworks and ECM or NDM to record and document all program activities and services electronically, except as otherwise required by a Federal partner. Paper records are not permitted and are not considered for data validation and monitoring purposes.

## **Section III. Records corrections**

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Records in NEworks, ECM, and NDM that contain errors *must* be corrected, subject to the following conditions, limitations, and requirements.

1. Record correction requests *must not* be used to enhance program performance or distort actual events.
2. Program staff can individually correct errors in NEworks and NDM during the 30-day period beginning on the date of entry of incorrect information. After the 30-day period expires, a correction request must be submitted through OnBase.
3. Errors in ECM require submission of record correction requests, as only NDOL staff have the ability to make corrections to ECM.
4. To request a correction to records in NEworks, ECM, or NDM, program staff must complete, submit, and approve a record correction request through OnBase, after which the Quality Control Administrator will review the request.
5. All submitted record correction requests must concisely reference existing acceptable source documentation<sup>7</sup> that justifies the requested correction and that source documentation must be accessible to the Quality Control Administrator during the Administrator's review of the correction request.

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<sup>7</sup> Refer to [APPENDIX II](#) for access to a list of acceptable source documentation.

6. Record correction requests will not be approved if:
- a. supporting source documentation for affected records is not apparent or available to NDOL's Quality Control Administrator; or
  - b. an outcome for an NEworks activity was included in a quantitative annual performance report that has been submitted to USDOL. (Note. If an NEworks activity has been "system closed" it can be corrected.)

## Section IV. Records retention

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### (a) Local Title I programs<sup>8</sup>

Subject to the exceptions described in [Section IV\(c\)](#), each local board must ensure that the following records relating to each of its Title I programs are retained for a minimum of three years from the date of NDOL's submission of the final expenditure report to USDOL for the applicable program year:

- financial records;
- source documentation;
- statistical records; and
- all other records pertaining to the programs.

A local board may request the date of NDOL's submission of the final expenditure report by sending an email to Bradley Pierce, Director, Reemployment Services Division at [bradley.pierce@nebraska.gov](mailto:bradley.pierce@nebraska.gov).

### (1) Additional retention requirements

The Greater Lincoln and Greater Omaha Workforce Development Boards may be subject to additional record retention requirements based on other applicable State, regional, and local laws. Greater Lincoln and Greater Omaha administrative entity staff must individually determine if they are subject to such additional requirements.

The Greater Nebraska Workforce Development Board *is* subject to additional records retention requirements under the Nebraska Records Management Act.<sup>9</sup> Greater Nebraska administrative entity staff must refer to the records retention and disposition schedules established by Nebraska's Secretary of State, which are accessible at [http://www.sos.ne.gov/records-management/labor\\_schedule.html](http://www.sos.ne.gov/records-management/labor_schedule.html), to determine additional retention requirements.

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<sup>8</sup> 2 CFR § 200.333

<sup>9</sup> Neb. Rev. Stat. §§ 84-1201 – 84-1229

## (b) NDOL-administered programs

NDOL-administered programs are bound by the same Federal three-year retention period described above. In addition to the three-year retention requirement, NDOL-administered programs are subject to additional records retention requirements under the Nebraska Records Management Act. Administrators of NDOL-administered programs must refer to the records retention and disposition schedules established by Nebraska's Secretary of State, which are accessible at [http://www.sos.ne.gov/records-management/labor\\_schedule.html](http://www.sos.ne.gov/records-management/labor_schedule.html), to determine the additional retention requirements.

## (c) Exceptions<sup>10</sup>

USDOL is not permitted to impose record retention requirements upon NDOL other than those stated in the Uniform Guidance, except under the circumstances described in paragraphs 1 through 6 below. Likewise, NDOL and local boards are not permitted to impose record-retention requirements upon subrecipients other than those stated in the Uniform Guidance, subject to the requirements of the Nebraska Records Management Act and other applicable State, regional, and local laws, except under the circumstances described in paragraphs 1 through 6 below.

1. If any litigation, claim, or audit is started before expiration of the applicable retention period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.
2. The retention period must be extended when the applicable entity is notified in writing to extend the retention period and the written notification is provided by USDOL, NDOL, a local board, other cognizant agency for audit, oversight agency for audit, or cognizant agency for indirect costs.
3. Records for real property and equipment acquired with Federal funds must be retained for three years after final disposition of the property and equipment.
4. When records are transferred to or maintained by USDOL or NDOL, the three-year retention requirement no longer applies to the local board.
5. *Records for program income transactions after the period of performance.* In some cases, recipients of Federal funds must report program income after the period of performance. When there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.
6. *Indirect cost rate proposals and cost allocations plans.* This retention requirement applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).
  - a. *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal government (or to the pass-through entity, such as NDOL or a local board) to form the basis for negotiation of the rate, then the

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<sup>10</sup> 2 CFR § 200.333

required retention period for its supporting records starts from the date of submission.

- b. *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal government (or to a pass-through entity, such as NDOL or a local board) for negotiation purposes, then the applicable retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

## Section V. Records access

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### (a) Rights of access<sup>11</sup>

The Federal awarding agency, Inspectors General, Comptroller General of the United States, and the pass-through entity, or any of their respective authorized representatives must have the right of access to any documents, papers, or other records of a non-Federal entity that pertain to the Federal award in order to make audits, examinations, excerpts, and transcripts. The right also includes the provision of timely and reasonable access to the non-Federal entity's personnel for the purpose of interview and discussion related to such documents.

### (b) Expiration of rights of access<sup>12</sup>

The rights of access described above *are not* limited to the required retention periods described in [Section IV](#). The rights of access last as long as the records are retained by the non-Federal entity. Federal awarding agencies and pass-through entities (such as NDOL and local boards) must not impose any other access requirements upon non-Federal entities.

### (c) Public access to records<sup>13</sup>

Unless required by Federal, state, local, or tribal statute, non-Federal entities are not required to permit public access to their records. No Federal awarding agency may place restrictions on a non-Federal entity that limits public access to the entity's records pertaining to a Federal award, except:

- for records that include protected PII; or
- when the Federal awarding agency can demonstrate that the records will be kept confidential and would have been:
  - exempted from disclosure pursuant to the Freedom of Information Act (FOIA);<sup>14</sup> or

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<sup>11</sup> 2 CFR § 200.337(a)

<sup>12</sup> 2 CFR § 200.336(c)

<sup>13</sup> 2 CFR § 200.337

<sup>14</sup> FOIA does not apply to records that remain under a non-Federal entity's control, except as required under 2 CFR § 200.315 (intangible property) [5 USC § 552].

- deemed as controlled unclassified information<sup>15</sup> pursuant to [Executive Order 13556](#) if the records had belonged to the Federal awarding agency.

Note that records provided to a Federal agency by a non-Federal entity are, in general, subject to FOIA and applicable exemptions.

## **Section VI. Data monitoring and quality control**

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### **(a) Data validation**

NDOL is required to establish data validation procedures.<sup>16</sup> Data validation is a series of internal controls or quality assurance techniques established to verify the accuracy, validity, and reliability of data. The purposes of data validation procedures are to:<sup>17</sup>

- verify that the performance data reported to USDOL are valid, accurate, reliable, and comparable across programs;
- identify anomalies in the data and resolve issues that may cause inaccurate reporting;
- identify source documentation required for data elements; and
- improve program performance accountability through the results of data validation efforts.

### **(1) Procedures**

#### **(i) State-level system-automated data element validation**

Data is validated quarterly and annually at the state-level through large-scale, system-automated processes.

1. NDOL's vendor for NEworks provides a full PIRL<sup>18</sup> file to NDOL on a daily basis through secure file transfer, which is then uploaded to the WIPS<sup>19</sup> data validation and reporting clearinghouse during USDOL-defined quarterly and annual reporting cycles.
2. The full PIRL file passes through a preliminary data validation and edit check protocol, which scans all individual and programmatic data elements. The edit check searches for date range errors and inconsistencies, anomalies, and waterfall errors (i.e., if element a = 1, element b cannot = 2).

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<sup>15</sup> Controlled unclassified information (CUI) is unclassified information belonging to the Executive Branch of the US Government that requires safeguarding or dissemination controls.

<sup>16</sup> WIOA Sec. 116(d)(5); TEGL 23-19

<sup>17</sup> TEGL 23-19

<sup>18</sup> *PIRL* refers to the Participant Individual Record Layout, a format for reporting program performance data to USDOL.

<sup>19</sup> *WIPS* refers to the Workforce Integrated Performance System, the system by which states report on the performance of workforce programs.

3. Once the full PIRL file successfully clears the edit check protocol, full PIRL reports are certified by the NDOL Quality Control Unit Performance Program Coordinator.
4. A similar data validation and edit check process for wage data occurs simultaneously in the SWIS clearinghouse during quarterly and annual reporting cycles, as defined by USDOL. The data goes through an import/export/validation process within NEworks and is then inserted as aggregate data into the full PIRL file, after which the data is retired from NEworks.

#### (ii) Manual data validation: State

NDOL is required to perform regular data element validation for the data elements accessible under [APPENDIX II](#) for Title I programs and Wagner-Peyser.<sup>20</sup> APPENDIX II also identifies acceptable source documentation required for validation of the data elements. Prior to NDOL's submission of the State's annual quantitative performance report to USDOL, NDOL's Quality Control Unit Program Analyst conducts manual validation of data elements,<sup>21</sup> in addition to the system-automated data element validation. Manual data validation for the preceding full program year begins on July 1 following the conclusion of that program year, according to the record sampling and validation processes described below in subsections (I) and (II).

#### (I) Records sampling

NDOL's Quality Control Unit Performance Program Coordinator generates a list of randomly selected participant cases for each Title I and Wagner-Peyser program population using the NEworks random sampling function. The participant cases are selected based on the required sample size per program population defined in Table 1.

- A participant case is the set of records documenting services provided to a program participant who was active or exited a program during the previous full program year (the data validation timeframe).
- A program population is the total number of participants who were active or exited a program during the data validation timeframe.

The Performance Program Coordinator then provides the lists to the Quality Control Unit Program Analyst within 15 days of the conclusion of the applicable program year.

Table 1. Required sample size per program population

Program population size	Confidence level	Confidence interval	Sample size
1 - 99	95%	15	30
100 - 199	95%	15	35
200 - 299	95%	15	37
300 - 399	95%	15	39
400 - 499	95%	15	39
500 - 599	95%	15	40
600 - 699	95%	15	40
700 - 799	95%	15	41

<sup>20</sup> TEGL 23-19

<sup>21</sup> Information in the State's annual quantitative performance report for local Title I programs and Wagner-Peyser must be validated by the State before the report is submitted to USDOL [TEGL 23-19].

Program population size	Confidence level	Confidence interval	Sample size
800 - 899	95%	15	41
900 - 999	95%	15	41
1000 - 1999	95%	15	42
2000 - 4999	95%	15	42
5000 - 9999	95%	15	43
10000 - 14999	95%	15	43
15000 - 19999	95%	15	43
20000 - 24999	95%	15	43
25000 - 29999	95%	15	43
30000 +	95%	15	43

## (II) Validation

Validation of the data elements accessible under [APPENDIX II](#) for Title I and Wagner-Peyser programs must be based on the following guidelines.

1. Each participant case in the sample is evaluated, comparing the information in NEworks for the data element to the source documentation provided in ECM or NDM to determine if acceptable source documentation is present for each of the applicable data elements accessible under APPENDIX II for the program.<sup>22</sup>
2. For most data elements, the validation guidelines in APPENDIX II provide multiple forms of acceptable source documentation. If multiple types of source documentation<sup>23</sup> are present in ECM or NDM for the same data element and the sources conflict, the most objective source should be used to determine if the data element is valid and accurate.

Following the completion of data validation, the Program Analyst creates a report that:

- indicates the number of participant cases evaluated from each program population;
- identifies anomalies in the data that may cause inaccurate reporting;
- identifies trends in common data accuracy issues;
- identifies participant cases with data accuracy issues; and
- assesses the effectiveness of the current data validation process and recommends revisions to the process in order to improve program performance accountability through the results of data validation efforts.

On or before September 30 of the applicable year, the Program Analyst then provides the report to the NDOL Quality Control Administrator and State Monitoring Unit Supervisor for evaluation

<sup>22</sup> Not all data elements accessible under [APPENDIX II](#) apply to all Title I and Wagner-Peyser programs. For example, data element 1303 (Type of training service #1) does not apply to Wagner-Peyser because Wagner-Peyser does not provide training services.

<sup>23</sup> Refer to [APPENDIX I](#) for a definition of types of source documentation.

and necessary corrective actions, in collaboration with the State Policy Unit and the Performance Program Coordinator.

### (iii) Manual data validation: Local Title I programs

Local area administrative entities overseeing Title I programs are:

- individually responsible for development and implementation of Title I program data validation procedures to ensure data accuracy; and
- required to perform quarterly data validation for program-specific data elements.<sup>24</sup>

At a minimum, local data validation procedures must:

- require that data validation be performed according to the schedule provided in Table 2;
- require that data validation be performed according to the record sampling and validation processes described below in subsections (I) and (II) to insure that recorded program activities are accurately supported by acceptable source documentation as required by each program's authorizing legislation, implementing regulations, subregulatory guidance, subawards, applicable requirements of the Uniform Guidance, and this policy;
- include procedures for provision of technical assistance to program staff when data validation reveals invalid or inaccurate data;
- include procedures for timely submission of record corrections when data validation reveals invalid data, subject to the requirements and limitations described in [Section III](#); and
- require the submission of quarterly data validation reports to the NDOL Quality Control Administrator and State Monitoring Unit Supervisor according to the schedule defined in Table 2.

Table 2. Local Title I quarterly data validation and reporting schedule

Quarter being reviewed	Start date	End date	Report due date
January – March	April 1	June 30	August 15
April – June	July 1	September 1	October 16
July – September	October 1	December 31	February 14
October - December	January 1	March 31	May 15

### (I) Records sampling

The Quality Control Unit Performance Program Coordinator generates a list of randomly selected participant cases for each Title I program population using the NEworks random sampling function. The participant cases are selected based on the required sample size per program population defined in Table 3.

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<sup>24</sup> TEGL 23-19 Attachment II defines acceptable source documentation required for validation of the data elements. Attachment II is accessible in [APPENDIX II](#) of this policy.

- A participant case is the set of records documenting services provided to a program participant who was active or exited a program during the previous full program year (the data validation timeframe).
- A program population is the total number of participants who were active or exited a program during the data validation timeframe.

The Performance Program Coordinator then provides the lists to the local administrative entity within 15 days of the conclusion of the applicable quarter.

Table 3. Required sample size per program population

Program population size	Confidence level	Confidence interval	Sample size
1 - 99	95%	15	30
100 - 199	95%	15	35
200 - 299	95%	15	37
300 - 399	95%	15	39
400 - 499	95%	15	39
500 - 599	95%	15	40
600 - 699	95%	15	40
700 - 799	95%	15	41
800 - 899	95%	15	41
900 - 999	95%	15	41
1000 - 1999	95%	15	42
2000 - 4999	95%	15	42
5000 - 9999	95%	15	43
10000 - 14999	95%	15	43
15000 - 19999	95%	15	43
20000 - 24999	95%	15	43
25000 - 29999	95%	15	43
30000 +	95%	15	43

## (II) Validation

Validation of the data elements accessible under [APPENDIX II](#) for local Title I programs must be based on the following guidelines.

1. Each participant case in the sample is evaluated, comparing the information in NEworks for the data element to the source documentation provided in ECM or NDM to determine if acceptable source documentation is present for each of the data elements accessible under APPENDIX II for the applicable program.<sup>25</sup>
2. For most data elements, the validation guidelines in APPENDIX II provide multiple forms of acceptable source documentation. If multiple types of source documentation<sup>26</sup> are

<sup>25</sup> Not all data elements accessible through [APPENDIX II](#) apply to all Title I programs and the Wagner-Peyser Employment Service. For example, data element 1303 (Type of training service #1) does not apply to Wagner-Peyser because Wagner-Peyser does not provide training services.

<sup>26</sup> Refer to [APPENDIX I](#) for a definition of types of source documentation.

present in ECM or NDM for the same data element and the sources conflict, the most objective source should be used to determine if the data element is valid and accurate.

Following the completion of data validation, the local area administrative entity must generate a report that:

- indicates the number of participant cases evaluated from each program population;
- identifies anomalies in the data that may cause inaccurate reporting;
- identifies trends in common data accuracy issues;
- identifies participant cases with data accuracy issues; and
- identifies corrective actions that were taken during the quarterly data validation process.

On or before the report due date defined in Table 2, the local area administrative entity must then provide the report to the NDOL Quality Control Administrator and State Monitoring Unit Supervisor for evaluation and implementation of any additional corrective action, in collaboration with the State Policy Unit and the Performance Program Coordinator.

#### (iv) Manual data validation: Wagner-Peyser

The NDOL administrator overseeing Wagner-Peyser is:

- responsible for development and implementation of program-specific data validation procedures for Wagner-Peyser to ensure data accuracy; and
- designating Wagner-Peyser staff responsible for performing quarterly data validation for the data elements accessible under [APPENDIX II](#).<sup>27</sup>

At a minimum, Wagner-Peyser data validation procedures must:

- require that data validation be performed quarterly according to policies established by the NDOL Reemployment Services Division;
- require that data validation be performed according to the record sampling and validation processes described below in subsections (I) and (II) to insure that recorded program activities are accurately supported by acceptable source documentation as required by each program's authorizing legislation, implementing regulations, subregulatory guidance, subawards, applicable requirements of the Uniform Guidance, and this policy;
- include procedures for provision of technical assistance to program staff when data validation reveals invalid or inaccurate data; and

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<sup>27</sup> TEGL 23-19 Attachment II defines acceptable source documentation required for validation of the data elements and is accessible through [APPENDIX II](#) of this policy.

- include procedures for timely submission of record corrections when data validation reveals invalid data, subject to conditions, limitations, and requirements described in [Section III](#).

#### (b) Staff training

The NDOL Quality Control Unit provides local area staff and staff of NDOL-administered programs with access to monthly training on topics relating the use of NEworks, ECM, and NDM. Requests for additional training relating to the use of NEworks, ECM, and NDM may be submitted by email to the NEworks Help Desk ([ndol.newworkshelp@nebraska.gov](mailto:ndol.newworkshelp@nebraska.gov)). The Quality Control Unit Performance Program Coordinator also provides training to the State Monitoring Unit Supervisor and Quality Control Unit Program Analyst upon request regarding data validation.

#### DISCLAIMER

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

## APPENDIX I. Definitions

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**PURPOSE.** Definitions in this appendix are provided as supplemental information that supports the provisions of the policy. The terms and phrases defined in this appendix should be read and understood in the context in which they are used in the policy and not as stand-alone information independent of that context.

### 1. exit (program exit) and common exit

*Exit* (or *program exit*)<sup>28</sup> is the last date of service provided to a participant under a program listed below. The last day of service cannot be determined until at least 90 days have elapsed since the participant last received services and there are no plans to provide the participant with future services. Services do not include self-service, information-only services or activities, or follow-up services. This criterion for determining program exit applies to the:

- local Title I programs;
- Jobs for Veterans State Grant program;
- Trade Adjustment Assistance program; and
- Wagner-Peyser Employment Service.

*Common exit*<sup>29</sup> means a participant is exited only when all *exit* criteria described above in the definition of *exit* are met for each program in which the participant is enrolled.

Example: Joe is enrolled in the Trade Adjustment Assistance Program and is co-enrolled in a dislocated worker program and the Wagner-Peyser Employment Service. Joe's last date of service under Wagner-Peyser is August 1. Joe's last date of service under the dislocated worker program is September 15. Joe's last date of service under the Trade program is October 1. Joe receives no additional services from any of the programs. Joe's common exit date is October 1.

### 2. Federal financial assistance

*Federal financial assistance* means assistance that non-Federal entities receive or administer in the form of:<sup>30</sup>

- grants;
- cooperative agreements;
- non-cash contributions or donations of property (including donated surplus property);
- direct appropriations;
- food commodities; and

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<sup>28</sup> 20 CFR § 677.150(c)

<sup>29</sup> 20 CFR § 677.150(c)(3)(ii)

<sup>30</sup> 2 CFR § 200.40

- other financial assistance, excluding:
  - loans and loan guarantees;
  - interest subsidies; and
  - insurance.

### 3. non-Federal entity

*Non-Federal entity* means a state, local government, Indian tribe, institution of higher education, or nonprofit organization that carries out a Federal award as a recipient or subrecipient.<sup>31</sup> For purposes of the policy, non-Federal entity may refer to NDOL, local boards, or subrecipients.

### 4. pass-through entity

*Pass-through entity* means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.<sup>32</sup> For purposes of this policy, pass-through entity may refer to NDOL or local boards, depending on context.

### 5. personally identifiable information (PII)

*Personally identifiable information*<sup>33</sup> (*PII*) means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. Some information that is considered to be *PII* is available in public sources such as telephone books, public websites, and university listings. This type of information is considered to be public *PII* and includes, for example, first and last name, address, work telephone number, email address, home telephone number, or general educational credentials. The definition of *PII* is not anchored to any single category of information or technology. Rather, it requires a case-by-case assessment of the specific risk that an individual can be identified. Non-*PII* can become *PII* whenever additional information is made publicly available, in any medium and from any source, that could be used to identify an individual when combined with other available information.

### 6. protected PII

*Protected personally identifiable information (protected PII)*<sup>34</sup> means an individual's first name or first initial and last name in combination with any one or more of types of information, including, but not limited to, social security number, passport number, credit card numbers, clearances, bank numbers, biometrics, date and place of birth, mother's maiden name, criminal, medical and financial records, educational transcripts. This does not include *PII* that is required by law to be disclosed.

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<sup>31</sup> 2 CFR § 200.69

<sup>32</sup> 2 CFR § 200.74

<sup>33</sup> 2 CFR § 200.01

<sup>34</sup> Ibid.

## 7. recipient

*Recipient*<sup>35</sup> means a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. *Recipient* does not include *subrecipients*. For purposes of this policy, *recipient* refers to NDOL.

## 8. source documentation types

Acceptable *source documentation types* include crossmatch, self-attestation, case notes, and electronic records, subject to the requirements defined in TEGL 23-19 Attachment II.<sup>36</sup>

### a. crossmatch

A crossmatch requires the validator to find detailed supporting evidence for the data element in a database. An indicator or presence of a Social Security Number in an administrative non-WIOA database *is not* sufficient evidence for a crossmatch. A non-WIOA database is a database that is not maintained by a WIOA core program, such as database maintained by the Nebraska Department of Motor Vehicles. A validator must confirm supporting information such as dates of participation and services rendered when using a crossmatch as source documentation.

### b. self-attestation

Self-attestation (also referred to as a participant statement) occurs when a participant states their status for a particular data element, such as pregnant or parenting youth, and then signs and dates a form acknowledging this status. The key elements of self-attestation are:

- the participant identifying his or her status for permitted data elements; and
- signing and dating a form attesting to this self-identification.

The form may be completed electronically in NEworks with an electronic signature or completed and signed using a paper form. When using a paper form, the form must be scanned and uploaded into ECM or NDM once it has been completed and signed by the participant.

### c. case notes

Case notes refers to electronic statements entered into NEworks by a case manager that identify, at a minimum:<sup>37</sup>

- a participant's status for a specific data element (i.e., program activity or service);
- the date on which the information was obtained from the participant; and
- the name of the case manager who obtained the information.

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<sup>35</sup> 2 CFR § 200.86

<sup>36</sup> TEGL 23-19 Attachment II

<sup>37</sup> Ibid.

If a program activity is planned to last more than one day, the case manager must document actual service delivery in case notes.

Case notes add context to services provided to a participant that are not clearly evidenced by the recording of program activities or services in NEworks, such as details relating to participant enrollment and discussions regarding possible training services, including consultations relating to the Eligible Training Provider List which must be documented.<sup>38</sup> It is important to note that case notes are necessary supplemental information that support recorded services, and they are considered during data validation and monitoring.

d. electronic records

Electronic records are participant records created, stored, and maintained exclusively in NEworks, ECM, or NDM, including:

- program applications;
- eligibility determinations;
- participant enrollments;
- exits and follow-ups;
- case notes; and
- all other information relevant to program activities.

## 9. subaward

*Subaward*<sup>39</sup> means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. *Subaward* does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A *subaward* may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

## 10. subrecipient

*Subrecipient*<sup>40</sup> means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program. The terms *subrecipient* does not include an individual that is a beneficiary of a Federal program, meaning a program participant.

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<sup>38</sup> Refer to the State's policy on Eligible Training Providers for information on consultation requirements. The State's policy manual is accessible at <https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies>.

<sup>39</sup> 2 CFR § 200.1

<sup>40</sup> 2 CFR § 200.93

## **APPENDIX II. Acceptable source documentation for data elements**

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Acceptable source documentation for WIOA core and non-core programs is defined in TEGL 23-19 Attachment II: [https://wdr.doleta.gov/directives/attach/TEGL/TEGL\\_23-19\\_Attachment\\_2.pdf](https://wdr.doleta.gov/directives/attach/TEGL/TEGL_23-19_Attachment_2.pdf).

## 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 402.471.9000 <a href="mailto:ndol.wioa_policy@nebraska.gov">ndol.wioa_policy@nebraska.gov</a>	Policy category
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	Supersedes
	None

## State Monitoring Program

### WIOA Title I

## 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

As Nebraska's *recipient* of WIOA Title I funds and the Title I *pass-through entity* regarding local WIOA Title I programs, NDOL is required to establish a State Monitoring Program.<sup>1</sup>

Note that this policy will be revised in the future to address monitoring of NDOL-administered programs, including the Wagner-Peyser Employment Service, Jobs for Veterans State Grant program, National Dislocated Worker Grant programs, Senior Community Service Employment Program, and Trade Adjustment Assistance program.

## ACTION

Questions and comments on this policy may be submitted in writing to the WIOA policy mailbox at [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov).

<sup>1</sup> 2 CFR §§ 200.303(c), 200.329(a), 200.332(b), and 200.332(d)

## POLICY

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### Section I. State Monitoring Program

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#### (a) Overview

NDOL is responsible for oversight and monitoring of Nebraska's Title I *subrecipients*. Oversight is performed in many ways, through evaluation of local area Title I record correction requests; scheduled annual monitoring, including risk assessments, and desktop reviews; and analysis of local area Title I program implementation of priority of service, performance, and financial reports. NDOL may also evaluate other materials, data, and conditions relevant to local area operations.

To successfully carry out oversight and monitoring functions, NDOL relies on the professional judgement and experience of its staff, including NDOL's State Monitoring Unit (SMU) staff, State Policy Unit staff, other Reemployment Services staff, and Finance Division staff.

#### (b) Purpose

The State Monitoring Program, in general:<sup>2</sup>

- conducts annual on-site monitoring reviews<sup>3</sup> of local area compliance with [2 CFR Part 200](#), as required under WIOA Sec. 184(a)(3), WIOA and its implementing rules, regulations, and guidance, as well as requirements established under the State's policies;
- ensures that local Title I *subrecipient* policies established to achieve program performance and outcomes meet the objectives of WIOA and its implementing rules, regulations, and guidance, as well as requirements established under the State's policies;<sup>4</sup>
- enables the SMU to determine if *subrecipients* and *contractors* have demonstrated substantial compliance with WIOA and its implementing rules, regulations, and guidance, including [2 CFR Part 200](#), as well as requirements established under the State's policies;
- enables the SMU to ensure compliance with the nondiscrimination, disability, and equal opportunity requirements of WIOA Sec. 188, including the Assistive Technology Act of 1998 ([29 USC § 3003](#)), as well as requirements established under the State's policies; and

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<sup>2</sup> 20 CFR § 683.410(b)(2)

<sup>3</sup> Virtual monitoring reviews may be conducted under certain circumstances.

<sup>4</sup> The State's policy manual is accessible at <https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies>.

- enables NDOL to determine whether a local plan should be disapproved for failure to demonstrate acceptable progress in addressing deficiencies, as required under WIOA Sec.108(e).

### (c) Requirements

Under the State Monitoring Program, the following activities and actions must occur.<sup>5</sup>

1. The SMU must conduct an annual on-site monitoring review<sup>6</sup> of *subrecipient* compliance with [2 CFR Part 200](#), as required under WIOA Sec. 184(a)(3), WIOA and its implementing rules, regulations, and guidance, as well as requirements established under the State's policies.
2. NDOL must require its *subrecipients* to take prompt corrective action be taken if any substantial violation of [2 CFR Part 200](#) are found.
3. The Governor must impose sanctions pursuant to WIOA Sec. 184(b) – (c) in the event of a *subrecipient's* failure to take corrective actions required under paragraph 2.

Note. The SMU may issue additional requirements and instructions to *subrecipients* subsequent to monitoring activities.<sup>7</sup>

### (d) Tools

The State Monitoring Unit (SMU) uses NDOL's [Comprehensive Monitoring Guide \(CMG\)](#)<sup>8</sup> as a tool when performing on-site and virtual reviews of the core activities of the State's Title I *subrecipients*. The purposes of SMU reviews are to evaluate:

- *subrecipient* management and administration of Title I grants;
- quality of *subrecipient* Title I programs and services; and
- performance of *subrecipient* grants to determine if *subrecipient* programs are operating in compliance with their respective grant agreements with NDOL; Federal and State laws, regulations, rules, guidance, and policies; and [2 CFR Part 200](#), in a manner that ensures achievement of Title I *subrecipient* goals and outcomes.

On-site or virtual monitoring is one of many oversight tools employed by the SMU that help the SMU with assessing Title I *subrecipient* technical assistance needs to achieve success in program goals and deliverables. NDOL monitors its Title I *subrecipients* to assess appropriate implementation of priority of service, measure programmatic progress, ensure compliance, assess responsible use of Federal funds, ensure continuous improvement, and develop technical assistance plans.

<sup>5</sup> 20 CFR §§ 683.410(b)(3) through 683.410(b)(7)(iii)

<sup>6</sup> Again, virtual monitoring reviews may be conducted under certain circumstances.

<sup>7</sup> 20 CFR § 683.410(b)(7)

<sup>8</sup> The Comprehensive Monitoring Guide is accessible at <https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/ManualsPlansReports>, under the *WIOA Monitoring and Oversight* subsection.

### (e) Schedules

The SMU issues its planned monitoring schedules on an annual basis.<sup>9</sup> In addition, the SMU may schedule ad hoc monitoring events and single audits, as circumstances require. In both cases, established schedules may be adjusted to accommodate the business purposes of NDOL, including the SMU.

### (f) Timelines

#### (1) Annual comprehensive monitoring

When the SMU announces a monitoring event based on the State's WIOA Title I Comprehensive Monitoring Schedule, or schedules ad hoc monitoring events or single audits, the announcement will include timelines for the following activities and actions, pursuant to the State's [Comprehensive Monitoring Guide](#):

- focus of the review;
- review period;
- submission of requested documents and materials to be reviewed;
- entrance conference;
- review of participant records;
- exit conference; and
- planned release of the monitoring report, which will typically occur within 45 days of the exit conference, absent extenuating circumstances.

Note that timelines established in announcements for annual comprehensive monitoring events, ad hoc monitoring events, or single audits may be adjusted to accommodate the business purposes of NDOL, including the business purposes of the SMU.

#### (2) Single audits

When the SMU schedules a single audit of a particular local area, the announcement made to the local area will include timelines for conduct of the single audit, which will be based on applicable criteria in the [Comprehensive Monitoring Guide](#) and additional guidance provided by the US Department of Labor.

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<sup>9</sup> The Comprehensive Monitoring Guide is accessible at <https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/ManualsPlansReports>, under the *WIOA Monitoring and Oversight* subsection.

## Section II. Substantial violations of 2 CFR Part 200

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### (a) Corrective action

If NDOL identifies any substantial violation of [2 CFR Part 200](#) regarding use of Title I funds by a *subrecipient* through compliance monitoring or financial audits, or other means such as single audits, NDOL must require corrective actions to secure compliance with the requirements of [2 CFR Part 200](#),<sup>10</sup> in addition to the requirements established under WIOA, its implementing rules, regulations and guidance, as well as the States policies.<sup>11</sup>

### (b) Sanctions

If NDOL identifies any substantial violation of the [2 CFR Part 200](#) regarding use of Title I funds by a *subrecipient* through compliance monitoring or financial audits, or other means such as single audits, and a local board fails to take corrective actions as required by NDOL, including its SMU, the Governor must:<sup>12</sup>

- issue a notice of intent to revoke approval of all or part of the local board's local plan; or
- impose a reorganization plan, which may include:
  - decertifying the local board;
  - prohibiting the use of Eligible Training Providers by the local area;
  - selecting an alternative entity to administer the local board's affected Title I program;
  - merging the local area into one or more other local areas; or
  - making other changes as the Secretary of the US Department of Labor (Secretary) or the Governor determine necessary to secure compliance.

### (c) Repayment of misexpended funds

If the Secretary requires that the State repay funds to the US Department of Labor as a result of a determination that a *subrecipient* expended funds in a manner contrary to the requirements of WIOA Title I, NDOL will deduct an amount equal to the misexpenditure from subsequent Program Year allocations to the affected local area from funds reserved for administrative costs of the local Title I program involved.<sup>13</sup>

### (d) Appeals and administrative adjudication

A *subrecipient* found in substantial violation of [2 CFR Part 200](#) regarding use of Title I funds through financial or compliance monitoring or audits or other means *and* has received notice from the Governor that either all or part of its local area plan will be revoked *or* that a reorganization

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<sup>10</sup> WIOA Sec. 184(a)(5)(A); 20 CFR § 683.410(b)(4)

<sup>11</sup> The State's policy manual is accessible at <https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies>.

<sup>12</sup> WIOA Sec. 184(b)(1)

<sup>13</sup> WIOA Sec. 184(c)(3) – (4); 20 CFR § 683.410(b)(5)

will occur may appeal the sanction imposed by the Governor to the Secretary.<sup>14</sup> The Governor's sanction will not become effective until the time for appeal has expired or the Secretary has issued a decision.<sup>15</sup>

### (3) Appeal procedure

The *subrecipient's* appeal must be filed no later than 30 calendar days after receipt of written notification of local plan revocation or imposed reorganization.<sup>16</sup> The appeal must be submitted by certified mail, return receipt requested, to:

- Secretary, US Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210, Attention: ASET;<sup>17</sup> and
- Office of the Governor, PO Box 94848, Lincoln, NE 68509-4848.<sup>18</sup>

Further, NDOL requires that a copy of the appeal be provided simultaneously by certified mail, return receipt requested, to:

- Commissioner of Labor, Nebraska Department of Labor, PO Box 94600, Lincoln, NE 68509-4600; and
- Director, Reemployment Services Division, Nebraska Department of Labor, PO Box 94600, Lincoln, NE 68509-4600.

The Secretary will notify the *subrecipient* and the Governor in writing of the Secretary's decision within 45 calendar days after receipt of the appeal.<sup>19</sup> In making this decision, the Secretary may consider any comments submitted by the Governor in response to the appeal.

### (4) Administrative adjudication

If the *subrecipient* is dissatisfied with the Secretary's final decision, the local area may appeal to the US Department of Labor Office of Administrative Law Judges by requesting a hearing.<sup>20</sup> The request for a hearing must:<sup>21</sup>

- specifically identify the issues or findings in the Secretary's final decision upon which review is requested;
- be transmitted by certified mail, return receipt requested, to Chief Administrative Law Judge, US Department of Labor, Suite 400, 800 K Street NW, Washington, DC 20001; and

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<sup>14</sup> WIOA Sec. 184(b)(2)(A); 20 CFR § 683.650(a)

<sup>15</sup> Ibid.

<sup>16</sup> 20 CFR § 683.650(a)

<sup>17</sup> 20 CFR § 683.650(d)

<sup>18</sup> Ibid.

<sup>19</sup> WIOA Sec. 184(b)(2)(B)

<sup>20</sup> WIOA Sec. 186(a); 20 CFR § 683.800(a), (c), and (d)

<sup>21</sup> WIOA Sec. 186(b)

- be provided simultaneously to Secretary, US Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210, Attention: ASET.

Further, NDOL requires that a copy of the secondary appeal be provided simultaneously by certified mail, return receipt requested, to:

- Commissioner of Labor, Nebraska Department of Labor, PO Box 94600, Lincoln, NE 68509-4600; and
- Director, Reemployment Services Division, Nebraska Department of Labor, PO Box 94600, Lincoln, NE 68509-4600.

Note that a *subrecipient's* failure to request a hearing within 21 calendar days of receipt of the Secretary's final decision constitutes the *subrecipient's* waiver of its right to administrative adjudication.<sup>22</sup>

Further, note that issues or findings identified in the Secretary's final decision that are not specified in the *subrecipient's* request for review, or the Secretary's entire final decision when no hearing has been requested within the 21-day period, are considered resolved and not subject to further review.<sup>23</sup> Only alleged violations of WIOA, its implementing regulations, the applicable grant or other agreement under WIOA raised in the Secretary's final decision and the *subrecipient's* request for hearing are subject to review.<sup>24</sup>

### Section III. Failure to submit accurate on-time quarterly financial reports

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A local board's failure to submit accurate quarterly financial reports as described in the State's program funding policy and according to the timelines described the State's program funding policy:<sup>25</sup>

- significantly affects NDOL's ability to monitor and submit accurate State-level quarterly financial reports based on reporting timelines defined in [TEGL 20-19](#); and
- may result in Federal and State level findings and mandatory corrective action.

### DISCLAIMER

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This policy is based on NDOL's reading of applicable statutes, regulations, rules, and guidance released by the US 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>22</sup> 20 CFR § 683.800(b)

<sup>23</sup> 20 CFR § 683.800(c)

<sup>24</sup> Ibid.

<sup>25</sup> The State's policy manual is accessible at <https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies>.

## APPENDIX I. Definitions

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**PURPOSE.** Definitions in this appendix are provided as supplemental information that supports the provisions of the policy. The terms and phrases defined in this appendix, which appear in italics on the policy, should be read and understood in the context in which they are used in the policy and not as stand-alone information independent of that context.

### 1. Chief elected official

The term *chief elected official*<sup>26</sup> means:

- the chief elected executive officer of a unit of general local government in a local area; and
- in the case of a local area that includes multiple units of general local government, the individuals designated under the agreement executed among the chief elected officials of the local area in accordance with WIOA Sec. 107(c)(1)(B).

For purposes of this policy, the term chief elected official also refers to a chief elected officials board (CEOB) established in accordance with WIOA Sec. 107(c)(1)(B).

### 2. Contract

*Contract*<sup>27</sup> means a legal instrument by which a non-Federal entity, such as a local board, purchases property or services needed to carry out the project or program under a Federal award.

### 3. Contractor

*Contractor*<sup>28</sup> is an entity that receives a contract.

### 4. Pass-through entity (PTE)

*Pass-through entity (PTE)*<sup>29</sup> means a non-Federal entity that provides a *subaward* to a *subrecipient* to carry out part of a Federal program. For purposes of this policy, *PTE* refers to NDOL.

### 5. Recipient

*Recipient*<sup>30</sup> means a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. The term *recipient* does not include *subrecipients*. For purposes of this policy, *recipient* refers to NDOL.

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<sup>26</sup> WIOA Sec. 3(9)

<sup>27</sup> 2 CFR § 200.22

<sup>28</sup> 2 CFR § 200.23

<sup>29</sup> 2 CFR § 200.74

<sup>30</sup> 2 CFR § 200.86

## 6. Subaward (or subgrant)

*Subaward* (or *subgrant*) means an award provided by a pass-through entity to a *subrecipient* for the *subrecipient* to carry out part of a Federal award received by the pass-through entity.<sup>31</sup>

## 7. Subrecipient

*Subrecipient*<sup>32</sup> means a non-Federal entity that receives a *subaward* from a pass-through entity to carry out part of a Federal program, such as a local board. *Subrecipient*<sup>33</sup> also refers to any entity to which a local board provides a *subaward* for the administration of some or all of the requirements of the *subaward* provided to the local board by NDOL for administration of Title IB programs. For purposes of this policy, *subrecipient* includes local area *chief elected officials* and local boards.

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<sup>31</sup> 20 CFR § 675.300

<sup>32</sup> 2 CFR § 200.93

<sup>33</sup> Ibid.

## State Policy

## Workforce Innovation and Opportunity Act (WIOA)

Nebraska Department of Labor (NDOL) Division of Reemployment Services 550 South 16 <sup>th</sup> Street Lincoln, NE 68508 402.471.9000 <a href="mailto:ndol.wioa_policy@nebraska.gov">ndol.wioa_policy@nebraska.gov</a>	Policy category
	Administrative Requirements
	Effective date
	January 18, 2023
	Supersedes
	Audit and Audit Resolution (effective date April 27, 2015)

## Audit and Audit Resolution, Change 1

## REFERENCE

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

## BACKGROUND

20 CFR § 683.210 requires that all recipients of WIOA title I and Wagner-Peyser Act funds that expend more than the minimum amounts specified in 2 CFR Part 200 Subpart F in Federal awards during their fiscal year must have a program-specific or single audit conducted in accordance with 2 CFR Part 200 Subpart F. In addition, 2 CFR Part 200 Subpart F requires that subrecipients and pass-through entities adhere to audit requirements established in Subpart F.

## CHANGES

This policy establishes the following material changes to the superseded and cancelled policy.

- All provisions in the superseded and cancelled policy have been revised to ensure compliance with 2 CFR Part 200, including its Subpart F and other relevant rules and regulations.

- An appendix has been added to this change, [APPENDIX I](#), to provide relevant definitions in a single location.
- An appendix has been added to this change, [APPENDIX II](#), to provide consolidated information on allowed and unallowed activities for Title I programs.

## ACTION

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This policy supersedes and cancels the State's policy titled *Audit Resolution* (effective date April 27, 2015). Questions and comments on this policy may be submitted in writing to the WIOA policy mailbox at [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov).

- Local areas must ensure that they comply with all requirements of this policy.
- The NDOL State Monitoring Unit is responsible for ensuring local area compliance with this policy.

## POLICY

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This policy has six sections and two appendices.

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## Section I. General

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This policy implements Federal standards for obtaining consistency and uniformity for audit of a non-Federal entity expending Federal award, which are defined in the Uniform Guidance ([2 CFR Part 200](#), including [2 CFR Part 200 Subpart F](#)).

## Section II. Audits

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### (a) Audit requirements

#### (1) Audit required

A non-Federal entity that expends \$750,000 or more in Federal awards during the non-Federal entity's fiscal year must have a single or program-specific audit conducted for that year in accordance with the provisions of [2 CFR Part 200](#).<sup>1</sup>

#### (2) Single audit

A non-Federal entity that expends \$750,000 or more in Federal awards during the non-Federal entity's fiscal year must have a single audit conducted in accordance with [2 CFR § 200.514](#) (refer to [Section II\(a\)\(2\)](#)), except when the non-Federal entity elects to have a program-specific audit conducted in accordance with [Section II\(a\)\(3\)](#).<sup>2</sup>

#### (3) Program-specific audit election

When an auditee expends Federal awards under only one Federal program *and* the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with [2 CFR § 200.507](#).<sup>3</sup>

#### (4) Exemption when Federal awards expended are less than \$750,000

A non-Federal entity that expends less than \$750,000 in Federal awards during the non-Federal entity's fiscal year is exempt from Federal audit requirements for that fiscal year, except as noted in [2 CFR § 200.503](#); however, records must be available for review or audit by a pass-through entity, appropriate officials of the Federal agency, and Government Accountability Office (GAO).<sup>4</sup>

#### (5) Subrecipients and contractors<sup>5</sup>

An auditee may simultaneously be a recipient, a subrecipient, and a contractor. Federal awards expended as a recipient or a subrecipient are subject to audit under this part. The payments received for goods or services provided as a contractor are not Federal awards. [2 CFR § 200.331](#) sets forth considerations for determining whether payments constitute a Federal award or a payment for goods or services provided as a contractor.

#### (6) Compliance responsibility for contractors<sup>6</sup>

In most cases, the auditee's compliance responsibility for contractors is only to ensure that the procurement, receipt, and payment for goods and services comply with Federal statutes,

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<sup>1</sup> 2 CFR § 200.501(a)

<sup>2</sup> 2 CFR § 200.501(b)

<sup>3</sup> 2 CFR § 200.501(c)

<sup>4</sup> 2 CFR § 200.501(d)

<sup>5</sup> 2 CFR § 200.501(f)

<sup>6</sup> 2 CFR § 200.501(g)

regulations, and the terms and conditions of Federal awards. Federal award compliance requirements normally do not pass through to contractors. However, the auditee is responsible for ensuring compliance for procurement transactions which are structured such that the contractor is responsible for program compliance or the contractor's records must be reviewed to determine program compliance. Also, when these procurement transactions relate to a major program, the scope of the audit must include determining whether these transactions are in compliance with Federal statutes, regulations, and the terms and conditions of Federal awards.

#### (7) For-profit subrecipient<sup>7</sup>

Because audit requirements under [2 CFR Part 200](#) do not apply to a for-profit subrecipient, the pass-through entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients. The agreement with a for-profit subrecipient must describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the agreement, and post-award audits.

#### (b) Basis for determining Federal awards expended

##### (1) Determining Federal awards expended<sup>8</sup>

The determination of when a Federal award is expended must be based on when activity related to the Federal award occurs. Generally, the activity pertains to events that require the non-Federal entity to comply with Federal statutes, regulations, and the terms and conditions of Federal awards, such as:

- expenditure/expense transactions associated with awards including grants;
- cost-reimbursement contracts under Federal Acquisition Regulation (FAR), compacts with Indian Tribes, cooperative agreements, and direct appropriations;
- disbursement of funds to subrecipients;
- receipt of property;
- receipt of surplus property;
- receipt or use of program income;
- distribution or use of food commodities;
- disbursement of amounts entitling the non-Federal entity to an interest subsidy; and
- the period when insurance is in force.

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<sup>7</sup> 2 CFR § 200.501(h)

<sup>8</sup> 2 CFR § 200.502(a)

## (2) Free rent

Free rent received by itself is not considered a Federal award expended under this part. However, free rent received as part of a Federal award to carry out a Federal program must be included when determining Federal awards expended and is subject to audit under [2 CFR Part 200](#).<sup>9</sup>

## (3) Valuing non-cash assistance

Federal non-cash assistance, such as free rent, food commodities, donated property, or donated surplus property must be valued at fair market value at the time of receipt or the assessed value provided by the Federal agency.<sup>10</sup>

## (c) Relation to other audit requirements<sup>11</sup>

An audit conducted in accordance with [2 CFR Part 200](#) must be in lieu of any financial audit of Federal awards which a non-Federal entity is required to undergo under any other Federal statute or regulation. To the extent that such audit provides a Federal agency with the information it requires to carry out its responsibilities under Federal statute or regulation, a Federal agency must rely upon and use that information. However, a Federal agency, Inspectors General, or GAO may conduct or arrange for additional audits which are necessary to carry out its responsibilities under Federal statute or regulation. The provisions of [2 CFR Part 200](#) do not authorize any non-Federal entity to constrain, in any manner, such Federal agency from carrying out or arranging for such additional audits, except that the Federal agency must plan such audits to not be duplicative of other audits of Federal awards. Prior to commencing such an audit, the Federal agency or pass-through entity must review the Federal Audit Clearinghouse (FAC)<sup>12</sup> for recent audits submitted by the non-Federal entity and, to the extent such audit(s) meet a Federal agency or pass-through entity's needs, the Federal agency or pass-through entity must rely upon and use such audits. Any additional audits must be planned and performed in such a way as to build upon work performed, including the audit documentation, sampling, and testing already performed by other auditors. Note that the provisions of [2 CFR Part 200](#) do not limit the authority of Federal agencies to conduct, or arrange for the conduct of, audits and evaluations of Federal awards, nor limit the authority of any Federal agency Inspector General or other Federal official.

## (1) Federal agency to pay for additional audits

A Federal agency that conducts or arranges for additional audits must, consistent with other applicable Federal statutes and regulations, arrange for funding the full cost of such additional audits.

## (2) Request for a program to be audited as a major program

A Federal awarding agency may request that an auditee have a particular Federal program audited as a major program in lieu of the Federal awarding agency conducting or arranging for the additional audits. To allow for planning, such requests should be made at least 180 calendar days prior to the end of the fiscal year to be audited. The auditee, after consultation with its

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<sup>9</sup> 2 CFR § 200.502(f)

<sup>10</sup> 2 CFR § 200.502(f)

<sup>11</sup> 2 CFR § 200.503(a) – (e)

<sup>12</sup> Information on the FAC is accessible at <https://facweb.census.gov/uploadpdf.aspx>.

auditor, should promptly respond to such a request by informing the Federal awarding agency whether the program would otherwise be audited as a major program using the risk-based audit approach described in [2 CFR § 200.518](#) and, if not, the estimated incremental cost. The Federal awarding agency must then promptly confirm to the auditee whether it wants the program audited as a major program. If the program is to be audited as a major program based upon this Federal awarding agency request, and the Federal awarding agency agrees to pay the full incremental costs, then the auditee must have the program audited as a major program. A pass-through entity may use the provisions of this paragraph in relation to a subrecipient.

#### (d) Frequency of audits<sup>13</sup>

Except for the provisions for biennial audits provided in items 1 and 2 below, audits required by [2 CFR Part 200](#), including [2 CFR Part 200 Subpart F](#), must be performed annually.

Any biennial audit must cover both years within the biennial period:

1. A state or local government that is required by constitution or statute, in effect on January 1, 1987, to undergo its audits less frequently than annually, is permitted to undergo its audits biennially. This requirement must still be in effect for the biennial period.
2. Any nonprofit organization that had biennial audits for all biennial periods ending between July 1, 1992, and January 1, 1995, is permitted to undergo its audits part biennially.

#### (e) Sanctions

In cases of continued inability or unwillingness to have an audit conducted in accordance with [2 CFR Part 200](#), including [2 CFR Part 200 Subpart F](#), Federal agencies and pass-through entities must take appropriate action as provided in [2 CFR § 200.339](#).

#### (f) Audit costs (audit services)<sup>14</sup>

A reasonably proportionate share of the costs of audits required by, and performed in accordance with, the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), as implemented by requirements of this part, are allowable. However, the following audit costs are unallowable:

- any costs when audits required by the [Single Audit Act of 1984, as amended](#), and [2 CFR Part 200 Subpart F](#) have not been conducted or have been conducted but not in accordance therewith; and
- any costs of auditing a non-Federal entity that is exempted from having an audit conducted under the Single Audit Act of 1984, as amended, and 2 CFR Part 200 Subpart F because its expenditures under Federal awards are less than \$750,000 during the non-Federal entity's fiscal year.

The costs of a financial statement audit of a non-Federal entity that does not currently have a Federal award may be included in the indirect cost pool for a cost allocation plan or indirect cost proposal.

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<sup>13</sup> 2 CFR § 200.504

<sup>14</sup> 2 CFR § 200.425

Pass-through entities may charge Federal awards for the cost of agreed-upon-procedures engagements to monitor subrecipients (in accordance with [2 CFR Part 200 Subpart D](#) and [2 CFR §§ 200.331, 200.332, and 200.333](#)) through who are exempted from the requirements of the Single Audit Act and 2 CFR Part 200 Subpart F. This cost is allowable only if the agreed-upon procedures engagements are:

- conducted in accordance with GAGAS attestation standards;
- paid for and arranged by the pass-through entity; and
- limited in scope to one or more of the following types of compliance requirements: activities allowed or unallowed; allowable costs/cost principles; eligibility; and reporting.

#### (g) Program-specific audits

##### (1) Program-specific audit guide available<sup>15</sup>

A program-specific audit guide is available and provides specific guidance to the auditor with respect to internal controls; compliance requirements, including allowed and unallowed activities;<sup>16</sup> suggested audit procedures; and audit reporting requirements. A listing of current program-specific audit guides is provided in the compliance supplement.<sup>17</sup> When a current program-specific audit guide is available, the auditor must follow GAGAS *and* the guide when performing a program-specific audit.

##### (2) Program-specific audit guide not available

When a current program-specific audit guide is not available, the auditee and auditor must have basically the same responsibilities for the Federal program as they would have for an audit of a major program during a single audit.<sup>18</sup>

- The auditee must prepare the financial statement(s) for the Federal program that includes, at a minimum, a schedule of expenditures of Federal awards for the program and notes that describe the significant accounting policies used in preparing the schedule, a summary schedule of prior audit findings consistent with the requirements of [2 CFR § 200.511\(b\)](#) and a corrective action plan consistent with the requirements of [2 CFR § 200.511\(c\)](#).
- The auditor must:
  - perform an audit of the financial statement(s) for the Federal program in accordance with GAGAS;

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<sup>15</sup> 2 CFR § 200.507(a)

<sup>16</sup> Refer to [APPENDIX II](#) for a list of allowed and unallowed WIOA Title I activities, as excerpted from the *compliance supplement* which is linked in the next footnote and in APPENDIX II.

<sup>17</sup> The *compliance supplement* is accessible at [https://www.whitehouse.gov/wp-content/uploads/2022/05/2022-Compliance-Supplement\\_PDF\\_Rev\\_05.11.22.pdf](https://www.whitehouse.gov/wp-content/uploads/2022/05/2022-Compliance-Supplement_PDF_Rev_05.11.22.pdf).

<sup>18</sup> 2 CFR § 200.507(b)

- obtain an understanding of internal controls and perform tests of internal controls over the Federal program consistent with the requirements of [2 CFR § 200.514\(c\)](#) for a major program;
- perform procedures to determine whether the auditee has complied with Federal statutes, regulations, and the terms and conditions of Federal awards that could have a direct and material effect on the Federal program consistent with the requirements of [2 CFR § 200.514\(d\)](#) for a major program;
- follow up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with the requirements of [2 CFR § 200.511](#), and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding; and
- report any audit findings consistent with the requirements of [2 CFR § 200.516](#).

### (3) Report submission for program-specific audits<sup>19</sup>

The audit must be completed, and the reporting required under [2 CFR § 200.507\(c\)\(2\)](#) or [2 CFR § 200.507\(c\)\(3\)](#) must be submitted within the earlier of 30 calendar days after receipt of the auditor's report(s) or nine months after the end of the audit period, unless a different period is specified in a program-specific audit guide. Unless restricted by Federal law or regulation, the auditee must make report copies available for public inspection. Auditees and auditors must ensure that their respective parts of the reporting package *do not* include protected personally identifiable information.

When a program-specific audit guide is available, the auditee must electronically submit to the FAC the data collection form prepared in accordance with [2 CFR § 200.512\(b\)](#), as applicable to a program-specific audit, and the reporting required by the program-specific audit guide.

## Section III. Auditees

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### (a) Auditee responsibilities<sup>20</sup>

The auditee must:

- procure or otherwise arrange for the audit required by this part in accordance with [2 CFR § 200.509](#), and ensure it is properly performed and submitted when due in accordance with [2 CFR § 200.512](#);
- prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with [2 CFR § 200.510](#);

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<sup>19</sup> 2 CFR § 200.507(c)

<sup>20</sup> 2 CFR § 200.508

- promptly follow up and take corrective action on audit findings, including preparation of a summary schedule of prior audit findings and a corrective action plan in accordance with [2 CFR § 200.511\(b\)](#) and [2 CFR § 200.511\(c\)](#), respectively; and
- provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by this part.

## (b) Auditor selection

### (1) Auditor procurement<sup>21</sup>

In procuring audit services, the auditee must follow the procurement standards prescribed by the Procurement Standards defined in [2 CFR Part 200 Subpart D](#). In requests for proposals for audit services, the objectives and scope of the audit must be made clear and the non-Federal entity must request a copy of the audit organization's peer review report which the auditor is *required* to provide under GAGAS. Factors to be considered in evaluating each proposal for audit services include the responsiveness to the request for proposal, relevant experience, availability of staff with professional qualifications and technical abilities, the results of peer and external quality control reviews, and price. Whenever possible, the auditee must make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises, in procuring audit services as stated in [2 CFR § 200.321](#).

### (2) Restriction on auditor preparing indirect cost proposals<sup>22</sup>

An auditor who prepares the indirect cost proposal or cost allocation plan *must not* also be selected to perform the audit required by this part *when* the indirect costs recovered by the auditee during the prior year exceeded \$1 million. This restriction applies to the base year used in the preparation of the indirect cost proposal or cost allocation plan and any subsequent years in which the resulting indirect cost agreement or cost allocation plan is used to recover costs.

### (3) Use of Federal auditors

Federal auditors may perform all or part of the work required under this part if they comply fully with the requirements of this part.<sup>23</sup>

## (c) Financial statements

### (1) Financial statements<sup>24</sup>

The auditee must prepare financial statements that reflect its financial position, results of operations or changes in net assets, and, where appropriate, cash flows for the fiscal year audited. The financial statements must be for the same organizational unit and fiscal year that is chosen to meet the requirements of this part. However, non-Federal entity-wide financial statements may

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<sup>21</sup> 2 CFR § 200.509(a)

<sup>22</sup> 2 CFR § 200.509(b)

<sup>23</sup> 2 CFR § 200.509(c)

<sup>24</sup> 2 CFR § 200.510(a)

also include departments, agencies, and other organizational units that have separate audits in accordance with [2 CFR § 200.514\(a\)](#) and prepare separate financial statements.

## (2) Schedule of expenditures of Federal awards<sup>25</sup>

The auditee must also prepare a schedule of expenditures of Federal awards for the period covered by the auditee's financial statements which must include the total Federal awards expended as determined in accordance with [2 CFR § 200.502](#). While not required, the auditee may choose to provide information requested by Federal awarding agencies and pass-through entities to make the schedule easier to use. For example, when a Federal program has multiple Federal award years, the auditee may list the amount of Federal awards expended for each Federal award year separately. At a minimum, the schedule must:

1. list individual Federal programs by Federal agency.
  - a. For a cluster of programs, provide the cluster name, list individual Federal programs within the cluster of programs, and provide the applicable Federal agency name.
2. for Federal awards received as a subrecipient, include the name of the pass-through entity and identifying number assigned by the pass-through entity;
3. provide total Federal awards expended for each individual Federal program and the assistance listing number or other identifying number when the Assistance Listings information is not available and for a cluster of programs also provide the total for the cluster;
4. include the total amount provided to subrecipients from each Federal program; and
5. include notes that describe that significant accounting policies used in preparing the schedule and note whether or not the auditee elected to use the 10 percent de minimis cost rate as covered in [2 CFR § 200.414](#).

## (d) Audit findings follow-up

### (1) General<sup>26</sup>

The auditee is responsible for follow-up and corrective action on all audit findings. As part of this responsibility, the auditee must prepare a:

- summary schedule of prior audit findings; and
- a corrective action plan for current year audit findings.

The summary schedule of prior audit findings and the corrective action plan must include the reference numbers the auditor assigns to audit findings under [2 CFR § 200.516\(c\)](#). Because the summary schedule may include audit findings from multiple years, it must include the fiscal year

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<sup>25</sup> 2 CFR § 200.510(b)

<sup>26</sup> 2 CFR § 200.510(a)

in which the finding initially occurred. The corrective action plan and summary schedule of prior audit findings must include findings relating to the financial statements which are required to be reported in accordance with GAGAS.

## (2) Summary schedule of prior audit findings<sup>27</sup>

The summary schedule of prior audit findings must report the status of all audit findings included in the prior audit's schedule of findings and questioned costs. The summary schedule must also include audit findings reported in the prior audit's summary schedule of prior audit findings except audit findings listed as corrected in accordance item 1 and item 3 below or audit findings that are no longer valid or not warranting further action in accordance with item 3.

1. When audit findings were fully corrected, the summary schedule need only list the audit findings and state that corrective action was taken.
2. When audit findings were not corrected or were only partially corrected, the summary schedule must describe the reasons for the finding's recurrence and planned corrective action and any partial corrective action taken. When corrective action taken is significantly different from corrective action previously reported in a corrective action plan or in the Federal agency's or pass-through entity's management decision,<sup>28</sup> the summary schedule must provide an explanation.
3. When the auditee believes the audit findings are no longer valid or do not warrant further action, the reasons for this position must be described in the summary schedule. A valid reason for considering an audit finding as not warranting further action is that all of the following have occurred:
  - a. two years have passed since the audit report in which the finding occurred was submitted to the FAC;
  - b. the Federal agency or pass-through entity is not currently following up with the auditee on the audit finding; and
  - c. a management decision was not issued.

## (3) Corrective action plan<sup>29</sup>

At the completion of the audit, the auditee must prepare, in a document separate from the auditor's findings described in [2 CFR § 200.516](#), a corrective action plan to address each audit finding included in the current year auditor's reports. The corrective action plan must provide the name(s) of the contact person(s) responsible for corrective action, the corrective action planned, and the anticipated completion date. If the auditee does not agree with the audit findings or believes corrective action is not required, then the corrective action plan must include an explanation and specific reasons.

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<sup>27</sup> 2 CFR § 200.510(b)

<sup>28</sup> Refer to [Section VI](#) for information on management decisions.

<sup>29</sup> 2 CFR § 200.510(c)

## (e) Report submission

### (1) General<sup>30</sup>

The audit must be completed and the data collection form described [Section III\(e\)\(2\)](#) and reporting package described in [Section III\(e\)\(3\)](#) must be submitted within the earlier of 30 calendar days after receipt of the auditor's report(s) or nine months after the end of the audit period. If the due date falls on a Saturday, Sunday, or Federal holiday, the reporting package is due the next business day.

Unless restricted by Federal statutes or regulations, the auditee must make copies available for public inspection. Auditees and auditors must ensure that their respective parts of the reporting package do not include protected personally identifiable information.

### (2) Data collection<sup>31</sup>

FAC is the repository of record under [2 CFR Part 200 Subpart F](#) for reporting packages and the data collection form. All Federal agencies, pass-through entities, and others interested in a reporting package and data collection form must obtain it by accessing FAC.

- The auditee must submit required data elements to FAC, as required under [2 CFR Part 200 Appendix X](#), which state whether the audit was completed in accordance with [2 CFR Part 200 Subpart F](#) and provides information about the auditee, its Federal programs, and the results of the audit. The data must include information available from the required audit that is necessary for Federal agencies to use the audit to ensure integrity for Federal programs. The data elements and format must be approved by the Office of Management and Budget (OMB) and available from FAC and include collections of information from the reporting package described in [Section III\(e\)\(3\)](#). A senior level representative of the auditee (state controller, director of finance, chief executive officer, or chief financial officer, etc.) must sign a statement to be included as part of the data collection that says that the:
  - auditee complied with the requirements of [2 CFR Part 200 Subpart F](#);
  - data were prepared in accordance with [2 CFR Part 200 Subpart F](#) (and the instructions accompanying the data collection form;
  - reporting package does not include protected personally identifiable information;
  - information included in its entirety is accurate and complete; and
  - FAC is authorized to make the reporting package and the form publicly available on a website.
- Using the information included in the reporting package described in [Section III\(e\)\(3\)](#), the auditor must complete the applicable data elements of the data collection form. The auditor must sign a statement to be included as part of the data collection form that indicates, at a minimum, the source of the information included in the form, the auditor's

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<sup>30</sup> 2 CFR § 200.512(a)

<sup>31</sup> 2 CFR § 200.512(b)

responsibility for the information, that the form is not a substitute for the reporting package and that the content of the form is limited to the collection of information prescribed by OMB.

### (3) Reporting package<sup>32</sup>

The reporting package must include the:

- financial statements and schedule of expenditures of Federal awards discussed in [2 CFR § 200.510\(a\)](#) and [2 CFR § 200.510\(b\)](#), respectively, as well as [Section III\(c\)](#);
- summary schedule of prior audit findings discussed in [2 CFR § 200.511\(b\)](#), as well as [Section III\(d\)\(2\)](#);
- auditor's report(s) discussed in [2 CFR § 200.515](#), as well as [Section V\(b\)](#); and
- corrective action plan discussed in [2 CFR § 200.511\(c\)](#), as well as [Section V\(c\)](#).

### (4) Submission to FAC<sup>33</sup>

The auditee must electronically submit to FAC the data collection form and the reporting package.

### (5) Requests for management letters issued by the auditor

In response to requests by a Federal agency or pass-through entity, auditees must submit a copy of any management letters issued by the auditor.<sup>34</sup>

### (6) Report retention requirements

Auditees must keep one copy of the data collection form section and one copy of the reporting package of this section on file for three years from the date of submission to FAC.<sup>35</sup>

### (7) FAC responsibilities<sup>36</sup>

The FAC must make available the reporting packages received to the public and maintain a data base of completed audits, provide appropriate information to Federal agencies, and follow up with known auditees that have not submitted the required data collection forms and reporting packages.

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<sup>32</sup> 2 CFR § 200.512(c)

<sup>33</sup> 2 CFR § 200.512(d)

<sup>34</sup> 2 CFR § 200.512(e)

<sup>35</sup> 2 CFR § 200.512(f)

<sup>36</sup> 2 CFR § 200.512(g)

## Section IV. Federal agencies

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Responsibilities of Federal agencies regarding audits are described in [2 CFR § 200.513](#).

## Section V. Auditors

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### (a) Scope of audit

#### (1) General<sup>37</sup>

The audit must be conducted in accordance with GAGAS.<sup>38</sup> The audit must cover the entire operations of the auditee or, at the option of the auditee, such audit must include a series of audits that cover departments, agencies, and other organizational units that expended or otherwise administered Federal awards during such audit period, provided that each such audit must encompass the financial statements and schedule of expenditures of Federal awards for each such department, agency, and other organizational unit that must be considered to be a non-Federal entity. The financial statements and schedule of expenditures of Federal awards must be for the same audit period.

#### (2) Financial statements<sup>39</sup>

The auditor must determine whether the financial statements of the auditee are presented fairly in all material respects in accordance with generally accepted accounting principles. The auditor must also determine whether the schedule of expenditures of Federal awards is stated fairly in all material respects in relation to the auditee's financial statements as a whole.

#### (3) Internal control<sup>40</sup>

The compliance supplement<sup>41</sup> provides guidance on internal controls over Federal programs based upon the guidance in [Standards for Internal Control in the Federal Government](#) issued by the Comptroller General of the United States and the [Internal Control – Integrated Framework](#), issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). In addition to the requirements of GAGAS, the auditor must perform procedures to obtain an understanding of internal control over Federal programs sufficient to plan the audit to support a low assessed level of control risk of noncompliance for major programs.<sup>42</sup> Except as described below, the auditor must:

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<sup>37</sup> 2 CFR § 200.514(a)

<sup>38</sup> GAGAS refers to *Generally accepted government auditing standards (GAGAS)*, also known as the Yellow Book, means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits. The Yellow Book is accessible at <https://www.gao.gov/yellowbook>.

<sup>39</sup> 2 CFR § 200.514(b)

<sup>40</sup> 2 CFR § 200.514(c)

<sup>41</sup> The *compliance supplement* is accessible at <https://www.whitehouse.gov/wp-content/uploads/2022/05/2022-Compliance-Supplement-PDF-Rev-05.11.22.pdf>.

<sup>42</sup> Refer to Section V(e) for detail on major program determinations.

- plan the testing of internal control over compliance for major programs to support a low assessed level of control risk for the assertions relevant to the compliance requirements for each major program; and
- perform testing of internal control as planned.

*Exception.* When internal control over some or all of the compliance requirements for a major program are likely to be ineffective in preventing or detecting noncompliance, the planning and performing of testing described above are not required for those compliance requirements. However, the auditor must report a significant deficiency or material weakness in accordance with [2 CFR § 200.516](#), assess the related control risk at the maximum, and consider whether additional compliance tests are required because of ineffective internal control.

#### (4) Compliance<sup>43</sup>

In addition to requirements of GAGAS, the auditor must determine whether the auditee has complied with Federal statutes, regulations, and the terms and conditions of Federal awards that may have a direct and material effect on each of its major programs. The principal compliance requirements applicable to most Federal programs and the compliance requirements of the largest Federal programs are included in the compliance supplement. For the compliance requirements related to Federal programs contained in the compliance supplement,<sup>44</sup> an audit of these compliance requirements will meet the requirements of [2 CFR Part 200](#). When there have been changes to the compliance requirements and the changes are not reflected in the compliance supplement, the auditor must determine the current compliance requirements and modify the audit procedures accordingly. For those Federal programs not covered in the compliance supplement, the auditor must follow the compliance supplement's guidance for programs not included in the supplement.<sup>45</sup>

When internal control over some or all of the compliance requirements for a major program are likely to be ineffective in preventing or detecting noncompliance, the planning and performing of testing described in [Section V\(a\)\(3\)](#) are not required for those compliance requirements. However, the auditor must report a significant deficiency or material weakness in accordance with [2 CFR § 200.516](#), assess the related control risk at the at the maximum, and consider whether additional compliance tests are required because of ineffective internal control.

#### (5) Audit follow-up<sup>46</sup>

The auditor must follow-up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with [2 CFR § 200.511\(b\)](#), and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status

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<sup>43</sup> 2 CFR § 200.514(d)

<sup>44</sup> The *compliance supplement* covers includes Title I adult, dislocated worker, and youth programs; Title III Wagner-Peyser Employment Service; Jobs for Veterans State Grant; Senior Community Service Employment Program; and Trade Adjustment Assistance for Workers.

<sup>45</sup> Refer to [Section II\(g\)\(2\)](#) for information relating to the lack of program-specific audit guides.

<sup>46</sup> 2 CFR § 200.514(e)

of any prior audit finding. The auditor must perform audit follow-up procedures regardless of whether a prior audit finding relates to a major program in the current year.

#### (6) *Data collection form*

As required in [2 CFR § 200.512\(b\)\(3\)](#), the auditor must complete and sign specified sections of the data collection form.

#### (b) *Audit reporting*<sup>47</sup>

The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) must state that the audit was conducted in accordance with [2 CFR Part 200 Subpart F](#) and [2 CFR § 200.515](#) and include the following:

1. *Financial statements.* The auditor must determine and provide an opinion (or disclaimer of opinion) whether the financial statements of the auditee are presented fairly in all materials respects in accordance with generally accepted accounting principles (or a special purpose framework such as cash, modified cash, or regulatory as required by state law). The auditor must also decide whether the schedule of expenditures of Federal awards is stated fairly in all material respects in relation to the auditee's financial statements as a whole.
2. *Internal control.* A report on internal control over financial reporting and compliance with provisions of laws, regulations, contracts, and award agreements, noncompliance with which could have a material effect on the financial statements. This report must describe the scope of testing of internal control and compliance and the results of the tests, and, where applicable, it will refer to the separate schedule of findings and questioned costs described item 4 below.
3. *Compliance.* A report on compliance for each major program and a report on internal control over compliance. This report must:
  - a. define the scope of testing of internal control over compliance;
  - b. include an opinion or disclaimer of opinion as to whether the auditee complied with Federal statutes, regulations; and
  - c. include terms and conditions of Federal awards which could have a direct and material effect on each major program and refer to the separate schedule of findings and questioned costs as described in item 4 below.
4. A schedule of findings and questioned costs which must include the following components:
  - a. a summary of the auditor's results, which must include:
    - i. a description of the type of report the auditor issued on whether the financial statements audited were prepared in accordance with generally

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<sup>47</sup> 2 CFR § 200.515

accepted accounting principles, also known as GAAP (unmodified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

- ii. a statement about whether significant deficiencies or material weaknesses in internal control were disclosed by the audit of the financial statements, when applicable;
  - iii. a statement as to whether the audit disclosed any noncompliance that is material to the financial statements of the auditee;
  - iv. a statement about whether significant deficiencies or material weaknesses in internal control over major programs were disclosed by the audit, when applicable;
  - v. a description of the type of report the auditor issued on compliance for major programs (unmodified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);
  - vi. a statement as to whether the audit disclosed any audit findings that the auditor is required to report under [2 CFR § 200.516\(a\)](#);
  - vii. an identification of major programs by listing each individual major program:
    - (1) Note. In the case of a cluster of programs, only the cluster name as shown on the schedule of expenditures of federal awards<sup>48</sup> is required.
  - viii. an identification the dollar threshold used to distinguish between Type A and Type B programs, as described in [2 CFR § 200.518\(b\)\(1\)](#); and
  - ix. a statement as to whether the auditee qualified as a low-risk auditee under [2 CFR § 200.520](#).
- b. findings relating to the financial statements which are required to be reported in accordance with GAGAS;
  - c. findings and questioned costs for Federal awards which must include audit findings as defined in [2 CFR § 200.516\(a\)](#):
    - i. audit findings (internal control findings, compliance findings, questioned costs, or fraud) that relate to the same issue must be presented as a single audit finding:
      - (1) Note. When practical, audit findings should be organized by Federal agency or pass-through entity.
    - ii. audit findings relating to both financial statements and Federal awards, as reported under [2 CFR § 200.515\(d\)\(2\)](#) and [2 CFR § 200.515\(d\)\(3\)](#) of this

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<sup>48</sup> Refer to [Section III\(c\)\(2\)](#) for information on *schedule of expenditures of Federal awards*.

section, respectively, must be reported in both sections of the schedule. However, the reporting in one section of the schedule may be in summary form with a reference to a detailed reporting in the other section of the schedule.

5. Nothing in this part precludes combining of the audit reporting required under [2 CFR § 200.515](#) with reporting required by [2 CFR § 200.512\(b\)](#) when allowed by GAGAS and [2 CFR Part 200 Appendix X](#).

(c) *Audit findings*<sup>49</sup>

1. *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:
  - a. significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs;
    - i. auditor's determination on whether a deficiency of internal control is a significant deficiency or material weakness for purposes of reporting an audit finding relates to a type of compliance requirement for a major program identified in the compliance supplement;
  - b. material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards related to a major program, including auditor's determination on whether a noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement;
  - c. known questioned costs that are greater than \$25,000 for a type of compliance requirement for a major program:
    - i. Known questioned costs are those specifically identified by the auditor.
    - ii. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs).
    - iii. The auditor must also report known questioned costs when likely questioned costs are greater than \$25,000 for a type of compliance requirement for a major program.
    - iv. In reporting questioned costs, the auditor must include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

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<sup>49</sup> 2 CFR § 200.516

- d. known questioned costs that are greater than \$25,000 for a Federal program which is not audited as a major program:
    - i. Except for audit follow-up:
      - (1) The auditor is not required under this part to perform audit procedures for such a Federal program; therefore, the auditor will normally not find questioned costs for a program that is not audited as a major program.
      - (2) However, if the auditor does become aware of questioned costs for a Federal program that is not audited as a major program (as part of audit follow-up or other audit procedures) and the known questioned costs are greater than \$25,000, then the auditor must report this as an audit finding.
  - e. circumstances concerning why the auditor's report on compliance for each major program is other than an unmodified opinion, unless such circumstances are otherwise reported as audit findings in the schedule of findings and questioned costs for Federal awards;
  - f. known or likely fraud affecting a Federal award, unless such fraud is otherwise reported as an audit finding in the schedule of findings and questioned costs for Federal awards:
    - i. Note. This does not require the auditor to report publicly information which could compromise investigative or legal proceedings or to make an additional reporting when the auditor confirms that the fraud was reported outside the auditor's reports under the direct reporting requirements of GAGAS.
  - g. instances where the results of audit follow-up procedures disclosed that the summary schedule of prior audit findings prepared by the auditee in accordance with [2 CFR § 200.511\(b\)](#) materially misrepresents the status of any prior audit finding.
2. *Audit finding detail and clarity.* Audit findings must be presented in sufficient detail and clarity for the auditee to prepare a corrective action plan and take corrective action, and for Federal agencies and pass-through entities to arrive at a management decision. The following specific information must be included, as applicable, in audit findings:
- a. Federal program and specific Federal award identification, including the assistance listing title and number, Federal award identification number and year, name of Federal agency, and name of the applicable pass-through entity:
    - i. Note. When information, such as the assistance Listings title and number or Federal award identification number, is not available, the auditor must provide the best information available to describe the Federal award.
  - b. criteria or specific requirement upon which the audit finding is based, including the Federal statutes, regulations, or terms and conditions of the Federal awards;

- c. criteria generally identifying the required or desired state or expectation with respect to the program or operation:
    - i. Note. Criteria provide context for evaluating evidence and understanding findings.
  - d. conditions found, including facts that support the deficiency identified in the audit finding;
  - e. statement of cause that identifies the reason or explanation for the conditions or the factors responsible for the difference between the situation that exists (conditions) and the required or desired state (criteria), which may also serve as a basis for recommendations for corrective action;
  - f. possible asserted effects to provide sufficient information to the auditee and Federal agency, or pass-through entity in the case of a subrecipient, to permit them to determine the cause and effect to facilitate prompt and proper corrective action:
    - i. Note. Statement of the effect or potential effect should provide a clear, logical link to establish the impact or potential impact of the difference between the condition and the criteria.
  - g. identification of questioned costs and how they were computed (known questioned costs must be identified by applicable assistance listing number(s) and applicable Federal award identification number(s));
  - h. information to provide proper perspective for judging the prevalence and consequences of the audit findings, such as whether the audit findings represent an isolated instance or a systemic problem.
    - i. Note. When appropriate, instances identified must be related to the universe and the number of cases examined and be quantified in terms of dollar value. The auditor should report whether the sampling was a statistically valid sample.
  - i. identification of whether the audit finding was a repeat of a finding in the immediately prior audit and if so any applicable prior year audit finding numbers;
  - j. recommendations to prevent future occurrences of the deficiency identified in the audit finding; and
  - k. views of responsible officials of the auditee.
3. *Reference numbers.* Each audit finding in the schedule of findings and questioned costs must include a reference number in the format meeting the requirements of the data collection form submission required by [2 CFR § 200.512\(b\)](#) to allow for easy referencing of the audit findings during follow-up.

#### (d) Audit documentation<sup>50</sup>

*Retention of audit documentation.* The auditor must retain audit documentation and reports for a minimum of three years after the date of issuance of the auditor's report(s) to the auditee, unless the auditor is notified in writing by the cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period. When the auditor is aware that the Federal agency, pass-through entity, or auditee is contesting an audit finding, the auditor must contact the parties contesting the audit finding for guidance prior to destruction of the audit documentation and reports.

*Access to audit documentation.* Audit documentation must be made available upon request to the cognizant or oversight agency for audit or its designee, cognizant agency for indirect cost, a Federal agency, or GAO at the completion of the audit, as part of a quality review, to resolve audit findings, or to carry out oversight responsibilities consistent with the purposes of this part. Access to audit documentation includes the right of Federal agencies to obtain copies of audit documentation, as is reasonable and necessary.

#### (e) Major program determination

##### (1) General<sup>51</sup>

The auditor must use a risk-based approach to determine which Federal programs are major programs. This risk-based approach must include consideration of current and prior audit experience, *oversight* by Federal agencies and pass-through entities, and the inherent risk of the Federal program. The process in [Section V\(e\)\(2\)](#) through [Section V\(e\)\(8\)](#) below must be followed.

##### (2) Step one<sup>52</sup>

The auditor must identify the larger Federal programs, which must be labeled Type A programs. Type A programs are defined as Federal programs with Federal awards expended during the audit period exceeding the levels outlined in the Table 1.<sup>53</sup>

*Table 1. Total Federal awards expended and Type A/B threshold*

Total Federal awards expended	Type A/B threshold
Equal to or exceed \$750,000 but less than or equal to \$25 million	\$750,000.
Exceed \$25 million but less than or equal to \$100 million	Total Federal awards expended times 0.03.
Exceed \$100 million but less than or equal to \$1 billion	\$3 million.
Exceed \$1 billion but less than or equal to \$10 billion	Total Federal awards expended times 0.003.
Exceed \$10 billion but less than or equal to \$20 billion	\$30 million.
Exceed \$20 billion	Total Federal awards expended times 0.0015.

Federal programs that meet one of the thresholds in Table 1 must be labeled Type A; and Federal programs that do not meet any of the thresholds in Table 1 must be labeled Type B programs.<sup>54</sup>

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<sup>50</sup> 2 CFR § 200.517

<sup>51</sup> 2 CFR § 200.518(a)

<sup>52</sup> 2 CFR § 200.518(b)

<sup>53</sup> 2 CFR § 200.518(b)(1)

<sup>54</sup> 2 CFR § 200.518(b)(2)

For biennial audits permitted under [2 CFR § 200.504](#), the determination of Type A and Type B programs must be based upon the Federal awards expended during the two-year period.<sup>55</sup>

### (3) Step two<sup>56</sup>

The auditor must identify Type A programs which are low-risk. In making this determination, the auditor must consider whether the requirements in [2 CFR § 200.519\(c\)](#), the results of audit follow-up, or any changes in personnel or systems affecting the program indicate significantly increased risk and preclude the program from being low risk. For a Type A program to be considered low-risk, it must have been audited as a major program in at least one of the two most recent audit periods (in the most recent audit period in the case of a biennial audit), and, in the most recent audit period, the program must have not had:

- internal control deficiencies which were identified as material weaknesses in the auditor's report on internal control for major programs as required under [2 CFR § 200.515\(c\)](#);
- a modified opinion on the program in the auditor's report on major programs as required under [2 CFR § 200.515\(c\)](#); or
- known or likely questioned costs that exceed five percent of the total Federal awards expended for the program.

Notwithstanding any said in step two, OMB may approve a Federal awarding agency's request that a Type A program may not be considered low risk for a certain recipient. For example, it may be necessary for a large Type A program to be audited as a major program of a recipient each year to allow the Federal awarding agency to comply with [31 USC § 3515](#). The Federal awarding agency must notify the recipient and, if known, the auditor of OMB's approval at least 180 calendar days prior to the end of the fiscal year to be audited.

### (4) Step three<sup>57</sup>

The auditor must identify Type B programs which are high-risk using professional judgment and the criteria in [2 CFR § 200.519](#). However, the auditor is not required to identify more high-risk Type B programs than at least one fourth the number of low-risk Type A programs identified as low-risk under Step 2. Except for known material weakness in internal control or compliance problems as discussed in [2 CFR § 200.519\(b\)\(1\)](#), [2 CFR § 200.519\(b\)\(2\)](#), and [2 CFR § 200.519\(c\)\(1\)](#), a single criterion in risk would seldom cause a Type B program to be considered high-risk. When identifying which Type B programs to risk assess, the auditor is encouraged to use an approach which provides an opportunity for different high-risk Type B programs to be audited as major over a period of time.

The auditor is not expected to perform risk assessments on relatively small Federal programs. Therefore, the auditor is only required to perform risk assessments on Type B programs that exceed 25 percent (0.25) of the Type A threshold determined in step one.

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<sup>55</sup> 2 CFR § 200.518(b)(4)

<sup>56</sup> 2 CFR § 200.518(c)

<sup>57</sup> 2 CFR § 200.518(d)

#### (5) Step four<sup>58</sup>

At a minimum, the auditor must audit all of the following as major programs:

- all Type A programs not identified as low risk under step two; and
- all Type B programs identified as high-risk under step three.

Such additional programs as may be necessary to comply with the percentage of coverage rule discussed in [Section V\(e\)\(6\)](#) below. This may require the auditor to audit more programs as major programs than the number of Type A programs.

#### (6) Percentage of coverage rule<sup>59</sup>

If the auditee meets the criteria in [2 CFR § 200.520](#), the auditor need only audit the major programs identified in step four and such additional Federal programs with Federal awards expended that, in aggregate, all major programs encompass at least 20 percent (0.20) of total Federal awards expended. Otherwise, the auditor must audit the major programs identified in step four and such additional Federal programs with Federal awards expended that, in aggregate, all major programs encompass at least 40 percent (0.40) of total Federal awards expended.

#### (7) Documentation of risk

The auditor must include in the audit documentation the risk analysis process used in determining major programs.<sup>60</sup>

#### (8) Auditor's judgment<sup>61</sup>

When the major program determination was performed and documented in accordance with this Subpart, the auditor's judgment in applying the risk-based approach to determine major programs must be presumed correct. Challenges by Federal agencies and pass-through entities must only be for clearly improper use of the requirements in this part. However, Federal agencies and pass-through entities may provide auditors guidance about the risk of a particular Federal program and the auditor must consider this guidance in determining major programs in audits not yet completed.

#### (f) Criteria for Federal program risk

##### (1) General<sup>62</sup>

The auditor's determination should be based on an overall evaluation of the risk of noncompliance occurring that could be material to the Federal program. The auditor must consider criteria, such as described in [Section V\(f\)\(2\)](#) through [Section V\(f\)\(4\)](#) below, to identify risk in Federal programs.

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<sup>58</sup> 2 CFR § 200.518(e)

<sup>59</sup> 2 CFR § 200.518(f)

<sup>60</sup> 2 CFR § 200.518(g)

<sup>61</sup> 2 CFR § 200.518(h)

<sup>62</sup> 2 CFR § 200.519(a)

Also, as part of the risk analysis, the auditor may wish to discuss a particular Federal program with auditee management and the Federal agency or pass-through entity.

## (2) Current and prior audit experience<sup>63</sup>

Weaknesses in internal control over Federal programs would indicate higher risk. Consideration should be given to the control environment over Federal programs and such factors as the expectation of management's adherence to Federal statutes, regulations, and the terms and conditions of Federal awards and the competence and experience of personnel who administer the Federal programs.

- A Federal program administered under multiple internal control structures may have higher risk. When assessing risk in a large single audit, the auditor must consider whether weaknesses are isolated in a single operating unit or pervasive throughout the entity.
- When significant parts of a Federal program are passed through to subrecipients, a weak system for monitoring subrecipients would indicate higher risk.

Prior audit findings would indicate higher risk, particularly when the situations identified in the audit findings could have a significant impact on a Federal program or have not been corrected. Federal programs not recently audited as major programs may be of higher risk than Federal programs recently audited as major programs without audit findings.

## (3) Oversight exercised by Federal agencies and pass-through entities<sup>64</sup>

Oversight exercised by Federal agencies or pass-through entities could be used to assess risk. For example, recent monitoring or other reviews performed by an oversight entity that disclosed no significant problems would indicate lower risk, whereas monitoring that disclosed significant problems would indicate higher risk.

Federal agencies, with the concurrence of OMB, may identify Federal programs that are higher risk. OMB will provide this identification in the compliance supplement.

## (4) Inherent risk of the Federal program<sup>65</sup>

The nature of a Federal program may indicate risk.

- Consideration should be given to the complexity of the program and the extent to which the Federal program contracts for goods and services. For example, Federal programs that disburse funds through third-party contracts or have eligibility criteria may be of higher risk. Federal programs primarily involving staff payroll costs may have high risk for noncompliance with requirements of [2 CFR § 200.430](#), but otherwise be at low risk.
- The phase of a Federal program in its life cycle at the Federal agency may indicate risk. For example, a new Federal program with new or interim regulations may have higher risk than an established program with time-tested regulations. Also, significant changes in

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<sup>63</sup> 2 CFR § 200.519(b)

<sup>64</sup> 2 CFR § 200.519(c)

<sup>65</sup> 2 CFR § 200.519(d)

Federal programs, statutes, regulations, or the terms and conditions of Federal awards may increase risk.

- The phase of a Federal program in its life cycle at the auditee may indicate risk. For example, during the first and last years that an auditee participates in a Federal program, the risk may be higher due to start-up or closeout of program activities and staff.
- Type B programs with larger Federal awards expended would be of higher risk than programs with substantially smaller Federal awards expended.

(g) [Criteria for a low-risk auditee](#)<sup>66</sup>

An auditee that meets all of the following conditions for each of the preceding two audit periods must qualify as a low-risk auditee and be eligible for reduced audit coverage in accordance with [2 CFR § 200.518](#).

- Single audits were performed on an annual basis in accordance with the provisions of [2 CFR 200 Subpart F](#), including submitting the data collection form and the reporting package to the FAC within the timeframe specified in [2 CFR § 200.512](#). A non-Federal entity that has biennial audits does not qualify as a low-risk auditee.
- The auditor's opinion on whether the financial statements were prepared in accordance with GAAP, or a basis of accounting required by state law, and the auditor's in relation to opinion on the schedule of expenditures of Federal awards were unmodified.
- There were no deficiencies in internal control which were identified as material weaknesses under the requirements of GAGAS.
- The auditor did not report substantial doubt about the auditee's ability to continue as a going concern.
- None of the Federal programs had audit findings from any of the following in either of the preceding two audit periods in which they were classified as Type A programs and:
  - having internal control deficiencies that were identified as material weaknesses in the auditor's report on internal control for major programs as required under [2 CFR § 200.515\(c\)](#);
  - receiving a modified opinion on a major program in the auditor's report on major programs as required under [2 CFR § 200.515\(c\)](#); or
  - having known or likely questioned costs that exceeded five percent of the total Federal awards expended for a Type A program during the audit period.

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<sup>66</sup> 2 CFR § 200.520

## Section VI. Management decisions

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### (a) General<sup>67</sup>

The management decision must clearly state whether or not the audit finding is sustained, the reasons for the decision, and the expected auditee action to repay disallowed costs, make financial adjustments, or take other action. If the auditee has not completed corrective action, a timetable for follow-up should be given. Prior to issuing the management decision, the Federal agency or pass-through entity may request additional information or documentation from the auditee, including a request for auditor assurance related to the documentation, as a way of mitigating disallowed costs. The management decision should describe any appeal process available to the auditee. While not required, the Federal agency or pass-through entity may also issue a management decision on findings relating to the financial statements which are required to be reported in accordance with GAGAS.

### (b) Federal agency<sup>68</sup>

As provided in [2 CFR § 200.513\(a\)\(3\)\(vii\)](#), the cognizant agency for audit must be responsible for coordinating a management decision for audit findings that affect the programs of more than one Federal agency. As provided in [2 CFR § 200.513\(c\)\(3\)\(i\)](#), a Federal awarding agency is responsible for issuing a management decision for findings that relate to Federal awards it makes to non-Federal entities.

### (c) Pass-through entity

As provided in [2 CFR § 200.332\(d\)](#), the pass-through entity must be responsible for issuing a management decision for audit findings that relate to Federal awards it makes to subrecipients.<sup>69</sup>

### (d) Time requirements<sup>70</sup>

The Federal awarding agency or pass-through entity responsible for issuing a management decision must do so within six months of acceptance of the audit report by the FAC. The auditee must initiate and proceed with corrective action as rapidly as possible and corrective action should begin no later than upon receipt of the audit report.

### (e) Reference numbers<sup>71</sup>

Management decisions must include the reference numbers the auditor assigned to each audit finding in accordance with [2 CFR § 200.516\(c\)](#).

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<sup>67</sup> 2 CFR § 200.521(a)

<sup>68</sup> 2 CFR § 200.521(b)

<sup>69</sup> 2 CFR § 200.521(c)

<sup>70</sup> 2 CFR § 200.521(d)

<sup>71</sup> 2 CFR § 200.521(e)

## DISCLAIMER

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

## APPENDIX I. Definitions

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**PURPOSE.** Definitions in this appendix are provided as supplemental information that supports the provisions of the policy. The terms and phrases defined in this appendix should be read and understood in the context in which they are used in the policy and not as stand-alone information independent of that context. Note that italicized terms in the definitions below indicate that definitions for those terms are also included in this appendix.

### 1. *assistance listing*

The term *assistance listing* refers to the publicly available listing of Federal assistance programs managed and administered by the General Services Administration, formerly known as the Catalog of Federal Domestic Assistance (CFDA).<sup>72</sup>

### 2. *assistance listing number*

*Assistance listing number* means a unique number assigned to identify an assistance listing, formerly known as the CFDA Number.<sup>73</sup>

### 3. *assistance listing program title*

The term *assistance listing program title* means the title that corresponds to the assistance listing number, formerly known as the CFDA program title.<sup>74</sup>

### 4. *auditee*

*Auditee* means any non-Federal entity that expends Federal awards which must be audited under [2 CFR Part 200 Subpart F](#).<sup>75</sup>

### 5. *auditor*<sup>76</sup>

The term *auditor* means an auditor who is a public accountant or a Federal, State, local government, or Indian tribe audit organization, which meets the general standards specified for external auditors in generally accepted government auditing standards (GAGAS).

The term *auditor* does not include internal auditors of nonprofit organizations.

### 6. *contract*

The term *contract* means, for the purpose of *Federal financial assistance*, a legal instrument by which a *recipient* or *subrecipient* purchases property or services needed to carry out the project or program under a Federal award.<sup>77</sup>

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<sup>72</sup> 2 CFR § 200.1

<sup>73</sup> Ibid.

<sup>74</sup> Ibid.

<sup>75</sup> Ibid.

<sup>76</sup> Ibid.

<sup>77</sup> Ibid.

For additional information on *subrecipient* and *contractor* determinations, refer to [2 CFR § 200.331](#). Refer also to the definition of *subaward* below.

#### 7. contractor

The term *contractor* means an entity that receives a *contract*.<sup>78</sup>

#### 8. cooperative agreement<sup>79</sup>

The term *cooperative agreement* means a legal instrument of financial assistance between a Federal awarding agency and a recipient or a pass-through entity and a subrecipient that, consistent with [31 USC §§ 6302 – 6305](#) is:

- used to enter into a relationship the principal purpose of which is to transfer anything of value to carry out a public purpose authorized by a law of the United States (refer to [31 USC § 6101\(3\)](#)) and not to acquire property or services for the Federal Government or a *pass-through entity's* direct benefit or use; and
- distinguished from a grant in that it provides for substantial involvement of a *Federal awarding agency* in carrying out the activity contemplated by the *Federal award*.

The term *cooperative agreement* does not include:

- (a) a cooperative research and development agreement as defined in [15 USC § 3710a](#); or
- (b) an agreement that provides only:
  - direct United States Government cash assistance to an individual;
  - a subsidy;
  - a loan;
  - a loan guarantee; or
  - insurance.

#### 9. disallowed costs

The term *disallowed costs* means those charges to a Federal award that the Federal awarding agency or pass-through entity determines to be unallowable, in accordance with the applicable Federal statutes, regulations, or the terms and conditions of the Federal award.<sup>80</sup>

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<sup>78</sup> 2 CFR § 200.1

<sup>79</sup> Ibid.

<sup>80</sup> Ibid.

## 10. Federal award<sup>81</sup>

*Federal award* means, depending on context, either:

- (a) *Federal financial assistance* a recipient receives comes directly from a Federal awarding agency or indirectly from a *pass-through entity*; or
- (b) the instrument setting forth the terms and conditions in a *grant agreement*, *cooperative agreement*, or other agreement for assistance covered in paragraph (b) of the definition of *Federal financial assistance* below.

The term *Federal award* does not include other contracts that a Federal agency uses to buy goods or services from a contractor or a contract to operate Federal Government owned contractor operated facilities (GOCOs).

## 11. Federal awarding agency

The term *Federal awarding agency* means the Federal agency that provides a Federal award directly to a *non-Federal entity*.<sup>82</sup>

## 12. Federal financial assistance<sup>83</sup>

*Federal financial assistance* means:

- (a) assistance that *non-Federal entities* receive or administer in the form of:
  - *grants*;
  - *cooperative agreements*;
  - non-cash contributions or donations of property (including donated surplus property);
  - direct appropriations;
  - food commodities; and
  - other financial assistance (excluding assistance described in paragraph (b) of this definition).
- (b) for [2 CFR § 200.203](#) and [2 CFR Part 200 Subpart F](#), assistance that non-Federal entities receive or administer in the form of:
  - loans;
  - loan guarantees;

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<sup>81</sup> 2 CFR § 200.1

<sup>82</sup> Ibid.

<sup>83</sup> Ibid.

- interest subsidies; and
- insurance;
- (c) for [2 CFR § 200.216](#), assistance that non-Federal entities receive or administer in the form of:
  - grants;
  - cooperative agreements;
  - loans; and
  - loan guarantees.

*Federal financial assistance* does not include amounts received as reimbursement for services rendered to individuals as described in [2 CFR § 200.502\(h\)](#) and [2 CFR § 200.502\(i\)](#).

### 13. Federal program

*Federal program* means:<sup>84</sup>

- (a) all *Federal awards* which are assigned a single assistance listing number; or
- (b) when no assistance listing number(s) is assigned, all *Federal awards* from the same agency made for the same purpose are combined and considered one program.

### 14. grant agreement<sup>85</sup>

*Grant agreement* means a legal instrument of financial assistance between a *Federal awarding agency* or *pass-through entity* and a *non-Federal entity* that, consistent with 31 USC §§ 6302 and 6304 (accessible at [31 USC Chapter 63](#)), is:

- used to enter into a relationship, the principal purpose of which is to transfer anything of value to carry out a public purpose authorized by a law of the United States (refer to [31 USC § 6101\(3\)](#)) and not to acquire property or services for the *Federal awarding agency* or *pass-through entity's* direct benefit or use; and
- distinguished from a *cooperative agreement* in that it does not provide for substantial involvement of the Federal awarding agency in carrying out the activity contemplated by the Federal award.

The term *grant agreement* does not include an agreement that provides only:

- (a) direct United States Government cash assistance to an individual;

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<sup>84</sup> 2 CFR § 200.1

<sup>85</sup> Ibid.

- (b) a subsidy;
- (c) a loan;
- (d) a loan guarantee; or
- (e) insurance.

#### 15. improper payment<sup>86</sup>

The term *improper payment* means any payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative, or other *legally applicable* requirements.

Incorrect amounts are overpayments or underpayments that are made to eligible recipient, including:

- (a) inappropriate denials of payment or service;
- (b) any payment that does not account for credit for applicable discounts;
- (c) payments that are for an incorrect amount; and
- (d) duplicate payments.

An *improper payment* also includes any payment that was made:

- to an ineligible recipient; or
- for an ineligible good or service or payments for goods or services not received (except for such payments authorized by law).

#### 16. internal controls

The term *internal controls* by *non-Federal entities* means processes designed and implemented by the *non-Federal entities* to provide reasonable assurance regarding the achievement of objectives in the following categories::<sup>87</sup>

- effectiveness and efficiency of operations;
- reliability of reporting for internal and external use; and
- compliance with applicable laws and regulations.

#### 17. major program

The term *major program* means a *Federal program* determined by the *auditor* to be a *major program* in accordance with [2 CFR § 200.518](#) or a program identified as a *major program* by a

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<sup>86</sup> 2 CFR § 200.1

<sup>87</sup> Ibid.

*Federal awarding agency* or *pass-through entity* in accordance with [2 CFR § 200.503\(e\)](#).<sup>88</sup> (Refer to [Section V\(e\)](#) of the policy for information on *major program* determination.)

#### 18. non-Federal entity

The term *non-Federal entity* means a State, local government, Indian tribe, Institution of Higher Education, or nonprofit organization that carries out a Federal award as a recipient or subrecipient.<sup>89</sup>

#### 19. pass-through entity

The term *pass-through entity* means a *non-Federal entity* that provides a *subaward* to a *subrecipient* to carry out part of a Federal program.<sup>90</sup>

#### 20. questioned cost<sup>91</sup>

The term *Questioned cost* means a cost that is questioned by the auditor because of an audit finding:

- (a) which resulted from a violation or possible violation of a statute, regulation, or the terms and conditions of a *Federal award*, including for funds used to match Federal funds;
- (b) when the costs, at the time of the audit, are not supported by adequate documentation; or
- (c) when the costs incurred appear unreasonable and do not reflect the actions a prudent person would take under the circumstances.

*Questioned costs* are not an *improper payment* until reviewed and confirmed to be improper as defined in OMB Circular A-123 Appendix C.

#### 21. recipient<sup>92</sup>

The term *recipient* means an entity, usually but not limited to *non-Federal entities*, that receives a *Federal award* directly from a *Federal awarding agency*.

The term *recipient* does not include *subrecipients* or individuals that are beneficiaries of the award.

#### 22. subaward<sup>93</sup>

The term *subaward* means an award provided by a *pass-through entity* to a *subrecipient* for the *subrecipient* to carry out part of a Federal award received by the *pass-through entity*. A *subaward*

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<sup>88</sup> 2 CFR § 200.1

<sup>89</sup> Ibid.

<sup>90</sup> Ibid.

<sup>91</sup> Ibid.

<sup>92</sup> Ibid.

<sup>93</sup> Ibid.

may be provided through any form of legal agreement, including an agreement that the *pass-through entity* considers a *contract*.

The term *subaward* does not include payments to a *contractor* or payments to an individual that is a beneficiary of a Federal program.

### 23. subrecipient<sup>94</sup>

The term *subrecipient* means an entity, usually but not limited to *non-Federal entities*, that receives a *subaward* from a *pass-through entity* to carry out part of a *Federal award*; but does not include an individual that is a beneficiary of such award. A *subrecipient* may also be a *recipient* of other *Federal awards* directly from a *Federal awarding agency*.

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<sup>94</sup> 2 CFR § 200.1

## APPENDIX II. Allowed and unallowed activities for WIOA Title I programs

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Allowed and unallowed activities for WIOA Title I programs are provided in the [compliance supplement](#) (pages 790 – 801 of the PDF) and listed below for reference. Please refer to the compliance supplement for full information on program-specific audit information for Title I programs (pages 787 – 809 of the PDF).

### 1. Required and allowable statewide activities

#### a. Administrative

- (1) preparing the annual performance progress report and submitting it to the Secretary of Labor;<sup>95</sup>
- (2) operating a fiscal and management accountability information system;<sup>96</sup>
- (3) carrying out monitoring and oversight activities<sup>97</sup>

#### b. Programmatic

- (1) Conducting statewide workforce development activities:
  - (a) *required statewide youth activities*: administration of youth workforce development activities;<sup>98</sup>
  - (b) *other allowable statewide youth activities*: providing technical assistance and career services to local areas, including local boards, one-stop operations, one-stop center partners, and eligible training providers;<sup>99</sup>
  - (c) *required statewide adult dislocated worker services*: providing employment and training activities, such as rapid response activities, and additional assistance to local areas;<sup>100</sup> and
  - (d) *other allowable statewide adult dislocated worker services*: establishing and implementing innovative incumbent worker training programs;<sup>101</sup>
- (2) providing support to local areas for the identification of eligible training providers;<sup>102</sup>
- (3) implementing innovative programs for displaced homemakers and programs to increase the number of individuals trained for and placed in nontraditional employment;<sup>103</sup>

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<sup>95</sup> WIOA Sec. 116(d)(1); 20 CFR §§ 677.160 and 683.300(d)

<sup>96</sup> WIOA Sec. 116(i); 20 CFR §§ 652.8(b) and 682.200(l)

<sup>97</sup> WIOA Secs. 129(b)(1)(E), 134(a)(2)(B)(iv), and 184(a)(4); 20 CFR §§ 682.200(j) and 683.410

<sup>98</sup> WIOA Sec. 129(b)(1)

<sup>99</sup> WIOA Sec. 129(b)(2)

<sup>100</sup> WIOA Sec. 134(a)(2)

<sup>101</sup> WIOA Sec. 134(a)(3)

<sup>102</sup> WIOA Sec. 122(a)(2)

<sup>103</sup> WIOA Sec. 134(c)(3)

- (4) carrying out adult and dislocated worker employment and training activities as the state determines are necessary to assist local areas in carrying out local employment and training activities;<sup>104</sup>
- (5) disseminating the following:<sup>105</sup>
  - (a) the state list of eligible training providers for adults and dislocated workers;
  - (b) information identifying eligible training providers of on-the-job training (OJT) and customized training;
  - (c) performance and program cost information about these providers; and
  - (d) a list of eligible providers of youth activities;
- (6) conducting evaluations of workforce activities for adults, dislocated workers, and youth, in order to promote, establish, implement, and utilize methods for continuously improving core program activities to achieve high-level performance within, and high-level outcomes from, the workforce development system;<sup>106</sup>
- (7) providing incentive grants;<sup>107</sup>
- (8) providing technical assistance to local areas that fail to meet local performance measures;<sup>108</sup>
- (9) assisting in the establishment and operation of one-stop delivery systems, in accordance with the strategy described in the state plan; and
- (10) providing additional assistance to local areas that have high concentrations of eligible youth<sup>109</sup>

## 2. Required and allowable local activities

### a. Required adult and dislocated worker employment and training activities

- (1) funds must be used at the local level to pay for career and training services through the one-stop delivery system for program participants;
- (2) required basic career services for all interested individuals:<sup>110</sup>
  - (a) eligibility determination for WIOA services;
  - (b) outreach, intake, and orientation to available information and services;

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<sup>104</sup> WIOA Sec. 134(a)(2)

<sup>105</sup> WIOA Sec. 122

<sup>106</sup> Ibid.

<sup>107</sup> WIOA Sec. 134(a)(3)(A)(xi)

<sup>108</sup> WIOA Sec. 129(b)(2)(E)

<sup>109</sup> WIOA Sec. 129(b)(1)(F)

<sup>110</sup> WIOA Sec. 134(c)(2)(A)(i) – (xi)

- (c) initial assessment of skill levels, including literacy, numeracy, and English language proficiency, as well as aptitudes, abilities (including skills gaps), and supportive service needs;
  - (d) provision of labor exchange services, including job search and placement assistance, as well as career counseling and appropriate recruitment and other business services provided by employers;
  - (e) provision of referrals to and coordination of activities with other programs and services within the one-stop delivery system;
  - (f) provision of workforce and labor market employment statistics and job information;
  - (g) provision of performance information and program cost information on eligible training providers by program and type of provider;
  - (h) provision of information on local area performance;
  - (i) provision of information on availability of supportive services and assistance;
  - (j) provision of information and meaningful assistance to individuals seeking assistance in filing a claim for unemployment compensation; and
  - (k) provision of assistance on financial aid eligibility for training and education programs that are not funded under WIOA Title I;
- (3) required individualized career services for all Title I program participants after determination that such services are required to retain or obtain employment, consistent with statutory priorities:<sup>111</sup>
- (a) comprehensive and specialized assessments of skill levels and service needs, including diagnostic testing, in-depth interviewing, and evaluation;
  - (b) development of an individual employment plan;
  - (c) group and/or individual counseling and mentoring;
  - (d) career planning;
  - (e) short-term pre-vocational services, including development of learning skills, communication skills, interviewing skills, punctuality, personal maintenance skills, and workplace behavior skills training;
  - (f) internships and work experiences linked to careers;
  - (g) workforce preparation activities, including basic academic skills, critical thinking skills, digital literacy skills, and self-management skills;

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<sup>111</sup> WIOA Sec. 134(c)(2)(A)(xii)

- (h) financial literacy services;
  - (i) out-of-area job search assistance and relocation assistance;
  - (j) English-language acquisition and integrated education and training programs
- (4) required training services for eligible Title I program participants when determined appropriate:<sup>112</sup>
  - (a) occupational skills training, including training for nontraditional employment.
  - (b) on-the-job-training (OJT);
  - (c) incumbent worker training;
  - (d) programs that combine workplace training with related instruction, including cooperative education programs;
  - (e) training programs operated by the private sector;
  - (f) skill upgrading and retraining;
  - (g) entrepreneurial training;
  - (h) transitional jobs;
  - (i) job readiness training in combination with other training programs;
  - (j) adult education and literacy training;
  - (k) customized training (designed to meet the specific requirements of an employer who is are required to pay a significant portion of the cost of the training
- (5) required follow-up services;<sup>113</sup> and
- (6) allowable pay-for performance (PFP) strategies and performance contracts.

**b. Other adult and dislocated worker employment and training activities**

At the discretion of the state and local boards, the following services may be provided:<sup>114</sup>

- (1) job seeker services, including:
  - (a) customer support to enable individuals with barriers to employment to navigate among multiple services;

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<sup>112</sup> WIOA Sec. 134(c)(3)(D)

<sup>113</sup> WIOA Sec. 134(c)(2)(A)(xiii)

<sup>114</sup> WIOA Sec. 134(d)

- (b) training programs for displaced homemakers and for individuals training for nontraditional occupations; and
  - (c) work support activities for low-wage workers
- (2) employer services, including:
  - (a) customized screening and referral of individuals in career and training services to employers; and
  - (b) customized employment-related services to employers, employer associations, or other organization on a fee-for-service basis, in addition to labor exchange services available to employers under the Wagner-Peyser Act; and
  - (c) activities to provide business services and strategies;
- (3) coordination activities, including:
  - (a) employment and training activities in coordination with child support enforcement and child support services;
  - (b) employment and training activities in coordination with cooperative extension programs carried out by the US Department of Agriculture;
  - (c) employment and training activities to facilitate remote access to services provided through a one-stop delivery system, including facilitating access through the use of technology;
  - (d) improving coordination with economic development activities to promote entrepreneurial skills training and microenterprise services;
  - (e) improving linkages with small employers;
  - (f) strengthening linkages with unemployment insurance programs;
  - (g) improving coordination of activities for individuals with disabilities; and
  - (h) improving coordination with other federal agency supported workforce development initiatives;
- (4) implementing PFP contract strategies for training services, which may include only the activities listed in the definition of PFP contracting strategies at WIOA Sec. 3(47);
- (5) technical assistance for one-stop centers, one-stop partners, and eligible training providers regarding the provision of services to individuals with disabilities;
- (6) activities for setting self-sufficiency standards for the provision of career and training services;
- (7) implementing promising services to workers and businesses;

- (8) supportive services, including needs related payments; and
- (9) locating transitional jobs.

c. Required youth activities<sup>115</sup>

- (1) tutoring, study skills training, instruction and evidence-based dropout prevention and recovery strategies that lead to completion of the requirements for a secondary school diploma or its recognized equivalent (including a recognized certificate of attendance or similar document for individuals with disabilities) or for a recognized post-secondary credential;
- (2) alternative secondary school services or dropout recovery services, as appropriate;
- (3) paid and unpaid work experiences that have academic and occupational education as a component of the work experience, which may include the following types of work experiences:
  - (a) summer employment opportunities and other employment opportunities available throughout the school year;
  - (b) pre-apprenticeship programs;
  - (c) internships and job shadowing; and
  - (d) OJT opportunities;
- (4) occupational skills training, which includes priority consideration for training programs that lead to recognized post-secondary credentials that align with in-demand industry sectors or occupations in the local area involved, if the local board determines that the programs meet the quality criteria described in WIOA Sec. 123;
- (5) education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster;
- (6) leadership development opportunities, including community service and peer-centered activities encouraging responsibility and other positive social and civil behaviors;
- (7) supportive services;
- (8) adult mentoring for a duration of *at least* 12 months that may occur both during and after program participation;
- (9) follow-up services for *not less than* 12 months after completion of participation;

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<sup>115</sup> WIOA Sec. 129(c)(2)

- (10) comprehensive guidance and counseling, which may include drug and alcohol abuse counseling and referral, as appropriate;
- (11) financial literacy education;
- (12) entrepreneurial skills training;
- (13) services that provide labor market and employment information about in-demand industry sectors or occupations available in the local area, such as career awareness, career counseling, and career exploration services; and
- (14) activities that help youth prepare for and transition to postsecondary education and training;
- (15) allowable pay-for performance (PFP) strategies and performance contracts.

d. **Funds allocated to a local area for eligible youth**

- (1) Funds allocated to a local area for eligible youth must be used for programs that:
  - (a) objectively assess academic levels, occupational skills levels, service needs (occupational, prior work experience, employability, interests, aptitudes, etc.), supportive service needs of each participant, and developmental needs of each participant, for the purpose of identifying appropriate services and career pathways;
  - (b) develop service strategies that are directly linked to one or more indicators of performance of the youth program described in WIOA Sec. 116(b)(2)(A)(ii) and identify career pathways that include education and employment goals, appropriate achievement objectives, and the appropriate services needed to achieve the goals and objectives for each participant taking into account the assessment conducted; and
  - (c) provide activities leading to the attainment of a secondary school diploma or its recognized equivalent, postsecondary education preparation, strong linkages between academic instruction and occupational education that lead to the attainment of recognized postsecondary credentials, preparation for unsubsidized employment opportunities, and effective connections to employers in in-demand industry sectors and occupations of the local and regional labor markets.<sup>116</sup>

### 3. **Unallowed activities**

WIOA Title I funds may not be used for the following activities (except as indicated below).

- a. construction, purchase of facilities or buildings, or other capital expenditures for improvements to land or buildings except with the prior approval of the Secretary of Labor

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<sup>116</sup> WIOA Sec. 129(c)(1)(A) – (C)

- (1) Note. WIOA Title I funds can be used for construction only in limited situations, including meeting obligations to provide physical and programmatic accessibility and reasonable accommodations, certain repairs, renovations, alterations, and capital improvements of property, and for disaster relief projects authorized under WIOA Sec. 170(d) and for other projects that the Secretary determines necessary to carry out the purposes of WIOA, as described under WIOA Sec. 189(c).
- b. employment-generating activities, economic development activities, investment in revolving loan funds, capitalization of businesses, investment in contract bidding resource centers, and similar activities not directly related to training for eligible individuals, with the exception of employer outreach and job development activities, which are considered directly related to training for eligible individuals;<sup>117</sup>
  - c. employment or training of participants in sectarian activities:
    - a. Note. Participants must not be employed in the construction, operation, or maintenance of a facility that is or will be used for sectarian instruction or as a place for religious worship. However, WIOA funds may be used for the maintenance of a facility that is not primarily or inherently devoted to sectarian instruction or religious worship if the organization operating the facility is part of a program or activity providing services to WIOA participants.<sup>118</sup>
  - d. encouraging or inducing the relocation of a business or part of a business from any location in the United States if the relocation results in any employee losing his or her job at the original location;<sup>119</sup>
  - e. providing customized training, skill training, or OJT or company specific assessments of job applicants or employees of a business or a part of a business that has relocated from any location in the United States, *until* the company has operated at that location for 120 calendar days, if the relocation resulted in any employee losing his or her job at the original location;<sup>120</sup>
  - f. paying the wages of incumbent employees during their participation in economic development activities provided through a statewide workforce investment system;<sup>121</sup>
  - g. public service employment, except to provide disaster relief employment, as specifically authorized in WIOA Sec. 194(10);
  - h. use of funds allotted to the State and allocated to local areas under WIOA Title I Subtitle B must not be used for foreign travel.<sup>122</sup>

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<sup>117</sup> WIOA Sec. 181(e)

<sup>118</sup> WIOA Sec. 188(a)(3)

<sup>119</sup> WIOA Sec. 181(d)(1)

<sup>120</sup> WIOA Sec. 181(d)(2)

<sup>121</sup> WIOA Sec. 181(b)(1)

<sup>122</sup> 20 CFR § 683.250(b); 29 USC § 2931(e)

## 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 402.471.9000 <a href="mailto:ndol.wioa_policy@nebraska.gov">ndol.wioa_policy@nebraska.gov</a>	Policy category
	Administrative Requirements
	Effective date
	January 20, 2023
	Supersedes
	None

## Grant Closeout

### 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

As a recipient of Federal awards, NDOL is required to institute a timely closeout process after the end of performance to ensure a timely closeout concerning its subrecipients.

### ACTION

Questions and comments on this policy may be submitted in writing to the WIOA policy mailbox at [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov).

- Local boards, as NDOL subrecipients and pass-through entities whenever they issue subawards to other subrecipients, must ensure compliance with Federal laws, rules, regulations, and guidance, as well as this policy, to ensure grant closeout requirements met.

## POLICY

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This policy has two sections and one appendix.

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Section II. Post-closeout adjustments and continuing responsibilities.....	3
APPENDIX I. Definitions.....	4

### Section I. Closeout requirements<sup>1</sup>

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NDOL, as a pass-through entity, will close out Federal awards to local areas when it determines that all applicable administrative actions and all required work of the Federal award has been completed by its subrecipients. If the non-Federal entity fails to complete the requirements, the Federal awarding agency and pass-through entity will proceed to close out the Federal award with the information available. Below are the actions NDOL must take to complete this process at the end of the period of performance.

- (a) The subrecipient must submit to NDOL, no later than 90 calendar days (or an earlier date as agreed upon by NDOL and the subrecipient) after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award. NDOL may approve extensions when requested and justified by the subrecipient, as applicable.
- (b) Unless NDOL authorizes an extension, the subrecipient must liquidate all financial obligations incurred under the Federal award no later than 120 calendar days after the end date of the period of performance, as specified in the terms and conditions of the Federal award.
- (c) NDOL must make prompt payments to the subrecipient for costs meeting the requirements established under [2 CFR Part 200 Subpart E](#) regarding the applicable Federal award.
- (d) The subrecipient must promptly refund any balances of unobligated cash that NDOL paid in advance or paid and that are not authorized to be retained by the subrecipient for use in other projects.
- (e) Consistent with the terms and conditions of the Federal award, NDOL must make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.
- (f) The subrecipient must account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with [2 CFR §§ 200.310 through 200.316](#) and [2 CFR § 200.330](#).
- (g) When the subrecipient completes all closeout requirements, NDOL must promptly complete all closeout actions for Federal awards.

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<sup>1</sup> 2 CFR § 200.344

- (h) If the subrecipient does not submit all reports in accordance with 2 CFR § 200.344 and the terms and conditions of the Federal Award, NDOL must proceed to close out with the information available within one year of the period of performance end date.

## **Section II. Post-closeout adjustments and continuing responsibilities<sup>2</sup>**

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Closeout of a Federal award does not affect:

1. rights of the Federal awarding agency or pass-through entity to disallow costs and recover funds on the basis of a later audit or other review:
  - a. The Federal awarding agency or pass-through entity must make any cost disallowance determination and notify the non-Federal entity within the record retention period.
2. requirements that the non-Federal entity to return any funds due as a result of later refunds, corrections, or other transactions including final indirect cost rate adjustments;
3. ability of the Federal awarding agency to make financial adjustments to a previously closed award such as resolving indirect cost payments and making final payments;
4. audit requirements in [2 CFR Part 200 Subpart F](#),<sup>3</sup>
5. property management and disposition requirements in [2 CFR §§ 200.310 through 200.316](#); or
6. records retention as required in [2 CFR §§ 200.334 through 200.337](#).<sup>4</sup>

After closeout of the Federal award, a relationship created under the Federal award may be modified or ended in whole or in part with the consent of the Federal awarding agency or pass-through entity and the non-Federal entity, provided the responsibilities of the non-Federal entity referred to above, including those for property management, are considered and provisions made for continuing responsibilities of the non-Federal entity, as appropriate.

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<sup>2</sup> 2 CFR § 200.345

<sup>3</sup> Refer to the State's policy on audit and audit resolution for more information. The State's policy manual is accessible at <https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies>.

<sup>4</sup> Refer to the State's policy on records management for additional information on record retention requirements, some of which are based on Nebraska law. Again, the State's policy manual is accessible at <https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies>.

## APPENDIX I. Definitions

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**PURPOSE.** Definitions in this appendix are provided as supplemental information that supports the provisions of the policy. The terms and phrases defined in this appendix should be read and understood in the context in which they are used in the policy and not as stand-alone information independent of that context. Note that italicized terms in the definitions below indicate that definitions for those terms are also included in this appendix.

### 1. *assistance listing*

*The term assistance listing* refers to the publicly available listing of Federal assistance programs managed and administered by the General Services Administration, formerly known as the Catalog of Federal Domestic Assistance (CFDA).<sup>5</sup>

### 2. *assistance listing number*

*Assistance listing number* means a unique number assigned to identify an assistance listing, formerly known as the CFDA Number.<sup>6</sup>

### 3. *closeout*

The term *closeout* means the process by which a *Federal awarding agency* or *pass-through entity* determines that all applicable administrative actions and all required work of the Federal award have been completed and takes actions as described in [2 CFR § 200.344](#).<sup>7</sup>

### 4. *contractor*

The term *contractor* means an entity that receives a *contract*.<sup>8</sup>

### 5. *contract*

*The term contract* means, for the purpose of *Federal financial assistance*, a legal instrument by which a *recipient* or *subrecipient* purchases property or services needed to carry out the project or program under a Federal award.<sup>9</sup>

### 6. *cooperative agreement*<sup>10</sup>

The term *cooperative agreement* means a legal instrument of financial assistance between a *Federal awarding agency* and a *recipient* or a *pass-through entity* and a *subrecipient* that, consistent with [31 USC §§ 6302 – 6305](#) is:

- used to enter into a relationship the principal purpose of which is to transfer anything of value to carry out a public purpose authorized by a law of the United States (refer to [31](#)

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<sup>5</sup> 2 CFR § 200.1

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

[USC § 6101\(3\)](#)) and not to acquire property or services for the Federal Government or a *pass-through entity's* direct benefit or use; and

- distinguished from a grant in that it provides for substantial involvement of a *Federal awarding agency* in carrying out the activity contemplated by the *Federal award*.

The term *cooperative agreement* does not include:

- (a) a cooperative research and development agreement as defined in [15 USC § 3710a](#); or
- (b) an agreement that provides only:
  - direct United States Government cash assistance to an individual;
  - a subsidy;
  - a loan;
  - a loan guarantee; or
  - insurance.

## 7. Federal award

*Federal award* means, depending on context, either:<sup>11</sup>

- (a) *Federal financial assistance* a *recipient* receives comes directly from a Federal awarding agency or indirectly from a *pass-through entity*; or
- (b) the instrument setting forth the terms and conditions in a *grant agreement*, *cooperative agreement*, or other agreement for assistance covered in paragraph (b) of the definition of *Federal financial assistance* below.

The term *Federal award* does not include other contracts that a Federal agency uses to buy goods or services from a contractor or a contract to operate Federal Government owned contractor operated facilities (GOCOs).

## 8. Federal awarding agency

The term *Federal awarding agency* means the Federal agency that provides a *Federal award* directly to a *non-Federal entity*.<sup>12</sup>

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<sup>11</sup> 2 CFR § 200.1

<sup>12</sup> Ibid.

## 9. Federal financial assistance<sup>13</sup>

*Federal financial assistance* means:

- (a) assistance that *non-Federal entities* receive or administer in the form of:
  - *grants*;
  - *cooperative agreements*;
  - non-cash contributions or donations of property (including donated surplus property);
  - direct appropriations;
  - food commodities; and
  - other financial assistance (excluding assistance described in paragraph (b) of this definition).
- (b) for [2 CFR § 200.203](#) (and [2 CFR Part 200 Subpart F](#)), assistance that *non-Federal entities* receive or administer in the form of:
  - loans;
  - loan guarantees;
  - interest subsidies; and
  - insurance;
- (c) for [2 CFR § 200.216](#), assistance that non-Federal entities receive or administer in the form of:
  - grants;
  - cooperative agreements;
  - loans; and
  - loan guarantees.

*Federal financial assistance* does not include amounts received as reimbursement for services rendered to individuals as described in [2 CFR § 200.502\(h\)](#) and [2 CFR § 200.502\(i\)](#).

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<sup>13</sup> 2 CFR § 200.1

## 10. Federal program

*Federal program* means:<sup>14</sup>

- (a) all *Federal awards* which are assigned a single *assistance listing number*, or
- (b) when no *assistance listing number* is assigned, all *Federal awards* from the same agency made for the same purpose are combined and considered one program.

## 11. grant agreement<sup>15</sup>

*Grant agreement* means a legal instrument of financial assistance between a *Federal awarding agency* or *pass-through entity* and a *non-Federal entity* that, consistent with 31 USC §§ 6302 and 6304 (accessible at [31 USC Chapter 63](#)), is:

- used to enter into a relationship, the principal purpose of which is to transfer anything of value to carry out a public purpose authorized by a law of the United States (refer to [31 USC § 6101\(3\)](#)) and not to acquire property or services for the *Federal awarding agency* or *pass-through entity*'s direct benefit or use; and
- distinguished from a *cooperative agreement* in that it does not provide for substantial involvement of the Federal awarding agency in carrying out the activity contemplated by the Federal award.

The term *grant agreement* does not include an agreement that provides only:

- (a) direct United States Government cash assistance to an individual;
- (b) a subsidy;
- (c) a loan;
- (d) a loan guarantee; or
- (e) insurance.

## 12. internal controls

The term *internal controls* by *non-Federal entities* means processes designed and implemented by the *non-Federal entities* to provide reasonable assurance regarding the achievement of objectives in the following categories:<sup>16</sup>

- effectiveness and efficiency of operations;

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<sup>14</sup> 2 CFR § 200.1

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

- reliability of reporting for internal and external use; and
- compliance with applicable laws and regulations.

### 13. non-Federal entities

The term *non-Federal entity* means a State, local government, Indian tribe, Institution of Higher Education, or nonprofit organization that carries out a *Federal award* as a *recipient* or *subrecipient*.<sup>17</sup>

### 14. period of performance

The term *period of performance* means the total estimated time interval between the start of an initial Federal award and the planned end date, which may include one or more funded portions, or budget periods. Identification of the period of performance in the Federal award per [2 CFR § 200.211\(b\)\(5\)](#) does not commit the awarding agency to fund the award beyond the currently approved budget period.<sup>18</sup>

For WIOA Title IB programs, *period of performance* means that funds allocated to local areas for a given program year are available for expenditure by local boards during that program year and one succeeding program year.<sup>19</sup>

### 15. pass-through entity

The term *pass-through entity* means a *non-Federal entity* that provides a *subaward* to a *subrecipient* to carry out part of a Federal program.<sup>20</sup>

### 16. recipient

The term *recipient* means an entity, usually but not limited to *non-Federal entities*, that receives a *Federal award* directly from a *Federal awarding agency*.<sup>21</sup>

The term *recipient* does not include *subrecipients* or individuals that are beneficiaries of the award.

### 17. subaward

The term *subaward* means an award provided by a *pass-through entity* to a *subrecipient* for the *subrecipient* to carry out part of a *Federal award* received by the *pass-through entity*. A *subaward* may be provided through any form of legal agreement, including an agreement that the *pass-through entity* considers a *contract*.

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<sup>17</sup> 2 CFR § 200.1

<sup>18</sup> Ibid.

<sup>19</sup> 20 CFR § 683.110(c)

<sup>20</sup> 2 CFR 200.1

<sup>21</sup> Ibid.

*Subaward* does not include payments to a *contractor* or payments to an individual that is a beneficiary of a *Federal program*.

#### 18. subrecipient<sup>22</sup>

*The term subrecipient* means an entity, usually but not limited to *non-Federal entities*, that receives a *subaward* from a *pass-through entity* to carry out part of a *Federal award*; but does not include an individual that is a beneficiary of such award. A *subrecipient* may also be a *recipient* of other *Federal awards* directly from a *Federal awarding agency*.

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<sup>22</sup> 2 CFR § 200.1

## 4.2. Nondiscrimination and Equal Opportunity

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#### Arabic

مهم جداً تحتوي هذا المستند على معلومات مهمة حول حقوقك ومسؤولياتك وأولئك. من مهم جداً أن تفهم المعلومات الواردة في هذا المستند، وسوف نعمل وبجانبك للفضلة دون تكلفة لتلك المعلومات. **تصل على الرقم (402) 471-9000** للحصول على مساعدة في ترجمة المعلومات الواردة في هذا المستند.

#### Russian

**ВАЖНО!** В настоящем документе содержится важная информация о ваших правах, обязанностях и/или преимуществах. Крайне важно, чтобы вы поняли информацию, содержащуюся в данном документе, а мы бесплатно предоставим вам эту информацию на выбранном вами языке. **Позвоните по телефону (402) 471-9000** для получения помощи в переводе и понимании информации, содержащейся в данном документе.

#### Korean

**중요!** 본 문서는 귀하의 권리, 책임 및/또는 이익에 관한 중요한 정보를 포함하고 있습니다. 귀하가 본 문서에 있는 정보를 이해하는 것은 대단히 중요하며, 귀하가 원하는 언어로 정보를 제공받으실 수 있습니다. **(402) 471-9000로 전화하여** 본 문서에 있는 정보의 번역 및 이해를 위해 도움받으시길 바랍니다.

## 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 402.471.9000 <a href="mailto:ndol.wioa_policy@nebraska.gov">ndol.wioa_policy@nebraska.gov</a>	Policy category
	Nondiscrimination and Equal Opportunity
	Effective date
	March 28, 2022
	Supersedes
	Nondiscrimination and Equal Opportunity, Change 2 (effective April 10, 2019)

### Nondiscrimination and Equal Opportunity, Change 3

## 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

All recipients of WIOA Title I financial assistance must ensure nondiscrimination and equal opportunity in their provision of WIOA Title I services.<sup>1</sup> Nondiscrimination and equal opportunity requirements and procedures, including complaint processing and compliance reviews, are governed by the implementing regulations of WIOA Sec. 188, codified at 29 CFR Part 38, and are administered and enforced by the US Department of Labor Civil Rights Center (CRC).<sup>2</sup>

## ACTION

This policy supersedes and cancels the State's policy titled Nondiscrimination and Equal Opportunity, Change 2 (effective date April 10, 2019). Questions and comments on this policy may be submitted in writing to the WIOA policy mailbox at [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov).

<sup>1</sup> 20 CFR § 683.285(a)(1)

<sup>2</sup> 20 CFR § 683.285(a)(2); 29 CFR § 38.20; TEGL 37-14

Each local board must:

- meet the obligation to ensure nondiscrimination and equal opportunity as described in this policy; and
- ensure equal access to programs and services as described in this policy.

## CHANGES

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This policy updates the name of the State's EO officer in [Section II\(a\)\(5\)](#). No other material changes have been made.

## POLICY

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The purpose of this policy is to:

- define recipient obligations regarding nondiscrimination and equal opportunity under WIOA Sec. 188 and 29 CFR Part 38, including:
  - applicability, meaning the recipients to which the obligations apply; and
  - prohibited activities and limitations on activities;
- establish the requirements and procedures regarding nondiscrimination and equal opportunity under WIOA Sec. 188 and 29 CFR Part 38; and
- identify consequences for failure to comply with the nondiscrimination and equal opportunity provisions of WIOA Sec. 188 and 29 CFR Part 38.

This policy is organized in three sections and two appendices.

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## Section I. Obligation to ensure nondiscrimination and equal opportunity

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All recipients of WIOA Title I financial assistance must comply with the nondiscrimination and equal opportunity provisions of WIOA Sec. 188 and its implementing regulations provided at 29 CFR Part 38, including:<sup>3</sup>

- the requirements of 29 CFR Part 32, Subparts B and C and Appendix A, which are the regulations requirements pertaining to employment practices and employment-related training, program accessibility and reasonable accommodation;<sup>4</sup>
- the requirements of Titles I, II and III of the Americans with Disabilities Act of 1990 (ADA);<sup>5</sup> and
- all applicable obligations the recipient may have under:<sup>6</sup>
  - the Equal Pay Act of 1963, as amended;
  - Title VII of the Civil Rights Act of 1964, as amended;
  - the anti-discrimination provision of the Immigration and Nationality Act of 1965, as amended;
  - Executive Order 11246 (c. 1965), as amended, pertaining to equal employment opportunity regarding Federal contractors and Federally-assisted constructions contractors and subcontractors;
  - the Age Discrimination in Employment Act of 1967, as amended;
  - Title IX of the Education Amendments of 1972, as amended;
  - Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, pertaining to nondiscrimination and individuals with a disability;
  - the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; and
  - the Age Discrimination Act of 1975, as amended; and
  - Executive Order 13160 (c. 2000) pertaining to nondiscrimination and parents in Federally-conducted education and training programs.

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<sup>3</sup> 20 CFR § 683.285

<sup>4</sup> 29 CFR § 38.3(b)

<sup>5</sup> 29 CFR § 38.3(c)

<sup>6</sup> 29 CFR § 38.3(d)

The obligation to comply with the nondiscrimination and equal opportunity provisions of WIOA Sec. 188 or 29 CFR Part 38 are not excused or reduced by any:<sup>7</sup>

- state or local law or other requirement; or
- private organization rules or policies.

#### (a) Applicability

The requirements of WIOA Sec. 188 and 29 CFR Part 38 apply to:<sup>8</sup>

- each recipient of WIOA Title I financial assistance;
- each one-stop partner, and its programs and activities, that are part of the one-stop delivery system; and
- the employment practices of each recipient, to the extent the employment is in the administration of or in connection with programs and activities conducted under WIOA Title I or the one-stop delivery system.

The requirements of WIOA Sec. 188 and 29 CFR Part 38 do not apply to:<sup>9</sup>

- programs or activities that are financially assisted under laws other than WIOA Title I and are not part of the one-stop delivery system, including programs or activities implemented under the Workforce Investment Act of 1998;
- contracts of insurance or guaranty; or
- Federal procurement contracts, with the exception of contracts to operate or provide services to Job Corps Centers.

#### (b) Prohibitions

In general, recipients are prohibited from using any method that has the purpose or effect of subjecting individuals to discrimination on a prohibited ground due to the recipient's administration of facilities and programs providing aid, benefits, service, or training.<sup>10</sup>

##### (1) Discrimination and harassment<sup>11</sup>

WIOA Sec. 188 prohibits discrimination and harassment based on race, color, religion, sex (including pregnancy<sup>12</sup>), national origin, age, disability, or political affiliation or belief. In addition, WIOA Sec. 188 prohibits discrimination against and harassment of any WIOA Title I program applicant or participant on the basis of citizenship status or participation in a WIOA Title I financially assisted program or activity. Further, a recipient must not exclude any individual from, or restrict any individual's participation in, any program or activity based on the recipient's belief

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<sup>7</sup> 29 CFR § 38.24

<sup>8</sup> 29 CFR § 38.2(a)

<sup>9</sup> 29 CFR § 38.2(b)

<sup>10</sup> TEGL 37-14

<sup>11</sup> 29 CFR § 38.1. Refer to 29 CFR §§ 38.6 – 38.12 for details on specifically prohibited actions.

<sup>12</sup> 29 CFR § 38.8

or concern that the individual will encounter limited future employment opportunities because of the individual's race, color, religion, sex, national origin, age, disability, political affiliation or belief, citizenship status, or participation in a WIOA Title I financially assisted program or activity.<sup>13</sup>

A recipient must not communicate any information that suggests, by text or illustration, that the recipient treats beneficiaries, registrants, applicants, participants, employees or applicants for employment differently on any prohibited basis described in 29 CFR § 38.5, except when such treatment is permitted under 29 CFR Part 38 or Federal law.<sup>14</sup>

## (2) Intimidation and retaliation

A recipient must not discharge, intimidate, retaliate, threaten, coerce or discriminate against any individual because the individual has, with regard to the requirements and obligations of WIOA Sec. 188 or 29 CFR Part 38:<sup>15</sup>

- filed a complaint alleging a violation;
- opposed a practice prohibited by the nondiscrimination and equal opportunity provisions; or
- furnished information to, or assisted or participated in any manner in, an investigation, review, hearing, or any other activity related to any of the following:
  - administration of the nondiscrimination and equal opportunity provisions;
  - exercise of authority under those provisions;
  - exercise of privilege secured by those provisions; or
  - otherwise exercised any rights and privileges under the nondiscrimination and equal opportunity provisions.

## (3) Assistance for facilities for religious instruction or worship<sup>16</sup>

Except as described in [Section I\(c\)](#), WIOA Title I program funds must not be used to subsidize the employment of individuals participating in WIOA Title I programs where the participant would be carrying out the construction, operation, or maintenance of any part of any facility that is used or will be used for religious instruction or worship.

## (c) Exceptions and limitations

### (1) Facilities for religious instruction or worship<sup>17</sup>

The prohibition against use of WIOA Title I funds for facilities for religious instruction or worship, as described above, does not apply to maintenance of a facility that is not primarily or inherently

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<sup>13</sup> 29 CFR § 38.24(c)

<sup>14</sup> 29 CFR § 38.38(c)

<sup>15</sup> 29 CFR § 38.19

<sup>16</sup> WIOA Sec. 188(a)(3)

<sup>17</sup> Ibid.

devoted to religious instruction or worship when the organization operating the facility is part of a program or an activity providing services to WIOA Title I participants.

## (2) Employment and training in religious activities<sup>18</sup>

WIOA Title I funds may be used to support employment and training in religious activities when the assistance is indirect. Financial assistance for employment in religious activities is considered indirect when the participant has been provided with a genuine and independent opportunity to choose the provider of the employment, even where the local WIOA Title I service provider pays the provider of employment directly. Financial assistance for training in religious activities is considered indirect when the participant:

- is given a genuine and independent private choice among training providers or program options, which must be provided in a manner that maximizes informed consumer choice; and
- can freely elect, from among those options, to receive training in religious activities.

For training in religious activities, individual training accounts (ITAs) are considered indirect assistance.

## Section II. Requirements and procedures

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In addition to the specific requirements described in this section, each local board, in general, must ensure that its local American Job Center(s) provides equal access to programs and services.<sup>19</sup>

### (a) Requirements

#### (1) Accessibility

##### (i) Physical accessibility

Each recipient must insure that no qualified individual with a disability is excluded from participation in, or be denied the benefits of a recipient's service, program, or activity or be subjected to discrimination by any recipient because a recipient's facilities are inaccessible or unusable by individuals with disabilities.<sup>20</sup>

##### (ii) Programmatic accessibility

Each recipient must insure that all WIOA Title I financially assisted programs and activities are programmatically accessible, which includes:<sup>21</sup>

- providing reasonable accommodations for individuals with disabilities;

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<sup>18</sup> TEGL 1-05

<sup>19</sup> TEGL 37-14

<sup>20</sup> 29 CFR § 38.13(a)

<sup>21</sup> 29 CFR § 38.13(b)

- making reasonable modifications to policies, practices, and procedures;
- administering programs in the most integrated setting appropriate;
- communicating with persons with disabilities as effectively as with others; and
- providing appropriate auxiliary aids or services, including assistive technology devices and services, where necessary to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, the program or activity.

## (2) Reasonable accommodations and modifications

With regard to employment and aid, benefits, service, and training, a recipient must:

- provide reasonable accommodation to qualified individuals with disabilities who are applicants, registrants, eligible applicants/registrants, participants, employees, or applicants for employment, unless providing the accommodation would cause undue hardship;<sup>22</sup> and
- make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless making the modifications would fundamentally alter the nature of the service, program, or activity.<sup>23</sup>

## (3) Communications

Each recipient must take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others, including communications with program applicants and participants, applicants for employment and employees, members of the public, and their companions.<sup>24</sup>

## (4) Assurances<sup>25</sup>

Each recipient of WIOA Title I financial assistance must provide written assurances that it will adhere to and comply with the requirements of WIOA Sec. 188 and 29 CFR Part 38.

- In the case of a local board, the assurances are included in the local board's WIOA Title I grant agreement with NDOL.
- For all other recipients of WIOA Title I financial assistance provided through the local board, the assurances must be provided in writing as part of an appropriate written agreement between the recipient and the local board or its authorized designee.

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<sup>22</sup> 29 CFR § 38.14(a)

<sup>23</sup> 29 CFR § 38.14(b)

<sup>24</sup> 29 CFR § 38.15(a). *Companion* means a family member, friend, or associate of an individual seeking access to an aid, benefit, service, training, program, or activity of a recipient, who, along with such individual, is an appropriate person with whom the recipient should communicate [29 CFR § 38.15(a)(ii)].

<sup>25</sup> 29 CFR §§ 38.25 and 38.26

## (5) Equal Opportunity Officers<sup>26</sup>

Every recipient must designate an Equal Opportunity Officer (EO Officer), except small recipients and service providers.

- The EO Officer should be a senior-level employee of the recipient.
- The EO Officer must not have other responsibilities or activities that create a conflict, or the appearance of a conflict, with the responsibilities of an EO Officer.
- The EO Officer is responsible for:
  - serving as the recipient's liaison with CRC;
  - monitoring and investigating the recipient's activities, and the activities of the entities that receive WIOA Title I financial assistance from the recipient, to make sure that the recipient and its subrecipients are not violating their nondiscrimination and equal opportunity obligations;
  - reviewing the recipient's written policies to make sure that those policies are nondiscriminatory;
  - developing and publishing the recipient's procedures for processing discrimination complaints and making sure that those procedures are followed;
  - reporting directly to the Commissioner of Labor and the NDOL State-level EO Officer (identified below) on nondiscrimination and equal opportunity matters;
  - undergoing training (at the recipient's expense) to maintain competency as an EO Officer; and
  - if applicable, overseeing the development and implementation of the recipient's Methods of Administration.

In Nebraska, NDOL is the WIOA Title I grant recipient agency and Justin Schroeder is the State-level EO Officer for state issues related to the grant. The State-level EO Officer also serves as a State-level EO Officer for NDOL and may be contacted at:

Justin Schroeder  
State-level EO Officer  
Nebraska Department of Labor  
550 South 16<sup>th</sup> Street  
PO Box 94600  
Lincoln, NE 68509-4600  
(402) 471-3712  
TDD (800) 833-7352

Service providers are not required to designate an EO Officer. The obligation for ensuring service provider compliance with the nondiscrimination and equal opportunity provisions of WIOA Sec.

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<sup>26</sup> 29 CFR §§ 38.28 – 38.33

188 and 29 CFR Part 38 rests with the Governor or local area grant recipient (i.e., Chief Elected Official), as specified in the state's nondiscrimination plan.<sup>27</sup>

#### (6) Equal Opportunity Notice<sup>28</sup>

Each recipient of WIOA Title I financial assistance must provide initial and continuing notice that it does not discriminate on any prohibited basis.

The notice must be provided to:

- registrants;
- applicants;
- participants;
- applicants for employment and employees;
- unions or professional organizations that hold collective bargaining or professional agreements with the recipient;
- subrecipients that receive WIOA Title I financial assistance from the recipient; and
- members of the public, including those with impaired vision or hearing and those with limited English proficiency.

The notice must contain the specific wording identified in 29 CFR § 38.35, which is provided as [APPENDIX II](#) of this policy.

#### (iii) Publications, broadcasts, and other communications

##### (A) Publication of the Equal Opportunity Notice<sup>29</sup>

At a minimum, the Equal Opportunity Notice must be:

- posted prominently, in reasonable numbers and places, in available and conspicuous physical locations and on the recipient's web site pages;
- disseminated in internal memoranda and other written or electronic communications with staff;
- included in employee and participant handbooks or manuals regardless of form, including electronic and paper form if both are available;

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<sup>27</sup> 29 CFR § 38.33

<sup>28</sup> 29 CFR § 38.34

<sup>29</sup> 29 CFR § 38.36

- provided to each participant and employee; and
- made part of each participant's and employee's file and be a part of both paper and electronic files, if both are maintained.

In addition, the Equal Opportunity Notice must be:

- provided in appropriate formats to registrants, applicants, eligible applicants/registrants, applicants for employment and employees and participants with visual impairments;
- provided to participants in appropriate languages other than English;<sup>30</sup> and
- initially published and provided within 90 calendar days of the latter of January 3, 2017 or the first date the requirements of WIOA Sec. 188 and 29 CFR Part 38 apply to the recipient (i.e., within 90 days of first becoming a recipient).

**IMPORTANT.** Where the Equal Opportunity Notice has been given in an alternate format to registrants, applicants, eligible applicants/registrants, participants, applicants for employment and employees with a visual impairment, a record that the alternate-format notice has been given must be made a part of the employee's or participant's file.

#### (B) Printed and electronic materials and verbally-provided information<sup>31</sup>

Recipients must indicate:

- the WIOA Title I financially assisted program or activity in question is an equal opportunity employer/program; and
- auxiliary aids and services are available upon request to individuals with disabilities.

This requirement applies to recruitment brochures and other materials that are ordinarily distributed or communicated in written and/or oral form, electronically and/or on paper, to staff, clients, or the public at large, to describe WIOA Title I financially assisted program or activities or the requirements for participation by recipients and participants. When these materials indicate that the recipient may be reached by voice telephone, the materials must also prominently provide the telephone number of the text telephone (TTY) or other equally effective telecommunications system, such as a relay service, videophone, or captioned telephone used by the recipient.

#### (C) Information provided through news media<sup>32</sup>

Recipients that publish or broadcast program information in the news media must ensure that the publications and broadcasts state that:

- the WIOA Title I financially assisted program or activity in question is an equal opportunity employer/program (or otherwise indicate that discrimination in the WIOA Title I financially assisted program or activity is prohibited by Federal law); and

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<sup>30</sup> 29 CFR § 38.9

<sup>31</sup> 29 CFR § 38.38(a)

<sup>32</sup> 29 CFR § 38.38(b)

- auxiliary aids and services are available upon request to individuals with disabilities.

#### (iv) Orientations

During each presentation to orient new participants, new employees, and/or the general public to its WIOA Title I financially assisted program or activity, a recipient must include a discussion of rights under the nondiscrimination and equal opportunity provisions of WIOA, including the right to file a complaint of discrimination with the recipient or CRC Director.<sup>33</sup> This information must be communicated in appropriate languages and in formats accessible for individuals with disabilities.<sup>34</sup> When possible, the Equal Opportunity Notice should be provided in print and signed by WIOA Title I program participants and employees of the recipient and retained on file.

#### (7) Affirmative outreach<sup>35</sup>

Recipients must take appropriate steps to ensure that they are providing equal access to their WIOA Title I financially assisted programs and activities. These steps should involve reasonable efforts to include members of the various groups protected under 29 CFR Part 38, including but not limited to:

- individuals with limited English proficiency;
- individuals with disabilities;
- persons of different sexes and age groups; and
- persons of various racial and ethnic/national origin groups and religions.

#### (8) Collection and maintenance of EO data<sup>36</sup>

Each recipient must collect data and maintain records the CRC Director finds necessary to determine whether the recipient has complied or is complying with the nondiscrimination and equal opportunity provisions of WIOA Sec. 188 and 29 CFR Part 38. The system and format in which the records and data are kept must be designed to allow the Governor and CRC to conduct statistical or other quantifiable data analyses to verify the recipient's compliance with WIOA Sec. 188 and 29 CFR Part 38.

Records must be collected and maintained on:

- program applicants;
- registrants;
- eligible applicants/registrants;
- participants;

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<sup>33</sup> 29 CFR § 38.36

<sup>34</sup> 29 CFR §§ 38.9, 38.15, and 38.39

<sup>35</sup> 29 CFR § 38.40

<sup>36</sup> 29 CFR § 38.41

- terminees;
- employees; and
- applicants for employment.

Each recipient must record the race/ethnicity, sex, age, and where known, disability status of the groups specified above. Beginning on January 3, 2019, each recipient must also record the limited English proficiency and preferred language of each applicant, registrant, participant, and terminee. This collected information must be stored in a manner that ensures confidentiality, and must be used only for the purposes of:

- recordkeeping and reporting;
- determining eligibility, where appropriate, for WIOA Title I financially assisted programs or activities;
- determining the extent to which the recipient is operating its WIOA Title I financially assisted program or activity in a nondiscriminatory manner; and
- other uses authorized by law.

#### (i) Medical and disability-related information

Any medical or disability-related information obtained about a particular individual, including information that could lead to the disclosure of a disability, must be collected on separate forms. All such information, whether in hard copy, electronic, or both, must be maintained in one or more separate files, apart from any other information about the individual, and treated as confidential. Whether these files are electronic or hard copy, they must be locked or otherwise secured (for example, through password protection).

#### (ii) Complaints<sup>37</sup>

Each recipient must maintain, and submit to CRC upon request, a log of complaints filed with the recipient that allege discrimination on the basis of:

- race;
- color;
- religion;
- sex (including pregnancy, childbirth, and related medical conditions);
- national origin;
- age;
- disability;

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<sup>37</sup> 29 CFR 38.41(c)

- political affiliation or belief;
- citizenship; or
- participation in a WIOA Title I financially assisted program or activity.

The log must include:

- the name and address of the complainant;
- the basis of the complaint;
- a description of the complaint;
- the date the complaint was filed;
- the disposition and date of disposition of the complaint; and
- other pertinent information.

Information that could lead to identification of a particular individual as having filed a complaint must be kept confidential.

Where designation of individuals by race or ethnicity is required, the guidelines of the Office of Management and Budget must be used.

A service provider's responsibility for collecting and maintaining the information required under this section may be assumed by the Governor or local area grant recipient, as provided in the state's nondiscrimination plan.

### (iii) Information to be provided to CRC

#### (A) Notification of administrative enforcement actions or lawsuits<sup>38</sup>

Each recipient must promptly notify the CRC Director when any administrative enforcement actions or lawsuits are filed against it alleging discrimination on the basis of:

- race;
- color;
- religion;
- sex (including pregnancy, childbirth, and related medical conditions);
- national origin (including limited English proficiency);
- age;

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<sup>38</sup> 29 CFR § 38.42(a)

- disability;
- political affiliation or belief; or
- for beneficiaries, applicants, and participants only, on the basis of citizenship or participation in a WIOA Title I financially assisted program or activity.

This notification must include the:

- names of the parties to the action or lawsuit;
- forum in which each case was filed; and
- relevant case numbers.

### (B) Compliance reviews and complaint investigations<sup>39</sup>

Each recipient, as part of a compliance review<sup>40</sup> or monitoring activity<sup>41</sup> conducted or carried out by the CRC Director, must provide the following information:

- the name of any other Federal agency that conducted a civil rights compliance review or complaint investigation, and that found the grant applicant or recipient to be in noncompliance, during the two years before the grant application was filed or CRC began its examination; and
- information about any administrative enforcement actions or lawsuits that alleged discrimination on any protected basis, and that were filed against the grant applicant or recipient during the two years before the application or renewal application, compliance review, or monitoring activity.

This information must include the:

- names of the parties;
- forum in which each case was filed; and
- relevant case numbers.

At the discretion of the CRC Director, recipients may be required to provide, in a timely manner:

- any information and data that the Director considers necessary to investigate complaints and conduct compliance reviews on bases prohibited under the nondiscrimination and equal opportunity provisions of WIOA and 29 CFR Part 38; and
- the particularized information and/or to submit the periodic reports that the CRC Director considers necessary to determine compliance with the nondiscrimination and equal opportunity provisions of WIOA or 29 CFR Part 38.

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<sup>39</sup> 29 CFR § 38.42(b)

<sup>40</sup> 29 CFR § 38.63

<sup>41</sup> 29 CFR § 38.65

Where designation of individuals by race or ethnicity is required, the guidelines of the Office of Management and Budget must be used.

#### (iv) Records retention<sup>42</sup>

Each recipient must maintain the following records, whether they exist in electronic form (including email) or hard copy, for a period of not less than three years from the close of the applicable program year:

- records of applicants, registrants, eligible applicants/registrants, participants, terminees, employees, and applicants for employment; and
- other records as are required under 29 CFR Part 38 or by the CRC Director.

Where a discrimination complaint has been filed or compliance review initiated, every recipient that possesses or maintains any type of hard-copy or electronic record related to the complaint (including records that have any relevance to the underlying allegations in the complaint, as well as records regarding actions taken on the complaint) or to the subject of the compliance review must preserve all records, regardless whether hard-copy or electronic, that may be relevant to a complaint investigation or compliance review, and maintain those records for a period of not less than three years from the date of final action related to resolution of the complaint or compliance review.

#### (v) Records access<sup>43</sup>

Each recipient must permit access by the CRC Director or the Director's designee during its hours of operation to its premises and to its employees and participants, to the extent that such individuals are on the premises during the course of the investigation, for the purpose of conducting complaint investigations, compliance reviews, or monitoring activities associated with a state's development and implementation of a nondiscrimination plan, and for inspecting and copying such books, records, accounts and other materials as may be pertinent to ascertain compliance with and ensure enforcement of the nondiscrimination and equal opportunity provisions of WIOA or 29 CFR Part 38.

Asserted considerations of privacy or confidentiality are not a basis for withholding information from CRC and will not bar CRC from evaluating or seeking to enforce compliance with the nondiscrimination and equal opportunity provisions of WIOA Sec. 188 and 29 CFR Part 38.

Whenever any information that the Director asks a recipient to provide is in the exclusive possession of another agency, institution, or person, and that agency, institution, or person fails or refuses to furnish the information upon request, the recipient must certify to CRC that it has made efforts to obtain the information and that the agency, institution, or person has failed or refused to provide it. This certification must list the name and address of the agency, institution, or person that has possession of the information and the specific efforts the recipient made to obtain it.

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<sup>42</sup> 29 CFR § 38.43

<sup>43</sup> 29 CFR § 38.44

## (b) Procedures

### (1) Complaint filing<sup>44</sup>

Any individual, or individual's representative, who believes that the individual or any specific class of individuals, has been or is being subjected to discrimination, harassment, or retaliation prohibited under WIOA Sec. 188 or 29 CFR Part 38 may file a written complaint. The complaint may be filed with the recipient's EO Officer or the Director, Civil Rights Center, U.S. Department of Labor, Room N4123, 200 Constitution Avenue, NW, Washington, DC 20210.

Generally, a complaint must be filed within 180 days of the alleged discrimination, harassment, or retaliation. However, for good cause shown, the CRC Director may extend the filing time. The time period for filing is for the administrative convenience of CRC, and does not create a defense for the respondent

#### (i) Required contents

Each complaint must be filed in writing, either electronically or in hard copy, and must contain the following information:

- the complainant's name, mailing address, and, if available, email address (or another means of contacting the complainant);
- the identity of the respondent (the individual or entity that the complainant alleges is responsible for the discrimination);
- a description of the complainant's allegations, which must include enough detail to allow the CRC Director or the recipient, as applicable, to decide whether CRC or the recipient, as applicable, has jurisdiction over the complaint; the complaint was filed in time; and the complaint has apparent merit, in other words, whether the complainant's allegations, if true, would indicate noncompliance with any of the nondiscrimination and equal opportunity provisions of WIOA Sec. 188 or 29 CFR Part 38; and
- the written or electronic signature of the complainant or the written or electronic signature of the complainant's representative.

A complaint may be filed by completing and submitting CRC's Complaint Information Form and Privacy Act Consent, which may be obtained either from the recipient's EO Officer or from CRC. The forms are available electronically on CRC's website<sup>45</sup> and in hard copy via postal mail upon written request to Director, Civil Rights Center, U.S. Department of Labor, Room N4123, 200 Constitution Avenue, NW, Washington, DC 20210.

#### (ii) Right to representation

Both the complainant and the respondent have the right to be represented by an attorney or other individual of their choice.<sup>46</sup>

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<sup>44</sup> 29 CFR § 38.69

<sup>45</sup> The Complaint Information Form and Privacy Act Consent Form are accessible at <https://www.dol.gov/oasam/programs/crc/external-enforc-complaints.htm>.

<sup>46</sup> 29 CFR § 38.71

## (2) Complaint processing procedures for recipients<sup>47</sup>

The procedures that a recipient adopts and publishes for processing complaints permitted under WIOA Sec. 188 and 29 CFR Part 38 must state that the recipient will issue a written notice of final action on complaints within 90 calendar days of the date on which the complaint is filed. At a minimum, the procedures must include the following elements:

- initial, written notice to the complainant that contains the following information:
  - an acknowledgment that the recipient has received the complaint;
  - notice that the complainant has the right to be represented in the complaint process;
  - notice of rights contained in 29 CFR § 38.35; and
  - notice that the complainant has the right to request and receive, at no cost, auxiliary aids and services, language assistance services, and that this notice will be translated into the non-English languages as required in 29 CFR §§ 38.4(h) – (i), 38.34, and 38.36.
- a written statement of the issue(s), provided to the complainant, that includes the following information:
  - a list of the issues raised in the complaint; and
  - For each such issue, a statement whether the recipient will accept the issue for investigation or reject the issue, and the reasons for each rejection;
- a period for fact-finding or investigation of the circumstances underlying the complaint;
- a period during which the recipient attempts to resolve the complaint which must include alternative dispute resolution (ADR), as described in 29 CFR § 38.72(c) and [Section II\(b\)\(2\)\(i\)](#);
- a written notice of final action, provided to the complainant within 90 calendar days of the date on which the complaint was filed, that contains the following information:
  - for each issue raised in the complaint, a statement of either:
    - the recipient's decision on the issue and an explanation of the reasons underlying the decision; or
    - a description of the way the parties resolved the issue; and
  - notice that the complainant has a right to file a complaint with CRC within 30 days of the date on which the notice of final action is received if the complainant is dissatisfied with the recipient's final action on the complaint.

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<sup>47</sup> 29 CFR § 68.72

#### (i) Alternative Dispute Resolution (ADR)<sup>48</sup>

The recipient's ADR procedures must provide for the following.

- The complainant may attempt ADR at any time after the complainant has filed a written complaint with the recipient, but before a Notice of Final Action has been issued.
- The choice whether to use ADR or the customary process rests with the complainant.
- A party to any agreement reached under ADR may notify the CRC Director in the event the agreement is breached. In such circumstances, the following rules will apply.
  - The non-breaching party may notify with the CRC Director within 30 days of the date on which the non-breaching party learns of the alleged breach; and
  - The CRC Director must evaluate the circumstances to determine whether the agreement has been breached. If the Director determines that the agreement has been breached, the complaint will be reinstated and processed in accordance with the recipient's procedures.

If the parties do not reach an agreement under ADR, the complainant may file a complaint with the CRC Director as described in 29 CFR §§ 38.69 – 38.71.

#### (3) Complaint processing procedures for service providers<sup>49</sup>

The Governor or the local area grant recipient (i.e., Chief Elected Official), as provided in the state's nondiscrimination plan, must develop and publish, on behalf of its service providers, the complaint processing procedures required in 29 CFR § 38.72. The service providers must then follow those procedures.

#### (4) Notice of recipient's lack of jurisdiction<sup>50</sup>

If a recipient determines that it does not have jurisdiction over a complaint, it must notify the complainant, in writing within five business days of making such determination. This notice of lack of jurisdiction must include:

- a statement of the reasons for that determination; and
- notice that the complainant has a right to file a complaint with CRC within 30 days of the date on which the complainant receives the notice.

#### (5) Notice of final action<sup>51</sup>

If the recipient issues a notice of final action before the 90 calendar day period ends, but the complainant is dissatisfied with the recipient's decision on the complaint, the complainant or the complainant's representative may file a complaint with the CRC Director within 30 days after the date on which the complainant receives the notice. If, by the end of 90 calendar days from the

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<sup>48</sup> 29 CFR § 38.72(c)

<sup>49</sup> 29 CFR § 38.73

<sup>50</sup> 29 CFR § 38.74

<sup>51</sup> 29 CFR §§ 38.75 and 38.76

date on which the complainant filed the complaint, the recipient has failed to issue a notice of final action, the complainant or the complainant's representative may file a complaint with the CRC Director within 30 calendar days of the expiration of the 90 calendar day period. In other words, the complaint must be filed with the CRC Director within 120 calendar days of the date on which the complaint was filed with the recipient.

### **Section III. Failure to comply<sup>52</sup>**

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Whenever the Secretary of Labor finds that a state or other recipient of WIOA Title I financial assistance has failed to comply with the requirements of WIOA Sec. 188 or 29 CFR Part 38, the Secretary must notify the state or recipient and must request that compliance takes place. If within a reasonable period of time, not to exceed 60 days, the state or recipient fails or refuses to comply, the Secretary may refer the matter to the United States Attorney General with a recommendation that an appropriate civil action be instituted or take such other action as may be provided by law.

Once a referral is received or if the United States Attorney General has reason to believe that the state or recipient of WIOA Title I financial assistance is engaged in a pattern or practice of discrimination, the United States Attorney General may bring a civil action in any appropriate district court of the United States for such relief as may be appropriate, including injunctive relief.<sup>53</sup>

### **DISCLAIMER**

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This policy is based on NDOL's reading of the applicable statutes, regulations, rules and guidance released by the US 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>52</sup> WIOA Sec. 188(b)

<sup>53</sup> WIOA Sec. 188(c)

## APPENDIX I. Definitions

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**PURPOSE.** Definitions in this appendix are provided as supplemental information that supports the provisions of the policy. The terms and phrases defined in this appendix should be read and understood in the context in which they are used in the policy and not as stand-alone information independent of that context.<sup>54</sup>

### 1. aid, benefits, service, or training

*Aid, benefit, service, or training* means WIOA Title I financially assisted services, financial or other aid, training, or benefits provided by or through a recipient or its employees, or by others through contract or other arrangements with the recipient. *Aid, benefit, service, or training* includes, but is not limited to:<sup>55</sup>

- career services;
- education or training;
- health, welfare, housing, social service, rehabilitation, or other supportive services;
- work opportunities;
- cash, loans, or other financial assistance to individuals; and
- any aid, benefits, services, or training provided in or through a facility that has been constructed, expanded, altered, leased, rented, or otherwise obtained, in whole or in part, with Federal financial assistance under Title I of WIOA.

### 2. applicant

*Applicant* means an individual who is interested in being considered for any WIOA Title I financially assisted aid, benefit, service, or training by a recipient, and who has signified that interest by submitting personal information in response to a request by the recipient.<sup>56</sup>

### 3. financial assistance

*Financial assistance* means any of the following:<sup>57</sup>

- any grant, subgrant, loan, or advance of funds, including funds extended to any entity for payment to or on behalf of participants admitted to that recipient for training, or extended directly to such participants for payment to that recipient;
- provision of the services of grant making agency personnel, or of other personnel at the grant making agency's expense; or

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<sup>54</sup> Additional definitions relating to nondiscrimination and equal opportunity are provided in 29 CFR § 38.4.

<sup>55</sup> 29 CFR § 38.4(b)

<sup>56</sup> 20 CFR § 38.4(c)

<sup>57</sup> 29 CFR § 38.4(x)

- a grant or donation of real or personal property or any interest in or use of such property, including:
  - transfers or leases of property for less than fair market value or for reduced consideration;
  - proceeds from a subsequent sale, transfer, or lease of such property, if the grant making agency's share of the fair market value of the property is not returned to the grant making agency; and
  - the sale, lease, or license of, and/or the permission to use (other than on a casual or transient basis), such property or any interest in such property, either:
    - without consideration;
    - at a nominal consideration;
    - at a consideration that is reduced or waived either for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to or use by the recipient;
    - waiver of charges that would normally be made for the furnishing of services by the grant making agency; or
    - any other agreement, arrangement, contract or subcontract (other than a procurement contract or a contract of insurance or guaranty), or other instrument that has as one of its purposes the provision of assistance or benefits under the statute or policy that authorizes assistance by the grant making agency.

#### 4. participant

For purposes of the policy, *participant* means an individual who has been determined to be eligible to participate in, and who is receiving any aid, benefit, service, or training under, a program or activity financially assisted in whole or in part under WIOA Title I. *Participant* includes, but is not limited to, individuals receiving any service(s) under state employment service programs, and claimants receiving any service(s) or benefits under state unemployment insurance programs.<sup>58</sup>

#### 5. pass-through entity

The term *pass-through entity* means a non-Federal entity, like a local board, that provides a subaward to a *subrecipient* to carry out some or all of the activities permitted or required under a Federal program.<sup>59</sup>

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<sup>58</sup> 29 CFR § 38.4(oo)

<sup>59</sup> 2 CFR § 200.74

## 6. programmatic accessibility

*Programmatic accessibility* means policies, practices, and procedures providing effective and meaningful opportunity for individuals with disabilities to participate in or benefit from aid, benefits, services, and training.<sup>60</sup>

## 7. qualified individual with a disability<sup>61</sup>

*Qualified individual with a disability* means:

- with respect to employment, an individual who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position; or
- with respect to aid, benefits, services, or training, an individual who, with or without auxiliary aids and services, reasonable accommodations, and/or reasonable modifications in policies, practices and procedures, meets the essential eligibility requirements for the receipt of such aid, benefits, services, or training.

## 8. reasonable accommodation<sup>62</sup>

The term *reasonable accommodation* means modifications or adjustments:

- to an application/registration process that enables a qualified applicant/registrant with a disability to be considered for the aid, benefits, services, training, or employment that the qualified applicant/registrant desires;
- that enable a qualified individual with a disability to perform the essential functions of a job, or to receive aid, benefits, services, or training equal to that provided to qualified individuals without disabilities. these modifications or adjustments may be made to the environment where work is performed or aid, benefits, services, or training are given; or the customary manner in which, or circumstances under which, a job is performed or aid, benefits, services, or training are given; and
- that enable a qualified individual with a disability to enjoy the same benefits and privileges of the aid, benefits, services, training, or employment as are enjoyed by other similarly situated individuals without disabilities.

## 9. recipient<sup>63</sup>

For purposes of the policy, the term *recipient* means any entity that receives WIOA Title I funds either directly from the US Department of Labor or through the Governor or another recipient, including, but not limited to:

- local workforce development boards;

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<sup>60</sup> 29 CFR § 38.4(tt)

<sup>61</sup> 29 CFR § 38.4(ww)

<sup>62</sup> 29 CFR § 38.4(yy)

<sup>63</sup> 29 CFR § 38.4(zz)

- one-stop operators;
- one-stop delivery system partners;
- Job Corps contractors and center operators, excluding the operators of Federally-operated Job Corps centers;
- Job Corps national training contractors;
- outreach and admissions agencies, including Job Corps contractors that perform these functions;
- placement agencies, including Job Corps contractors that perform these functions; and
- other national program recipients, including Native American program recipients; Migrant and Seasonal Farmworker Program recipients; and YouthBuild recipients; and
- other subrecipients, except for service providers.

Individuals participating in WIOA Title I programs are not recipients.

#### 10. service provider

*Service provider* means any:<sup>64</sup>

- operator of, or provider of aid, benefits, service, or training to:
- program or activity that receives WIOA Title I financial assistance from or through any state or local area grant recipient;
- participant through that participant's ITA; or
- entity that is selected and/or certified as an eligible provider of training services to participants.

#### 11. small recipient<sup>65</sup>

A *small recipient* is defined as a *recipient* that:

- serves fewer than 15 program participants during the one grant year (i.e., program year); or
- employs fewer than 15 employees on any given day during one grant year (i.e., program year).

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<sup>64</sup> 29 CFR § 38.4(ggg)

<sup>65</sup> 29 CFR § 38.4 (hhh)

## 12. subrecipient<sup>66</sup>

The term *subrecipient* means a non-Federal entity that receives a subaward from a pass-through entity to carry out some or all of the activities permitted or required under a Federal program (e.g., WIOA Title I youth, adult, and dislocated worker programs). The term *subrecipient* also refers to any entity to which a local board provides a subaward for the administration of some or all of the requirements of the subaward provided to the local board by NDOL for administration of WIOA Title I youth, adult, and dislocated worker activities.

Individuals participating in WIOA Title I programs are not *subrecipients*.

## 13. WIOA Title I financial assistance

*WIOA Title I financial assistance* means any of the following, when authorized or extended under WIOA Title I:<sup>67</sup>

- any grant, subgrant, loan, or advance of Federal funds, including funds extended to any entity for payment to or on behalf of participants admitted to that recipient for training, or extended directly to such participants for payment to that recipient;
- provision of the services of Federal personnel, or of other personnel at Federal expense; or
- a grant or donation of Federal real or personal property or any interest in or use of such property, including:
  - transfers or leases of property for less than fair market value or for reduced consideration;
  - proceeds from a subsequent sale, transfer, or lease of such property, if the Federal share of the fair market value of the property is not returned to the Federal Government; and
  - the sale, lease, or license of, and/or the permission to use (other than on a casual or transient basis), such property or any interest in such property, either:
    - without consideration;
    - at a nominal consideration;
    - at a consideration that is reduced or waived either for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to or use by the recipient;
    - waiver of charges that would normally be made for the furnishing of government services; or

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<sup>66</sup> 2 CFR § 200.93

<sup>67</sup> 29 CFR § 38.4(y)

- any other agreement, arrangement, contract or subcontract (other than a Federal procurement contract or a contract of insurance or guaranty), or other instrument that has as one of its purposes the provision of assistance or benefits under WIOA Title I.

#### 14. WIOA Title I financially assisted program or activity<sup>68</sup>

WIOA Title I financially assisted program or activity means:

- a program or activity, operated by a recipient and financially assisted, in whole or in part, under Title I of WIOA that provides either:
  - any aid, benefit, service, or training to individuals; or
  - facilities for furnishing any aid, benefits, services, or training to individuals;
    - aid, benefit, service, or training provided in facilities that are being or were constructed with the aid of Federal financial assistance under WIOA Title I; or
    - aid, benefit, service, or training provided with the aid of any non-WIOA Title I financial assistance, property, or other resources that are required to be expended or made available in order for the program to meet matching requirements or other conditions which must be met in order to receive the WIOA Title I financial assistance. See the definition of “aid, benefit, service, or training” in this section.

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<sup>68</sup> 29 CFR § 38.4(xxx)

### Equal Opportunity is the Law

It is against the law for this recipient of Federal financial assistance to discriminate on the following bases: Against any individual in the United States, on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions), national origin (including limited English proficiency), age, disability, or political affiliation or belief, or, against any beneficiary of, applicant to, or participant in programs financially assisted under Title I of the Workforce Innovation and Opportunity Act, on the basis of the individual's citizenship status or participation in any WIOA Title I-financially assisted program or activity.

The recipient must not discriminate in any of the following areas:

- deciding who will be admitted, or have access, to any WIOA Title I financially assisted program or activity;
- providing opportunities in, or treating any person with regard to, such a program or activity; or
- making employment decisions in the administration of, or in connection with, such a program or activity.

Recipients of Federal financial assistance must take reasonable steps to ensure that communications with individuals with disabilities are as effective as communications with others. This means that, upon request and at no cost to the individual, recipients are required to provide appropriate auxiliary aids and services to qualified individuals with disabilities.

### *What to do if you believe you have experienced discrimination*

If you think that you have been subjected to discrimination under a WIOA Title I-financially assisted program or activity, you may file a complaint within 180 days from the date of the alleged violation with either the:

- recipient's Equal Opportunity Officer (or the person whom the recipient has designated for this purpose); or
- Director, Civil Rights Center (CRC), U.S. Department of Labor, 200 Constitution Avenue NW, Room N-4123, Washington, DC 20210 or electronically as directed on the CRC Web site at [www.dol.gov/crc](http://www.dol.gov/crc).

If you file your complaint with the recipient, you must wait either until the recipient issues a written Notice of Final Action, or until 90 days have passed (whichever is sooner), before filing with the Civil Rights Center (see address above).

If the recipient does not give you a written Notice of Final Action within 90 days of the day on which you filed your complaint, you may file a complaint with CRC before receiving that Notice. However, you must file your CRC complaint within 30 days of the 90-day deadline (in other words, within 120 days after the day on which you filed your complaint with the recipient).

If the recipient does give you a written Notice of Final Action on your complaint, but you are dissatisfied with the decision or resolution, you may file a complaint with CRC. You must file your CRC complaint within 30 days of the date on which you received the Notice of Final Action.

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<sup>69</sup> 29 CFR § 38.35

### 4.3. Grievances, Complaints, and Appeals

**IMPORTANT!** This document contains important information about your rights, responsibilities and/or benefits. It is critical that you understand the information in this document, and we will provide the information in your preferred language at no cost to you. **Call (402) 471-9000** for assistance in the translation and understanding of the information in this document.

#### Spanish

**¡IMPORTANTE!** Este documento contiene información importante sobre sus derechos, responsabilidades y/o beneficios. Es importante que usted entienda la información en este documento. Nosotros le podemos ofrecer la información en el idioma de su preferencia sin costo alguno para usted. **Llame al (402) 471-9000** para pedir asistencia en traducir y entender la información en este documento.

#### Chinese - Traditional

**重要須知！**本文件包含重要資訊，事關您的權利、責任，和／或福利。請您務必理解本文件所含資訊，而我們也將使用您偏好的語言，無償為您提供資訊。請致電 **(402) 471-9000** 洽詢翻譯及理解本文件資訊方面的協助。

#### Vietnamese

**LƯU Ý QUAN TRỌNG!** Tài liệu này chứa thông tin quan trọng về quyền hạn, trách nhiệm và/hoặc quyền lợi của quý vị. Việc hiểu rõ thông tin trong tài liệu này là rất quan trọng, và chúng tôi sẽ cung cấp miễn phí cho quý vị thông tin này bằng ngôn ngữ mà quý vị ưa dùng. **Hãy gọi (402) 471-9000** để được hỗ trợ về việc thông dịch và hiểu thông tin trong tài liệu này.

#### Tagalog

**MAHALAGA!** Naglalaman ang dokumentong ito ng mahalagang impormasyon tungkol sa iyong mga karapatan, responsibilidad at/o benepisyo. Napakahalaga na nauunawaan mo ang impormasyong nakapaloob sa dokumentong ito, at ibibigay namin nang libre ang impormasyon sa pinili mong wika. **Tumawag sa (402) 471-9000** upang humingi ng tulong sa pagsasaling-wika at pag-unawa sa impormasyong nasa dokumentong ito.

#### French

**IMPORTANT!** Le présent document contient des informations importantes sur vos droits, vos responsabilités et/ou vos avantages. Il est essentiel que vous compreniez les informations figurant dans ce document, et nous vous fournirons gratuitement les informations dans la langue de votre choix. **Appelez au (402) 471-9000** pour obtenir de l'aide pour la traduction et la compréhension des informations contenues dans le présent document.

#### Haitian Creole

**ENPÒTAN!** Dokiman sa a gen enfòmasyon enpòtan ladan konsènan dwa, responsablite ak/oswa avantaj ou yo. Li ap vrèman enpòtan pou ou konprann enfòmasyon yo ki nan dokiman sa a, epi n ap ba ou enfòmasyon sa yo nan lang ou prefere a gratis. **Rele (402) 471-9000** pou jwenn asistans pou tradui ak pou konprann enfòmasyon ki nan dokiman sa a.

#### Portuguese

**IMPORTANTE!** Este documento contém informações importantes sobre os seus direitos, responsabilidades e/ou benefícios. É essencial que compreenda as informações constantes neste documento, as quais disponibilizaremos, gratuitamente, na língua à sua escolha. **Contacte o número (402) 471-9000** para solicitar ajuda para traduzir e compreender as informações contidas neste documento.

#### Arabic

مهم جدًا تحتوي هذا المستند على معلومات مهمة حول حقوقك ومسؤولياتك وأولئك. من مهم جدًا أن تفهم المعلومات الواردة في هذا المستند، وسوف نعمل وبطريقة مجانية لتزويدك هذه المعلومات بلغة تفضلها. **اتصل على (402) 471-9000** للحصول على مساعدة في ترجمة المعلومات الواردة في هذا المستند.

#### Russian

**ВАЖНО!** В настоящем документе содержится важная информация о ваших правах, обязанностях и/или преимуществах. Крайне важно, чтобы вы поняли информацию, содержащуюся в данном документе, а мы бесплатно предоставим вам эту информацию на выбранном вами языке. **Позвоните по телефону (402) 471-9000** для получения помощи в переводе и понимании информации, содержащейся в данном документе.

#### Korean

**중요!** 본 문서는 귀하의 권리, 책임 및/또는 이익에 관한 중요한 정보를 포함하고 있습니다. 귀하가 본 문서에 있는 정보를 이해하는 것은 대단히 중요하며, 귀하가 원하는 언어로 정보를 제공받으실 수 있습니다. **(402) 471-9000로 전화하여** 본 문서에 있는 정보의 번역 및 이해를 위해 도움받으시길 바랍니다.

## 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
	Administrative Requirements
	Effective date
	February 12, 2018
	Supersedes
	Interim Policy on Grievances or Complaints of a Nondiscriminatory Nature (Rev. 9/9/2015)

## Grievances and Complaints – WIOA<sup>1</sup> Title I

### 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

Local workforce development areas (local areas) must establish and maintain procedures for participants and others to file non-criminal grievances and complaints alleging violations of the requirements of WIOA Title I.<sup>2</sup>

The US Department of Labor established procedures for filing criminal complaints.<sup>3</sup>

### ACTION

This policy supersedes and cancels the State's<sup>4</sup> Interim Policy on Grievances or Complaints of a Nondiscriminatory Nature (Rev. 9/9/2015).

<sup>1</sup> WIOA refers to the Workforce Innovation and Opportunity Act of 2014.

<sup>2</sup> 20 CFR § 683.600(a)

<sup>3</sup> 20 CFR § 683.620; TEGL 2-12

<sup>4</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).

Questions and comments regarding this policy may be submitted in writing to the WIOA policy mailbox at [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov).

Each local workforce development board (local board) must:

- establish local area non-criminal grievance and complaint procedures as described in [Sections I](#) and ensure that the procedures comply with the requirements of that section; and
- ensure that all local area and one-stop center staff are familiar with the requirements of [Section II\(b\)\(2\)](#) regarding procedures for filing criminal complaints.

## POLICY

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Except as described below, this policy addresses requirements and procedures for filing:

- non-criminal grievances and complaints regarding alleged violations of the requirements of WIOA Title I; and
- criminal complaints regarding allegations of suspected fraud, program abuse, and criminal conduct involving grantees, recipients, or subrecipients of Federal funds from the US Department of Labor Employment and Training Administration (ETA).

This policy does not address requirements and procedures for filing grievances, complaints, or appeals regarding:

- discrimination;
- non-designation of local areas;
- denial or termination of training provider eligibility for inclusion on Nebraska's Eligible Training Provider List;
- sanctions for substantial violations or performance failures by a local area;
- decisions made regarding required contributions under the state funding mechanism; or
- services provided under WIOA Title III (Wagner-Peyser Employment Service).

Grievances, complaints, or appeals regarding the issues listed directly above are addressed separately in the applicable policies issued by the State,<sup>5</sup> guidance issued by the ETA, or WIOA or its implementing regulations.

This policy is organized in two (2) sections and one (1) appendix.

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<sup>5</sup> The State's policies are accessible at <https://dol.nebraska.gov/EmploymentAndTraining/LCRWP/WIOA/Policies>.

## Section I. Non-criminal grievances and complaints

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### (a) Requirements

Each local area must, with regard to their respective WIOA Title I non-criminal grievance and complaint procedures:<sup>6</sup>

1. provide information about the procedures to WIOA Title I program participants and document that the information has been provided;
2. provide information about the procedures to others affected by the local one-stop delivery system, including one-stop partners, job seekers, and employers served by the system;
3. ensure that every entity to which it awards WIOA Title I funds for the provision of services to program participants has access to information about and is fully aware of the procedures;
4. make reasonable efforts to assure that the information about the procedures can be understood by participants and others, including youth and those who are limited-English speaking individuals; and these efforts must comply with the language requirements of 29 CFR § 38.9 regarding the provision of services and information in languages other than English.

The remedies that may be imposed under NDOL and local area procedures are limited to:<sup>7</sup>

- suspension or termination of payments under WIOA Title I;
- prohibition of placement of a participant with an employer that has violated any requirement under WIOA Title I;
- reinstatement of an employee, payment of lost wages and benefits, and reestablishment of other relevant terms, conditions, and privileges of employment, where applicable; and
- other equitable relief, when appropriate.

### (b) Local area procedures

Each local board must establish local area non-criminal grievance and complaint procedures and ensure that the procedures provide:

- a process for dealing with grievances and complaints from participants and others affected by the local one-stop delivery system, including one-stop partners and service providers;
- an opportunity for an informal resolution and a hearing, to be completed within sixty (60) calendar days of the filing of the grievance or complaint;

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<sup>6</sup> 20 CFR § 683.600(b)

<sup>7</sup> 20 CFR § 683.600(f)

- a process that allows an individual alleging a labor standards violation to submit the grievance to a binding arbitration procedure, if such a procedure is provided under a collective bargaining agreement covering the parties to the grievance; and
- an opportunity for appeal to NDOL when:
  - no decision is reached within sixty (60) calendar days of the filing of the grievance or complaint according to local area procedures; or
  - a party to the grievance or complaint is dissatisfied with the local decision.

Local non-criminal grievance and complaint procedures must be made available as described in [Section I\(a\)](#).

**(c) State appeal procedures<sup>8</sup>**

All non-criminal grievances and complaints alleging violations of the requirements of WIOA Title I must be first addressed through local area procedures. If a non-criminal grievance or complaint is initially filed with NDOL:

- the appropriate local area representative will be notified by email within five (5) business days of NDOL's receipt of the grievance or complaint; and
- the individual(s) filing the grievance or complaint will be provided contact information for the appropriate local area representative within (5) business days, either by email or in writing, and advised that the grievance or complaint must be first filed with the local area according to local area procedures.

An appeal may be submitted to NDOL regarding a non-criminal grievance or complaint when:

- no decision is reached at the local level within sixty (60) calendar days of the filing of the grievance or complaint according to local area procedures; or
- a party to the grievance or complaint is dissatisfied with the local decision.

To file the appeal with NDOL, a written request for informal resolution and a hearing must be submitted to:

Commissioner of Labor  
Nebraska Department of Labor  
PO Box 94600  
Lincoln, NE 68509-4600

A copy of the appeal to NDOL must be provided at the same time to:

Director, Office of Employment and Training  
Nebraska Department of Labor  
PO Box 94600  
Lincoln, NE 68509-4600

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<sup>8</sup> 20 CFR § 683.600(d)

The written request must include:

- a description of the grievance or complaint filed with the local area; and
- the reason for the appeal.

Absent extenuating circumstances, the Commissioner will assign a hearing officer and a hearing will take place within thirty (30) calendar days of the Commissioner's receipt of the written request for a hearing. The hearing officer will issue a decision within thirty (30) calendar days of the hearing, to the extent possible.

(d) [Federal appeal procedures](#)<sup>9</sup>

All non-criminal grievances and complaints alleging violations of the requirements of WIOA Title I must be first addressed through local area and state procedures. An appeal may be submitted to the Secretary of Labor (the Secretary) regarding a non-criminal grievance or complaint when:

1. no decision is reached within sixty (60) calendar days of filing an appeal with NDOL according to the procedures described in [Section I\(c\)](#); or
2. a party to the grievance or complaint is dissatisfied with the decision on the state-level appeal filed with NDOL.

If appealing to the Secretary based on:

- the lack of a decision within sixty (60) calendar days of filing an with NDOL (reason 1 above), the appeal to the Secretary must be filed within one-hundred twenty (120) calendar days of the date the appeal was filed with NDOL; or
- dissatisfaction with the decision on the appeal filed with NDOL (reason 2 above), the appeal to the Secretary must be filed within sixty (60) calendar days of receipt of the decision on the appeal filed with NDOL.

An appeal to the Secretary must be submitted by certified mail, return receipt requested, to:

Secretary  
US Department of Labor  
200 Constitution Avenue NW  
Washington, DC 20210  
Attention: ASET

A copy of the appeal to the Secretary must be provided at the same time to the opposing party and:

Regional Administrator, Region 5  
Employment and Training Administration  
John C. Kluczynski Building  
230 South Dearborn Street, 6<sup>th</sup> Floor  
Chicago, IL 60604-1505

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<sup>9</sup> 20 CFR § 683.610

**IMPORTANT.** Non-criminal grievances and complaints made directly to the Secretary will be referred to the appropriate local area for resolution, except for complaints involving a recipient or subrecipient of WIOA Title I funding that has:<sup>10</sup>

- discharged or in any other manner discriminated against:
  - a participant or any individual in connection with the administration of the WIOA Title I program involved; or
  - any individual because the individual has:
    - filed any complaint or instituted or caused to be instituted any proceeding under or related to WIOA Title I; or
    - testified or is about to testify in any such proceeding or an investigation under or related to WIOA Title I;
- otherwise unlawfully denied to any individual a benefit to which that individual is entitled under the provisions of WIOA Title I, including regulations issued under WIOA Title I.

## Section II. Criminal complaints<sup>11</sup>

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### (a) Requirements

States, local governments, and grantees of Federal awards may become aware of actual, potential, or suspected:

- fraud;
- gross mismanagement or misuse of program funds;
- conduct violations;
- violations of regulations; and
- abuse in ETA programs and operations provided by ETA grantees.

TEGL 2-12 provides policy and procedures for reporting and investigating allegations of criminal wrongdoing or misconduct to include allegations of suspected fraud, program abuse, and criminal conduct involving grantees, recipients, or subrecipients of Federal funds from US Department of Labor Employment and Training Administration (ETA).

The Incident Report (IR) form is the official form provided by the US Department of Labor (the Department) for reporting allegations of criminal and other illegal or improper activities in ETA

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<sup>10</sup> 20 CFR 683.610(e)

<sup>11</sup> 20 CFR § 683.620; TEGL 2-12

funded programs. A fillable PDF version of the IR form, including instructions, is accessible at [https://wdr.doleta.gov/directives/attach/TEGL/TEGL\\_2\\_12\\_att\\_c.pdf](https://wdr.doleta.gov/directives/attach/TEGL/TEGL_2_12_att_c.pdf).

Allegations are reported to the OIG and, within ETA, to the Office of Financial and Administrative Management (OFAM) and the Office of Regional Management. Incidents reported using the IR form may involve allegations regarding:

- fraud;
- misfeasance, nonfeasance, or malfeasance;
- allegations involving misapplication of funds;
- allegations of gross mismanagement;
- allegations of employee and/or participant misconduct; and
- other potential or suspected criminal actions.

**IMPORTANT.** No action will be taken against any individual for disclosing information concerning criminal or improper activities or for making a valid complaint to proper authorities. Complainants may remain anonymous. If an individual feels that their position will be compromised by reporting information through the IR system, the individual may send the report directly to the OIG or OFAM.

## (b) Procedures

### (1) Grant recipients

As the WIOA Title I grant recipient for Nebraska, NDOL is responsible for following the Department's procedures established under TEGL 2-12.

- NDOL must immediately document allegations, suspicions, and complaints involving possible fraud, program abuse, and criminal misconduct using the IR form.
- In addition, situations involving imminent health or safety concerns or the imminent loss of funds exceeding an amount larger than fifty thousand dollars (\$50,000) are considered emergencies and must:
  - immediately be reported by NDOL to the OIG and OFAM by telephone; and
  - followed up with a written report in the form of an IR, no later than one (1) working day after the telephone report.

### (2) Other parties

Information and complaints involving criminal fraud, waste, abuse, or other criminal activity must be reported immediately through the Department's Incident Reporting System to either of the following addresses:

Department of Labor Office of Inspector General<sup>12</sup>  
Office of Investigations  
Room S5514  
200 Constitution Avenue NW  
Washington, DC 20210

Regional Inspector General for Investigations  
Region 5  
Employment and Training Administration  
John C. Kluczynski Building  
230 South Dearborn Street, 6<sup>th</sup> Floor  
Chicago, IL 60604-1505

If making a report only to the Regional Inspector General for Investigations, a copy must be provided at the same time to:

Employment and Training Administration  
US Department of Labor  
200 Constitution Avenue NW  
Washington, DC 20210

**IMPORTANT.** The Department's hotline number for reporting criminal fraud, waste, abuse or other criminal activity related to WIOA Title I is 1.800.347.3756.

## DISCLAIMER

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This policy is based on NDOL's reading of the applicable statutes, regulations, rules, and guidance released by the US 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>12</sup> The website for the US Department of Labor Office of Inspector General is accessible at <http://www.oig.dol.gov/contact.htm>.

## APPENDIX I. Definitions

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**PURPOSE.** Definitions in this appendix are provided as supplemental information that supports the provisions of the policy. The terms and phrases defined in this appendix should be read and understood in the context in which they are used in the policy and not as stand-alone information independent of that context.

### 1. grantee

For purposes of this policy, *grantee* means the Nebraska Department of Labor.

### 2. recipient<sup>13</sup>

*Recipient* means a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. The term recipient does not include subrecipients.

### 3. subrecipient<sup>14</sup>

*Subrecipient* means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program.

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<sup>13</sup> 2 CFR § 200.86

<sup>14</sup> 2 CFR § 200.93

## 5. Youth, Adult, and Dislocated Worker

## 5.1. Program Eligibility and Design

## State Policy

## Workforce Innovation and Opportunity Act (WIOA)

<p>Nebraska Department of Labor (NDOL) Division of Reemployment Services 550 South 16<sup>th</sup> Street Lincoln, NE 68508 402.471.9000 <a href="mailto:ndol.wioa_policy@nebraska.gov">ndol.wioa_policy@nebraska.gov</a></p>	<p><b>Policy category</b> Youth, Adult, and Dislocated Worker; Program Eligibility and Design</p> <p><b>Effective date</b> August 12, 2022</p> <p><b>Supersedes</b> Program Eligibility for Youth, Adults, and Dislocated Workers, Change 2 (effective August 31, 2018)</p> <p><b>Rescinds</b> Program eligibility for self-employed workers effected by COVID-19 (effective date January 12, 2021)</p>
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## Program Eligibility for Adults, Dislocated Workers, and Youth, Change 3

### 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 WIOA Title I adult, dislocated worker, and youth programs are defined under the provisions of WIOA and its implementing rules, regulations, and guidance, as well as other applicable Federal rules, regulations, and guidance.

### ACTION

This policy supersedes and cancels the State's policy on *Program Eligibility for Youth, Adults, and Dislocated Workers, Change 2* (effective date August 31, 2018) and rescinds the State's policy titled *Program eligibility for self-employed workers effected by COVID-19* (effective date January 12, 2021). Questions and comments on this policy may be submitted in writing to the WIOA policy mailbox at [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov).

Each local board must establish a policy or policies that:<sup>1</sup>

1. describe quantifiable methods that must be used to determine eligibility as in-school youth (ISY), out-of-school youth (OSY), and adults based on *basic skills deficient* criteria, which are defined in [APPENDIX I](#), and such methods must:
  - a. include use of assessment instruments that are valid and appropriate for the target population and the provision of reasonable accommodations during the assessment process for individuals with disabilities; and
  - b. describe acceptable source documentation required to demonstrate eligibility determinations based on this criteria, in accordance with TEGL 23-19 Attachment II;
2. includes a definition for the *requires additional assistance to **complete** an education program or to secure or hold employment* criterion used to determine eligibility as an ISY based on the need for the additional assistance and such definition must:
  - a. be reasonable, quantifiable, and based on objective evidence that the individual requires the additional assistance;
  - b. describe methods that must be used to determine eligibility based on this criterion; and
  - c. describe acceptable source documentation required to demonstrate eligibility determinations based on this criterion, in accordance with TEGL 23-19 Attachment II;
3. includes a definition for the *requires additional assistance to **enter or complete** an education program or to secure or hold employment* criterion used to determine eligibility as an OSY based on the need for the additional assistance and such definition must:
  - a. be reasonable, quantifiable, and based on objective evidence that the individual requires the additional assistance;
  - b. describe methods that must be used to determine eligibility based on this criterion; and
  - c. describe acceptable source documentation required to demonstrate eligibility determinations based on this criterion, in accordance with TEGL 23-19 Attachment II;

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<sup>1</sup> 20 CFR §§ 681.290(b) – (c), 681.300, 681.310(a), 680.130(b)(2)

4. defines conditions constituting the *unemployed as a result of general economic conditions in the community in which the individual resides* criterion used to determine eligibility as a dislocated worker based on conditions affecting self-employed individuals, including family members and farm workers or ranch hands and such definition must describe:
  - a. required methods for determining eligibility based on this criterion, which must relate to general economic conditions in the individuals' community, rather than personal circumstances of an individual, such as disability, injury, or other situations not related to the general economic conditions; and
  - b. acceptable source documentation required to demonstrate eligibility determinations based on this criterion;
5. must establish policies and procedures that address implementation, oversight, and monitoring of priority of service for adult, dislocated worker, and youth programs, as required under the State's priority of service policy.<sup>2</sup>

Each local board must ensure that local policies regarding eligibility for adult, dislocated worker, and youth programs comply and align with the requirements and defined terms established in this policy. Local policies must not add to or detract from eligibility requirements established under this policy and WIOA, its implementing rules, regulations, and guidance and other applicable Federal laws and regulations.

## CHANGES

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This policy establishes the following material changes to the superseded policy.

1. Clarifying revisions have been made in the [ACTION](#) section relating to actions required of local boards.
2. [Section II](#) has been added to clarify that adult, dislocated worker, and youth programs must adhere to the program-specific requirements established in the State's priority-of-service policy.
3. Section IV, Category V now includes information on types of military discharges other than dishonorable under [Service Members and Military Spouses, Service Members](#).
4. [Section IV\(a\)](#) and [Section IV\(b\)](#) have been added. They provide policy clarifications regarding military spouses and separating military service members in relation to dislocated worker program eligibility. The same policy clarifications appear in the State's priority-of-service policy.
5. [APPENDIX I](#) has been revised to include definitions for:
  - a. active military naval, air, or space service;

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<sup>2</sup> The State's policy manual is accessible at <https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies>.

- b. eligible spouse;
- c. mass layoff;
- d. non-covered person;
- e. postsecondary school;
- f. underemployed;
- g. unemployed as a result of general economic conditions in the community in which the individual resides; and
- h. Veteran.

APPENDIX I now clearly states that the “requires additional assistance...” criteria for ISY and OSY program eligibility must be defined by local boards.

- 6. The section on transition of WIA youth participants to the WIOA youth program has been removed, as it is no longer relevant.
- 7. The section on nondiscrimination has been removed as the State has established a separate policy on nondiscrimination and equal opportunity, which is included in the State’s policy manual.

## POLICY

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This policy establishes eligibility requirements for adult, dislocated worker, and youth programs, including priority-of-service requirements, and has five sections and one appendix.

Section I.	General eligibility requirements .....	4
Section II.	Priority-of-service requirements .....	5
Section III.	Adult program eligibility .....	5
Section IV.	Dislocated worker program eligibility .....	5
Section V.	Youth program eligibility .....	10
APPENDIX I.	Definitions .....	15

### Section I. General eligibility requirements

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In addition to the eligibility requirements described in [Sections III](#), [IV](#), and [V](#), all adult, dislocated worker, and youth program participants must be:<sup>3</sup>

- citizens or nationals of the United States; or

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<sup>3</sup> 20 CFR § 683.285(a)(5)

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

Further, the local board must ensure that all individuals who are age 18 or older and subject to the registration requirements of the Military Selective Service Act have complied with those requirements.<sup>4</sup>

## Section II. Priority-of-service requirements

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In addition to the general eligibility requirements described in [Section I](#) and program-specific eligibility requirements described in [Sections III, IV, and V](#), there are program-specific priority-of-service requirements for adult, dislocated worker, and youth programs. Refer to the State's priority-of-service policy for detailed information on program-specific requirements for priority of service.<sup>5</sup>

## Section III. Adult program eligibility

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In addition to the requirements described in [Section I](#) and [Section II](#) and in order to receive career services<sup>6</sup> through the adult program, individuals must be age 18 or older.<sup>7</sup>

## Section IV. Dislocated worker program eligibility<sup>8</sup>

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In addition to the requirements described in [Section I](#) and [Section II](#) and in order to receive career services through the dislocated worker program, individuals must meet the criteria described in one of the following five categories.

### Category I. Ordinary *layoff*

This eligibility category applies to individuals who have been *terminated* or *laid off*, or who have received a *notice of termination* or *layoff from employment*, but not because of a permanent closure or *mass layoff*, and are either:

- eligible for or have exhausted unemployment compensation; or

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<sup>4</sup> 50 USC 3801 et seq.; WIOA Sec. 189(h). Detailed information on Selective Service registration requirements are accessible at <https://www.sss.gov/register/who-needs-to-register/>.

<sup>5</sup> The State's policy manual is accessible at <https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies>.

<sup>6</sup> For a description of career services, refer to 20 CFR § 678.430.

<sup>7</sup> 20 CFR § 680.120

<sup>8</sup> WIOA Sec. 3(15); 20 CFR § 680.120; TEGL 19-16

- have been employed long enough to demonstrate an *attachment to the workforce* even if not eligible for unemployment compensation due to:
  - insufficient earnings; or
  - having performed services for an employer that is not covered under state unemployment compensation laws.

The individuals must also be *unlikely to return to a previous industry or occupation*.

### Category II. Permanent closure or *mass layoff*

This eligibility category applies to individuals who have been dislocated because of a permanent closure or *mass layoff*, meaning individuals who:

- have been *terminated* or *laid off*, or have received a *notice of termination or layoff from employment* because of permanent closure of or any substantial *layoff* at a plant, facility, or enterprise; or
- are employed at a facility at which the employer has made a *general announcement* that the facility will close within 180 calendar days; or
- for purposes of eligibility to receive services other than training services, career services, or supportive services, are employed at a facility for which the employer has made a *general announcement* that the facility will close.

### Category III. Conditions affecting self-employment

This eligibility category applies to self-employed individuals, including family members and farm workers or ranch hands, who are:

- *unemployed as a result of a natural disaster*; or
- *unemployed as a result of general economic conditions in the community in which the individual resides*, which must be defined by the local board as stated in [APPENDIX I](#).

### Category IV. Displaced homemaker<sup>9</sup>

This eligibility category applies to individuals who are displaced homemakers, meaning individuals who have been providing unpaid services to family members in the home and:

- have been dependent on the income of another family member but are no longer supported by that income; or

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<sup>9</sup> WIOA Sec. 3(16)(A) – (B); 20 CFR § 680.630(d)

- are dependent spouses of members (i.e., *military spouses*) of the US Armed Forces on *active duty* and whose family income is significantly reduced because of:
  - *deployment*;
  - *call or order to active duty*;
  - permanent change of duty station; or
  - *service-connected disability* of a service member.

The individuals must also be unemployed or *underemployed* and experiencing difficulty in obtaining or upgrading employment. Regarding underemployment, individuals who meet one or more criteria in the definition of *underemployed* in [APPENDIX I](#) may be considered eligible to receive services under a dislocated worker program.<sup>10</sup> For instance, an individual who is dislocated from a full-time job but has found part-time employment may be considered a dislocated worker.

Refer to [Section IV\(a\)\(1\)](#) for policy clarification regarding *military spouses* (defined below) and displaced homemaker status, which is also provided in the State's priority-of-service policy.

#### Category V. Service members and military spouses<sup>11</sup>

##### *Service members*

This eligibility category applies to service members who have separated or are separating from the US Armed Forces with a discharge that is anything other than dishonorable (honorable, general, entry-level, other than honorable, and bad conduct discharges; dismissal [officer discharge]) and:

- have received a notice of separation, meaning a Form DD-214 from the Department of Defense or other documentation showing a separation or imminent separation from the US Armed Forces;
- are eligible for or have exhausted unemployment compensation; and
- are *unlikely to return to a previous industry or occupation*.

Refer to [Section IV\(b\)](#) for policy clarification regarding separating military service members, which is also provided in the State's priority-of-service policy.

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<sup>10</sup> TEGL 19-16

<sup>11</sup> 20 CFR § 680.660; TEGL 19-16

### *Military spouses.*

This eligibility category also applies to *military spouses*, meaning:<sup>12</sup>

- individuals who are married to *active duty* service members, including National Guard or Reserve personnel on *active duty*; and
- surviving spouses of *active duty* service members who lost their lives while on *active duty* service in Afghanistan, Iraq, or other combat-related areas.

Refer to [Section IV\(a\)\(2\)](#) for policy clarification regarding *military spouses* (defined above) and cessation of employment, which is provided in the State's priority-of-service policy.

#### (a) Policy clarification on military spouses

The State's priority of service policy includes the following policy clarifications regarding *military spouses* (defined above) and displaced homemaker status and cessation of employment.<sup>13</sup>

##### (1) Displaced homemakers<sup>14</sup>

*Military spouses* may qualify to be served as a dislocated worker if they meet the definitional requirements for displaced homemaker. Surviving *military spouses* of *Veterans* and military service members may be served with dislocated worker funds. If a surviving *military spouse* of a *Veteran* or military service member qualifies generally as a dislocated worker or specifically as a displaced homemaker, they can be served under the dislocated worker program. If the surviving *military spouse* does not meet those requirements, they can be served under the adult program. Under either program, a surviving *military spouse* of a *Veteran* must receive priority of service over *non-covered persons* if they qualify for priority as an *eligible spouse*.

##### (2) Cessation of employment<sup>15</sup>

When a *military spouse* is unable to continue an employment relationship because of a military service member's permanent change of military station or the *military spouse* loses employment as a result of the military service member's discharge from the military, then the cessation of employment meets the termination component of the definition of dislocated worker. The *military spouse's* cessation of employment due to the military service member's permanent change of military station or their discharge from the military can also be considered to meet the *unlikely to return to a previous industry or occupation* criterion of the definition of dislocated worker. This criterion of the definition of dislocated worker recognizes the breadth of job types and considers whether the individual is likely to return to either their prior industry or (not "and") occupation. Furthermore, the phrase specifically uses the term "unlikely" to return; therefore, the standard for determining the likelihood of return is not absolute; instead, it is a matter of judgment based on relevant circumstances. In the majority of cases, the circumstances in which *military spouses* are required to leave a job/occupation as a result of the military service member's transfer do not

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<sup>12</sup> TEGL 22-04

<sup>13</sup> The State's policy manual is accessible at <https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies>.

<sup>14</sup> TEGL 22-04

<sup>15</sup> TEGLs 22-04 and 22-04 Change 1

position the spouse to return immediately to their previous industry or occupation, particularly at the same level for one or more of following reasons.

- Spouses are generally not resuming employment with the same employer.
- Even if a *military spouse* resumes employment with the same employer, the employment is in a new location, and jobs/occupations will generally not be the same structurally or organizationally in the new location as in the prior location.
- When *military spouses* do get jobs in their new locations, it is likely, as new employees, that they will start at lower levels of seniority than the levels of their positions in their prior locations.
- There is frequently a gap in employment as *military spouses* make the move and search for new employment, which may lessen their likelihood of returning to the same level of job type or occupation.
- The skills of the *military spouse* may be obsolete or inadequate compared to the advancing competency needs of the current workforce and economy.
- The industry in which the *military spouse* has prior work experience may be in decline in the region to which the *military spouse* has relocated.
- There may be an excess number of workers with similar skill sets and experience to that of the *military spouse* who are also seeking limited employment opportunities in the region to which the *military spouse* has relocated.

Based upon the totality of these circumstances, it would be reasonable to conclude that in the vast majority of cases, *military spouses* impacted by a military service member's duty reassignment or discharge will meet the *unlikely to return to a previous industry or occupation* criterion and could, therefore, be served as dislocated workers. *Military spouses* who meet eligibility criteria for dislocated workers must be afforded priority over *non-covered persons*.

#### (b) Policy clarification on separating military service members<sup>16</sup>

A basic requirement to qualify as a dislocated worker is that the worker be *terminated* or *laid off*. It is USDOL policy that being discharged under honorable conditions, either voluntarily or involuntarily, terminates an employment relationship between the military service member and the military and, therefore, falls within the scope of the termination component of the definition of dislocated worker. The separating military service member must also satisfy other criteria for dislocated worker program eligibility, including the requirement that the individual is *unlikely to return to a previous industry or occupation*. Additionally, under the priority of service provisions of the Jobs for Veterans Act, separating military service members who upon discharge meet the eligibility criteria for dislocated worker programs are afforded priority over individuals who are not *Veterans*.

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<sup>16</sup> TEGL 22-04

## Section V. Youth program eligibility

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### (a) ISY eligibility criteria

In addition to the requirements described in [Section I](#) and [Section II](#), two levels of criteria must be met for individuals to qualify as an ISY.

Level 1. Individuals must meet all of the criteria listed in Table 1 to be eligible as an ISY.

Table 1. ISY level 1 eligibility criteria<sup>17</sup>

ISY level 1 eligibility criteria
1. The individual must provide equal opportunity data on race, ethnicity, age, sex, and disability.
2. The individual is not younger than age 14 or older than age 21.
3. The individual is attending <i>school</i> , including <i>secondary school</i> or <i>postsecondary school</i> .
4. The individual is a <i>low-income individual</i> . <sup>18</sup>

Level 2. In addition to Level 1 criteria, individuals must also meet at least one of the eight criteria listed in Table 2 to be eligible as an ISY.

Table 2. ISY level 2 eligibility criteria<sup>19</sup>

ISY level 2 eligibility criteria
1. The individual is <i>basic skills deficient</i> .
2. The individual is an <i>English language learner</i> .
3. The individual is an <i>offender</i> .
4. The individual is a homeless individual who: a. lacks a fixed, regular, and adequate nighttime residence and is: i. sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; ii. lives in a motel, hotel, trailer park, or campground due to the lack of an adequate alternative; iii. lives in an emergency or transitional shelter; or iv. 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 rows 4a and 4b of this table; d. lives in cars, parks, public spaces, abandoned buildings, substandard housing, bus or training stations, similar settings; or e. is a runaway.
5. 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; or e. is in an out-of-home placement.
6. The individual is <i>pregnant or parenting</i> .

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<sup>17</sup> 20 CFR §§ 680.110(c) and 681.220(a) – (c)

<sup>18</sup> A potential youth program participant who lives in a *high-poverty area* is automatically considered a *low-income individual* [20 CFR §§ 681.250(d) and 681.260]. NDOL's most recent Division of Reemployment Services Notice regarding high-poverty areas based on census tracts is accessible at <https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Notices>.

<sup>19</sup> 20 CFR § 681.220(d); 42 USC §§ 14043e-2(6) and 11434a(2)

ISY level 2 eligibility criteria
7. The individual is an <i>individual with a disability</i> .
8. The individual <i>requires additional assistance to <b>complete</b> an educational program or to secure or hold employment</i> .

### (1) Age-based eligibility for ISY<sup>20</sup>

As stated above, an individual must be at least age 14 but not older than age 21 to be considered eligible as an ISY. *School* status is determined at the time of eligibility determination and remains the same throughout the individual's participation in the youth program. Once enrolled, an ISY may continue to receive services beyond age 21.

### (2) High school equivalency and dropout re-engagement programs<sup>21</sup>

High *school* equivalency programs and *dropout* re-engagement programs *are not* considered *schools* for purposes of determining *school* status, with one exception. Individuals attending high *school* equivalency programs, including programs considered to be *dropout* re-engagement programs, are ISY when the programs:

- are funded by a public K12 *school* system; and
- classify the individuals as still enrolled in *school*.

In addition, an individual enrolled in an alternative *school*, class, or education program established in accordance with Neb. Rev. Stat. § 79-266 is considered an ISY when the alternative *school*, class, or education program classifies the individual as still enrolled in *school*.

### (3) Low-income exception<sup>22</sup>

All individuals must be low-income to meet ISY eligibility criteria, with one exception. Up to five percent of all youth program participants (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. Example:

- A local area enrolled 200 individuals in the youth program:
  - 100 were OSY who were not required to meet the low-income criterion;
  - 50 were OSY who were required to meet the low-income criterion; and
  - 50 were ISY.

<sup>20</sup> 20 CFR § 681.220(b)

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

<sup>22</sup> 20 CFR § 681.250(c); TEGL 21-16

- In this example, the 50 OSY required to meet the low-income criteria and the 50 ISY are the only youth program participants factored into the five percent low-income exception calculation.
- Therefore, 5 of the 100 individuals who ordinarily would be required to meet the low-income criterion are not required to meet that criterion based on this low-income exception.

#### (4) Additional assistance limitation for ISY<sup>23</sup>

In each local area, not more than five percent of individuals may be eligible as ISY based solely on a need for additional assistance to complete an educational program or to secure or hold employment. This limitation applies only to ISY.

Example. if a local area enrolls 100 individuals as ISY during PY 2017, only five of those 100 individuals can be determined eligible based solely on the requires additional assistance criterion.

#### (b) OSY eligibility criteria

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

Level 1. Individuals must meet all of the criteria listed in Table 3 to be eligible as an OSY.

Table 3. OSY level 1 eligibility criteria<sup>24</sup>

OSY level 1 eligibility criteria
1. The individual must provide equal opportunity data on race, ethnicity, age, sex, and disability.
2. The individual is not younger than age 16 or older than age 24.
3. The individual is not <i>attending school</i> (secondary school) or <i>attending postsecondary school</i> .

Level 2. In addition to Level 1 criteria, individuals must meet at least one of the nine criteria listed in Table 4 to be eligible as an OSY.

Table 4. OSY level 1 eligibility criteria<sup>25</sup>

OSY level 2 eligibility criteria
1. The individual is a <i>dropout</i> .
2. The individual is within the <i>age of compulsory school attendance</i> under state law but has not attended for at least the most recent complete <i>school-year</i> quarter or calendar-year quarter.
3. The individual is a recipient of a secondary <i>school</i> diploma or its recognized equivalent, a <i>low-income individual</i> , <sup>26</sup> and either <i>basic skills deficient</i> or an <i>English language learner</i> .
4. The individual is an <i>offender</i> .
5. The individual is a homeless individual who:

<sup>23</sup> 20 CFR § 681.310(b)

<sup>24</sup> 20 CFR §§ 680.110(c) and 681.210(a) – (b)

<sup>25</sup> WIOA Sec. 3(24)(G); 20 CFR § 681.210(c); 42 USC §§ 14043e-2(6) and 11434a(2)

<sup>26</sup> A potential youth program participant who lives in a *high-poverty area* is automatically considered a *low-income individual* [20 CFR §§ 681.250(d) and 681.260]. NDOL's most recent Division of Reemployment Services Notice regarding high-poverty area census tracts is accessible at <https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Notices>.

OSY level 2 eligibility criteria
<ul style="list-style-type: none"> <li>a. lacks a fixed, regular, and adequate nighttime residence and is: <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 adequate alternative;</li> <li>iii. living in an emergency or transitional shelter;</li> <li>iv. is abandoned in a hospital; or</li> <li>v. 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 rows 5a and 5b of this Table 4;</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>
6. 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>
7. The individual is <i>pregnant or parenting</i> .
8. The individual is an <i>individual with a disability</i> .
9. The individual <i>requires additional assistance to enter or complete an educational program or secure or hold employment</i> and is a <i>low-income individual</i>

### (1) Age-based eligibility for OSY<sup>27</sup>

As stated above, individuals must be at least age 16 but not older than age 24 to be considered eligible as an OSY. *School* status is determined at the time of eligibility determination and remains the same throughout individuals' participation in the youth program. Once enrolled, OSY may continue to receive services beyond age 24.

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

Individuals must be low-income if they are recipients of secondary *school* diplomas or recognized equivalents and eligible as an OSY is based on:<sup>28</sup>

- *basic skills deficiency*;
- being an *English language learner*; or
- the *requires additional assistance to enter or complete an educational program or to secure or hold employment* criterion.

<sup>27</sup> 20 CFR § 681.210(b)

<sup>28</sup> 20 CFR § 681.250(a)

### (3) Low-income exception

As stated in [Section IV\(a\)\(3\)](#), up to five percent of all youth program participants (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.

### DISCLAIMER

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

## APPENDIX I. Definitions

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**PURPOSE.** Definitions in this appendix are provided as supplemental information that supports the provisions of the policy. The terms and phrases defined in this appendix should be read and understood in the context in which they are used in the policy and not as stand-alone information independent of that context.

### 1. active duty

*Active duty*<sup>29</sup> means full-time duty in the active military service of the United States. *Active duty* 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.

For purposes of this policy, *active duty* does not include full-time National Guard duty.

### 2. active military, naval, air, or space service

*Active military, naval, air, or space service* includes:<sup>30</sup>

- *active duty*;
- any period of *active duty* for training during which the individual concerned was disabled or died from a disease or injury incurred or aggravated in line of duty;
- any period of *inactive duty* training during which the individual concerned was disabled or died:
  - from an injury incurred or aggravated in line of duty; or
  - from an acute myocardial infarction, cardiac arrest, or a cerebrovascular accident occurring during such training;
- full-time duty in the National Guard or a Reserve component.

*Active military, naval, air, or space service* does not include full-time duty for training purposes, meaning training that is often referred to as “weekend” or “annual” training for National Guard or a Reserve components.<sup>31</sup>

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<sup>29</sup> 10 USC § 101(d)(1)

<sup>30</sup> 38 USC § 101(24); 38 CFR § 17.31

<sup>31</sup> 20 CFR § 1010.110

### 3. age of compulsory school attendance

An individual who is within the *age of compulsory school attendance*<sup>32</sup> is an individual who is subject to compulsory *school* attendance according to Nebraska state law. In Nebraska, individuals ages 6 through 17 are required to attend *school*, with three exceptions:

- 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 16 years of age and has been legally withdrawn from *school*.

### 4. attachment to the workforce

The phrase *attachment to the workforce*<sup>33</sup> means having been employed at least 20 or more hours per week for at least six of the most recent 36 months in a single occupation. The six 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 same number of weekly hours and duration noted above.

### 5. attending postsecondary school

*Attending postsecondary school*<sup>34</sup> means enrollment in credit-bearing postsecondary education classes, including credit-bearing community college classes and continuing education classes.

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

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

### 6. attending school (secondary school)

The phrase *attending school* (secondary school) is defined under state law. Nebraska State Law defines *attending school*<sup>35</sup> as enrollment in and regular attendance at a *school* approved by the Nebraska State Board of Education, including:

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

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<sup>32</sup> TEGL 21-16; Neb. Rev. Stat. § 79-201

<sup>33</sup> This is a term defined by the State.

<sup>34</sup> TEGL 21-16

<sup>35</sup> 20 CFR § 681.550(a); TEGL 21-16; Neb. Rev. Stat. §§ 79-201, 79-202, 79-319, and 79-1601

- high *school* equivalency programs,<sup>36</sup> including an alternative *school*, class, or education program established in accordance with Neb. Rev. Stat. § 79-266 for the benefit of expelled students.

If an individual is enrolled in the youth program during the summer and is in between secondary *school* years, the individual is considered an ISY if they are *enrolled* to continue *school* in the fall.

## 7. basic skills deficient

An individual who is *basic skills deficient* is:<sup>37</sup>

- a youth who has English reading or writing skills or computing skills at or below the 8<sup>th</sup> grade level based on a generally accepted standardized test; or
- a youth or adult who 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.

## 8. call or order to active duty

The phrase *call or order to active duty*<sup>38</sup> refers to a call or order or retention on *active duty* for members of the uniformed services pursuant to 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 United States President or Congress.

## 9. deployment

A member of the US Armed Forces is considered to be on *deployment*<sup>39</sup> 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. The Secretary of Defense may prescribe an alternative definition of *deployment* other than that described above.

A member of the US Armed Forces *is not* on *deployment* when the member is:

- performing service as a student or trainee at a school (including Government school);
- performing administrative, guard, or detail duties in garrison at the member's permanent duty station; or

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<sup>36</sup> Refer to [Section II\(a\)\(2\)](#) for additional information on high school equivalency and dropout reengagement programs.

<sup>37</sup> WIOA Sec. 3(5)

<sup>38</sup> 10 USC § 101(a)(13)(B)

<sup>39</sup> 10 USC § 991(b)

- unavailable solely because of 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
- unavailable solely because of a disciplinary action taken against the member.

## 10. dropout

A *dropout*<sup>40</sup> is an individual who:

- is no longer attending any *school*; and
- has not received a secondary *school* diploma or recognized equivalent.

*Dropout* refers only to an individual who is currently a secondary *school dropout*. *Dropout* 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 2020 and returned to high *school* in 2021 prior to enrollment in the youth program *is not a dropout*. An individual who has dropped out of postsecondary education is not a *dropout* for purposes of youth program eligibility.

## 11. eligible spouse

*Eligible spouse*,<sup>41</sup> as defined in [38 USC § 4215\(a\)](#), means the spouse of any of the following:

- any *Veteran* who died of a *service-connected disability*;
- any member of the Armed Forces serving on *active duty* who, at the time of application for the priority, is listed in one or more of the following categories and has been so listed for a total of more than 90 days:
  - missing in action;
  - captured in line of duty by a hostile force; or
  - forcibly detained or interned in the line of duty by a foreign government or power;
- any *Veteran* who has a total disability resulting from a *service-connected disability*, as determined by the US Department of Veterans Affairs (USDVA); or
- any *Veteran* who died while a total disability resulting from a *service-connected disability* was in existence, as determined by USDVA.

Note.<sup>42</sup> An *eligible spouse* whose eligibility is derived from a living *Veteran* or military service member would lose their eligibility if the *Veteran* or military service member were to lose the status that is the basis for the eligibility (e.g., if a *Veteran* with a total *service-connected disability* were to receive a revised disability rating at a lower level). Similarly, for an *eligible spouse* whose

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<sup>40</sup> WIOA Sec. 3(54); TEGL 21-16

<sup>41</sup> Ibid.

<sup>42</sup> TEGL 07-09

eligibility is derived from a living *Veteran* or military service member, that *eligible spouse's* eligibility would be lost upon divorce from the *Veteran* or military service member.

## 12. English language learner

*English language learner*<sup>43</sup> means an individual who has limited ability in reading, writing, speaking, or comprehending the English language and:

- whose native language is a language other than English; or
- lives in a family or community environment where a language other than English is the dominant language.

## 13. general announcement

The term *general announcement*<sup>44</sup> means an announcement to the public by an employer or employer representative. The *general announcement* must be made to the public, not just the employees of the employer.

## 14. high-poverty area

A *high-poverty area*, as it relates to youth eligibility, is a census tract, a set of contiguous Census tracts, a county, an American Indian Reservation, Oklahoma Tribal Statistical Area (as defined by the US Census Bureau), Alaska Native Village Statistical Area or Alaska Native Regional Corporation Area, Native Hawaiian Homeland Area, or other tribal land as defined by the Secretary of Labor in guidance, that has a poverty rate of at least 25 percent as set every five years using American Community Survey 5-year data.<sup>45</sup>

A detailed list of high-poverty area census tracts is provided by the NDOL Reemployment Services Division every five years pursuant to 20 CFR § 681.260.

## 15. individual with a disability

The term *individual with a disability* means an individual with a disability as defined in Section 3 of the Americans with Disabilities Act of 1990.<sup>46</sup>

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<sup>43</sup> WIOA Secs. 3(20) and 203(7); TEGL 21-16

<sup>44</sup> This is the State's definition as permitted under 20 CFR § 680.130(b)(1).

<sup>45</sup> A potential youth program participant who lives in a high-poverty area census tract is automatically considered a low-income individual [20 CFR §§ 681.250(d) and 681.260]. NDOL's most recent Division of Reemployment Services Notice regarding high-poverty area census tracts is accessible at <https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Notices>.

<sup>46</sup> 20 CFR § 675.300

## 16. laid off or layoff

For determining eligibility as a dislocated worker, the terms *laid off* or *layoff*<sup>47</sup> mean an individual's employment relationship is or will be suspended by the employer, without cause,<sup>48</sup> for more than 180 calendar days.

## 17. low-income individual

A *low-income individual* is an individual who meets one or more of the criteria listed in Table 5. Note that a youth who lives in a *high-poverty area* is automatically considered a *low-income individual*.<sup>49</sup>

Table 5. Low-income criteria<sup>50</sup>

Low-income eligibility criteria
1. The individual currently receives or is a member of a family currently receiving assistance through: a. Supplemental Nutrition Assistance Program (SNAP); b. Temporary Assistance for Needy Families Program (TANF); c. Supplemental Security Income through the Social Security Administration (SSI); or d. state or local income-based public assistance.
2. In the past 6 months, the individual has received or is a member of a family that has received assistance through: a. SNAP; b. TANF; c. SSI; or d. state or local income-based public assistance.
3. The individual is in a family whose total family income does not exceed the higher of: <sup>51</sup> a. the current Federally established poverty line; or b. 70 percent of the Federally established lower living standard income level (LLSIL).
4. The individual is a homeless individual who: a. lacks a fixed, regular, and adequate nighttime residence and is: 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 adequate alternative; 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 rows 4a and 4b of this table; d. lives in cars, parks, public spaces, abandoned buildings, substandard housing, bus or training stations, or similar settings; or e. is a runaway.
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 <i>school</i> diploma or its recognized equivalent.
6. The individual is a foster child on behalf of whom state or local government payments are made.

<sup>47</sup> This is a term defined by the State.

<sup>48</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.

<sup>49</sup> 20 CFR §§ 681.250(d) and 681.260

<sup>50</sup> WIOA Secs. 3(36) and 181(a)(2); 38 USC § 4213

<sup>51</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.

Low-income eligibility criteria
7. The individual is an <i>individual with a disability</i> whose income meets either of the criteria listed in row 3 of this Table 5.

a. **Income considered when determining low-income status**

The following types of payments made or in-kind aid to individuals *are not* considered income when determining low-income eligibility for WIOA Title I programs:

- 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; and
- payments made to individuals participating programs authorized under WIOA Title I.

In addition, when determining low-income eligibility for WIOA Title I programs for *Veterans* and *eligible spouses* of *Veterans*, payments made or in-kind aid to individuals from the following sources are not considered income:

- any amounts received as military pay or allowances by any person who served on *active duty*;
- any amounts received by a *Veteran* or *eligible spouses* of *Veterans* under the following chapters of Title 38 of the US Code:
  - Chapter 13 for service-connected deaths;
  - Chapter 30 for educational assistance;
  - Chapter 30 for peacetime disability or death compensation;
  - Chapter 30 for wartime disability or death compensation;
  - Chapter 31 for training and rehabilitation for *Veterans* with *service-connected disabilities*;
  - Chapter 32 for Post-Vietnam Era Veterans education assistance; and
  - Chapter 35 for survivors and dependents educational assistance;
- any amounts received by a *Veteran* or *eligible spouse* of a *Veteran* under 10 USC Chapter 106 for educational assistance for members of the selected reserve; and
- any amounts received by transitioning service members.

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

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 WIOA Title I programs, including:

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

## 18. mass layoff

The term *mass layoff* means a layoff that has occurred when:<sup>52</sup>

- at least 50 affected workers have been laid off; or
- a Worker Adjustment and Retraining Notification (WARN) Act notice has been filed, regardless of the number of workers affected by the announced layoff.

## 19. non-covered person

*Non-covered person*<sup>53</sup> means any individual who does not meet the definition of *Veteran* or *eligible spouse*.

## 20. notice of termination or layoff from employment

A *notice of termination or layoff from employment*<sup>54</sup> means a written notification from the employer naming one or more individuals and indicating that employment will cease or has ceased for the individuals on a specific date.

## 21. offender

*Offender* means an adult or juvenile who:<sup>55</sup>

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

## 22. pregnant or parenting

A *pregnant* individual is the expectant mother only.<sup>56</sup> An individual who is *parenting* is a custodial or non-custodial mother or father.<sup>57</sup>

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<sup>52</sup> 20 CFR § 682.305

<sup>53</sup> 20 CFR § 1010.110

<sup>54</sup> This is a term defined by the State.

<sup>55</sup> WIOA Sec. 3(38)

<sup>56</sup> TEGL 21-16

<sup>57</sup> Ibid.

23. requires additional assistance to **complete** an education program or to secure or hold employment

The phrase *requires additional assistance to **complete** an education program or to secure or hold employment* with regard to youth program eligibility must be defined in policy by the local board.<sup>58</sup>

24. requires additional assistance to **enter or complete** an education program or to secure or hold employment

The phrase *requires additional assistance to **enter or complete** an education program or to secure or hold employment* with regard to youth program eligibility is defined in policy by the local board.<sup>59</sup>

25. postsecondary school

The following *postsecondary schools* are considered postsecondary career schools:

- all postsecondary institutions that are accredited according to the requirements of the US Department of Education, such as universities, state colleges, and community colleges;
- all in-state private postsecondary career schools that are licensed to operate in Nebraska by the Nebraska Department of Education pursuant to the Nebraska Private Postsecondary Career School Act;<sup>60</sup> and
- all out-of-state private postsecondary career schools that are authorized to recruit Nebraska residents by the Nebraska Department of Education pursuant to the Nebraska Private Postsecondary Career School Act.<sup>61</sup>

26. school

The term *school* is defined under Nebraska state law which defines *school*<sup>62</sup> as a *school* approved by the Nebraska State Board of Education, including:

- accredited public and private secondary *schools*;
- accredited denominational and parochial secondary *schools*;
- *schools* that elect not to meet accreditation requirements, including home *schools*; and
- alternative *schools*, classes, or education programs established in accordance with Neb. Rev. Stat. § 79-266 for the benefit of expelled students.<sup>63</sup>

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<sup>58</sup> 20 CFR §§ 681.300 and 681.310

<sup>59</sup> 20 CFR § 681.300 and 681.310

<sup>60</sup> Neb. Rev. Stat. §§ 85-1607 – 85-1658

<sup>61</sup> Ibid.

<sup>62</sup> 20 CFR § 681.230; TEGL 21-16; Neb. Rev. Stats. §§ 79-201, 79-202, 79-319, and 79-1601

<sup>63</sup> Refer to [Section II\(a\)\(2\)](#) for additional information on high school equivalency and drop-out reengagement programs.

It is important to note the following points in relation to the definition of *school*.

- Nebraska state law does not include *postsecondary schools* in its definition of *school*.
- Providers of WIOA Title IC (Job Corps), Title ID (YouthBuild), and Title II (Adult Education and Family Literacy Act) programs *are not* considered *schools* for the purposes of determining *school* status.

## 27. service-connected disability

The term *service-connected disability* means with respect to disability or death that such disability was incurred or aggravated, or that death resulted from a disability incurred or aggravated, in line of duty in the active military, naval, air, or space service.<sup>64</sup>

## 28. temporary recall

The term *temporary recall*<sup>65</sup> refers to a request from an employer for a former worker, who has either received a *notice of termination* or been *terminated* from employment to return to work for 180 or less calendar days. In a *temporary recall*, the employer still intends to terminate the worker.

## 29. terminated

For determining eligibility as a dislocated worker, *terminated*<sup>66</sup> employment is a permanent situation in which the employer lays off an individual without cause<sup>67</sup> and does not plan to rehire the individual. Any documented non-seasonal *layoff* projected to last 180 or more calendar days constitutes termination of employment.

The following circumstances *are not* considered a termination 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 180 calendar days of the initial *layoff* date; or
- retirement or other voluntary separation from the workforce.

## 30. underemployed

*Underemployed*<sup>68</sup> individual means an individual who is employed:

- less than full-time who is seeking full-time employment;

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<sup>64</sup> 38 USC § 101(16)

<sup>65</sup> This is a term defined by the State.

<sup>66</sup> Ibid.

<sup>67</sup> Cause, with or without, is a determination made by the Nebraska Department of Labor unemployment compensation determinations unit regarding the circumstances surrounding a separation from employment.

<sup>68</sup> TEGL 19-16

- in a position that is inadequate with respect to their skills and training;
- who meets the definition of a *low-income individual*; or
- but whose current job earnings are not sufficient compared to their previous earnings from previous employment.

### 31. unemployed as a result of general economic conditions in the community in which the individual resides

The phrase *unemployed as a result of general economic conditions in the community in which the individual resides* must be defined by the local board, provided the definition is reasonable and based on verifiable data.<sup>69</sup>

### 32. unemployed as a result of a natural disaster

The phrase *unemployed as a result of a natural disaster*<sup>70</sup> means unemployment caused by a major adverse event resulting from natural processes of the Earth or forces other than the acts of human beings, including environmental conditions, such as:

- floods;
- droughts;
- 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.

### 33. unlikely to return to a previous occupation or industry

When determining eligibility as a dislocated worker, an individual is *unlikely to return to a previous occupation or industry* if job opportunities in the occupation or industry are significantly diminished for an individual based only on one or more of the following four criteria, subject to the clarification provided below relating to separating service members and *military spouses*:<sup>71</sup>

1. official assessments of market demand for products or services in the occupation or industry;
2. local labor market conditions for the industry or occupation;

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<sup>69</sup> This is the State's definition as permitted under 20 CFR § 680.130(b)(1).

<sup>70</sup> This is the State's definition as permitted under 20 CFR § 680.130(b)(3).

<sup>71</sup> This is the State's definition as permitted under 20 CFR § 680.130(b)(2).

3. evolution of skill requirements in the occupation or industry and whether an individual's skills have kept pace over time based on a current skills assessment; or
4. impact of technology or trade on the industry or occupation.

Separating service members and *military spouses* experiencing cessation of employment meet the standard of *unlikely to return to a previous industry or occupation*. Refer to [Section IV\(a\)](#) and [Section IV\(b\)](#) for policy clarifications.

#### 34. *Veteran*

*Veteran*<sup>72</sup> means a person who served in the *active military, naval, air, or space service* and was discharged or released therefrom under conditions other than dishonorable, as specified in [38 USC § 101\(2\)](#). *Active military, naval, air, or space service* includes full-time duty in the National Guard or a Reserve component, except for full-time duty for training purposes (i.e., that which often is referred to as “weekend” or “annual” training).

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<sup>72</sup> 20 CFR § 1010.110; 38 USC § 101(2)



## 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 402.471.9000 <a href="mailto:ndol.wioa_policy@nebraska.gov">ndol.wioa_policy@nebraska.gov</a>	<b>Policy category</b>
	Youth, Adult, and Dislocated Worker
	<b>Effective date</b>
	April 6, 2018
	<b>Supersedes</b>
	None

## Adult and Dislocated Worker Programs

### 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

The one-stop delivery system is the delivery system for WIOA Title I adult and dislocated worker program services, including career, training, and supportive services.

### ACTION

Questions and comments on this policy may be submitted in writing to the WIOA policy mailbox at [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov).

Each local board must:

1. ensure that all career services are available and accessible through at least one comprehensive American Job Center in its local area as described in [Section I](#);
2. with regard to determining participant eligibility for individualized career services (refer to [Section I\(b\)\(1\)](#)):
  - a. identify the initial assessments to be used to determine eligibility for individualized career services; and

- b. ensure that procedures for determining eligibility for individualized career services are consistent with the State's<sup>1</sup> policy and local policies and procedures regarding priority of service;
3. document circumstances justifying determinations to provide training services without first providing an interview, evaluation, or assessment, and career planning informed by local labor market information and training provider performance information as described in [Section II\(a\)\(1\)](#);
4. establish a process for determining there are an insufficient number of eligible training providers in the local area to accomplish the purpose of a system of individual training accounts (ITAs) and the process must (refer to [Section II\(b\)\(1\)](#)):
  - a. be described in the local plan; and
  - b. provide for a public comment period of at least 30 days for interested providers of training services;
5. develop criteria to be used in determining demonstrated effectiveness with regard to programs of training services for individuals with barriers to employment that are offered by community-based organizations or other private organizations as described in [Section II\(b\)\(1\)](#);
6. ensure that it's local plan describes the local process to be used in selecting training providers under contract for services as described in [Section II\(b\)\(1\)](#);
7. develop policies and procedures regarding the provision of supportive services to adult and dislocated worker participants as described in [Section III](#); and
8. ensure that the local adult and dislocated worker programs (refer to [Section IV\(b\)](#)):
  - a. coordinate the provision of services, including career, training, and supportive services, with one-stop partners and other entities;
  - b. identify and track funding streams that pay the costs of services provided to co-enrolled participants; and
  - c. ensure no duplication of services across programs.

## POLICY

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This policy establishes requirements regarding adult and dislocated worker program services, including career, training, and supportive services.

This policy is organized into five sections and one appendix.

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<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).

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## Section I. Career Services

WIOA authorizes career services for adults and dislocated workers.<sup>2</sup> There are three types of career services: basic career services, individualized career services, and follow-up services. There is no sequence-of-service requirement for career services. Each local board must ensure that all career services are available and accessible through at least one comprehensive American Job Center in its local area.<sup>3</sup> Career services may be provided directly by the one-stop operator or through contracts with service providers that are approved by the local board.<sup>4</sup> Basic and individualized career services may be delivered by local adult and dislocated worker programs, as well as the WIOA Title III Wagner-Peyser Employment Service.<sup>5</sup>

### (a) Basic career services

Basic career services must be universally accessible to all individuals seeking employment and training services.<sup>6</sup> Basic career services are listed in Table 1.

*Table 1. Basic career services<sup>7</sup>*

Description
1. Determinations of whether the individual is eligible to receive assistance from adult, dislocated worker, and youth programs
2. Outreach, intake (including worker profiling), and orientation to information and other services available through the one-stop delivery system, including an opportunity to initiate an application for Temporary Assistance for Needy Families (TANF) assistance and non-assistance benefits and services, which could be implemented through the provision of paper application forms or links to the application website
3. Initial assessment of skill levels including literacy, numeracy, and English language proficiency, as well as aptitudes, abilities (including skills gaps), and supportive services needs
4. Labor exchange services, including job search and placement assistance and career counseling when needed by an individual, including provision of information on: <ul style="list-style-type: none"> <li>a. in-demand industry sectors and occupations; and</li> <li>b. nontraditional employment</li> </ul>
5. Provision of referrals to and coordination of activities with other programs and services, including programs and services within the one-stop delivery system and other workforce development programs when appropriate
6. Provision of workforce and labor market employment statistics information, including provision of accurate information relating to local, regional, and national labor market areas, such as:

<sup>2</sup> TEGL 19-16

<sup>3</sup> 20 CFR §§ 680.100(b)(1) and 680.160; TEGL 19-16

<sup>4</sup> 20 CFR § 680.160. The local board may be a provider of career services only when approved by the chief elected official and the Governor in accordance with the requirements of WIOA Sec. 107(g)(2) and 20 CFR § 679.410. Also, refer to the State's policy on procurement for information on contracting with service providers.

<sup>5</sup> TEGL 19-16

<sup>6</sup> 20 CFR § 680.150(a); TEGL 19-16

<sup>7</sup> 20 CFR § 678.430(a)

Description
<ul style="list-style-type: none"> <li>a. job vacancy listings in labor market areas;</li> <li>b. information on job skills necessary to obtain the vacant jobs listed; and</li> <li>c. information relating to local in-demand occupations and the earnings, skill requirements, and opportunities for advancement for those jobs</li> </ul>
7. Provision of performance information and program cost information on eligible providers of education, training, and workforce services, delineated by program and type of providers
8. Provision of information, in usable and understandable formats and languages, on how the local area is performing on local performance accountability measures, as well as any additional performance information relating to the area's one-stop delivery system
9. Provision of information, in usable and understandable formats and languages, relating to the availability of supportive services or assistance and appropriate referrals to those services and assistance, including: child care; child support; medical or child health assistance available through the state's Medicaid program and Children's Health Insurance Program; benefits under Supplemental Nutrition Assistance Program (SNAP); assistance through the earned income tax credit; and assistance under a state program for TANF and other supportive services and transportation provided through that program
10. Provision of information and meaningful assistance to individuals seeking assistance in filing a claim for unemployment compensation
11. Assistance in establishing eligibility for programs of financial aid assistance for training and education programs not provided under WIOA

**IMPORTANT.** There are no criteria or conditions to be met for an individual to receive basic career services, meaning an individual does not need to register in NEworks or be enrolled in a one-stop partner program, including WIOA Title I or WIOA Title III programs.

#### (b) Individualized career services

Individualized career services must be made available to individuals enrolled in local adult and dislocated worker programs if determined appropriate in order for the individual to obtain or retain employment.<sup>8</sup> Individualized career services are listed in Table 2.

*Table 2. Individualized career services<sup>9</sup>*

Description
1. Comprehensive and specialized assessments of the skill levels and service needs of adults and dislocated workers, which may include: <ul style="list-style-type: none"> <li>a. diagnostic testing and use of other assessment tools; and</li> <li>b. in-depth interviewing and evaluation to identify employment barriers and appropriate employment goals</li> </ul>
2. Development of an individual employment plan (IEP) that identifies the employment goals, appropriate achievement objectives, and appropriate combination of services for the participant to achieve his or her employment goals, including the list of, and information about, the eligible training providers
3. Group counseling
4. Individual counseling
5. Career planning
6. Short-term pre-vocational services including development of learning skills, communication skills, interviewing skills, punctuality, personal maintenance skills, and professional conduct services to prepare individuals for unsubsidized employment or training
7. Internships and work experiences that are linked to careers, including transitional jobs
8. Workforce preparation activities

<sup>8</sup> 20 CFR §§ 680.140(a) and 680.150(b); TEGL 19-16

<sup>9</sup> 20 CFR § 678.430(b)

Description
9. Financial literacy services
10. Out-of-area job search assistance and relocation assistance
11. English language acquisition and integrated education and training programs

### (1) Eligibility

Eligibility for individualized career services must be based on an initial assessment of skill levels (item 3 in Table 1), including:<sup>10</sup>

- literacy and numeracy;
- English language proficiency;
- aptitudes and abilities, including skills gaps; and
- supportive services needs.

In addition, for adult program participants only, eligibility for individualized career services must also be determined according to priority of service requirements established in the State's policy on priority of service<sup>11</sup> and local policies and procedures regarding priority of service.

Each local board must:<sup>12</sup>

- identify the initial assessments<sup>13</sup> to be used to determine eligibility for individualized career services; and
- ensure that procedures for determining eligibility for individualized career services are consistent with the State's policy and local policies and procedures regarding priority of service for adults.

### (c) Follow-up services

Follow-up services must be made available for adults and dislocated workers who are placed in unsubsidized employment for a minimum of 12 months after the first day of employment.<sup>14</sup> All participants must be offered an opportunity to receive follow-up services unless the participant declines to receive follow-up services or the participant cannot be located or contacted. Types of follow-up services provided and the duration of follow-up services must be determined based on the needs of the individual. Therefore, the type and intensity of follow-up services may differ for each participant.

**IMPORTANT.** Follow-up services must be more than just an attempt to contact the participant and must not be just an attempt to secure documentation to support or report a performance outcome.

<sup>10</sup> 20 CFR § 680.150(b); TEGL 19-16

<sup>11</sup> The State's policies are accessible at <https://dol.nebraska.gov/EmploymentAndTraining/LCRWP/WIOA/Policies>.

<sup>12</sup> TEGL 19-16

<sup>13</sup> Use of recent previous interviews, evaluations, or assessments by partner programs is permitted for determining if individualized career services would be appropriate [20 CFR § 680.220].

<sup>14</sup> 20 CFR § 680.150(c); TEGL 19-16

## Section II. Training services

One-stop center staff may determine training services are appropriate for adult and dislocated worker program participants, regardless of whether the individual has received basic or individualized career services.<sup>15</sup> There is no sequence-of-service requirement for training services. Training services must be made available to eligible individuals enrolled in the adult and dislocated worker programs.<sup>16</sup> Types of training services that may be funded by adult and dislocated worker programs are listed in Table 3.

*Table 3. Training services for adults and dislocated workers<sup>17</sup>*

Description
1. Occupational skills training, including training for nontraditional employment
2. On-the-job training
3. Incumbent worker training
4. Programs that combine workplace training with related instruction, which may include cooperative education programs
5. Training programs operated by the private sector
6. Skills upgrading and retraining
7. Entrepreneurial training
8. Transitional jobs
9. Job readiness training provided in combination with 1 or more of the training services listed in items 1 through 8
10. Adult education and literacy activities, including English language acquisition and integrated education and training programs provided concurrently or in combination with 1 or more of the training services listed in items 1 through 8
11. Customized training conducted with a commitment by an employer or group of employers to employ an individual upon successful completion of the training

### (a) Eligibility<sup>18</sup>

Training services funded by the adult or dislocated worker programs may be made available to employed and unemployed adults and dislocated workers only when the following criteria are met.

1. Except as described in [Section II\(a\)\(1\)](#), a one-stop center or one-stop partner determines after an interview, evaluation, or assessment, and career planning informed by local labor market information and training provider performance information, or through any other career service received, that the participant:
  - a. is unlikely or unable to obtain or retain employment that leads to economic self-sufficiency or wages comparable to or higher than wages from previous employment through career services;

<sup>15</sup> TEGL 19-16

<sup>16</sup> 20 CFR §§ 680.140(a); TEGL 19-16

<sup>17</sup> 20 CFR § 680.200. The list of training services in Table 3 is not all-inclusive and additional training services may be provided. Refer to the State's policies on eligible training providers, OJT, and work-based training regarding requirements for various types of training services listed in Table 3.

<sup>18</sup> 20 CFR §§ 680.210 and 680.220; TEGL 19-16

- b. is in need of training services to obtain or retain employment leading to economic self-sufficiency or wages comparable to or higher than wages from previous employment; and
  - c. has the skills and qualifications to participate successfully in training services.
- 2. The participant selected a program of training services that is directly linked to one or more in-demand occupations in the local area or planning region or in another area to which the individual is willing to commute or relocate. Selection of training services must be conducted in a manner that maximizes consumer choice.<sup>19</sup>
- 3. The participant is unable to obtain grant assistance from other sources to pay the costs of the program of training services, including sources such as state-funded sources, Trade Adjustment Assistance (TAA), and Pell Grants; or the participant requires WIOA assistance in addition to other sources of grant assistance, including Pell Grants.
- 4. If training services are provided through the adult funding stream, the participant is determined eligible in accordance with the State's policy and local policies and procedures regarding priority of service for adults.<sup>20</sup>

#### (1) Exception<sup>21</sup>

There is no requirement that career services be provided as a condition to receive training services. However, if career services are not provided before training, the local board must document the circumstances that justify its determination to provide training services to the participant without first providing an interview, evaluation, or assessment, and career planning informed by local labor market information and training provider performance information.

#### (2) Documentation requirements

Prior to receipt of training services, the participant's case file must contain:<sup>22</sup>

- documentation demonstrating that all eligibility criteria listed above in [Section II\(a\)](#) have been met; and
- if career services are not provided as described in [Section II\(a\)\(1\)](#), documentation of the circumstances justifying the local board's determination to provide training services to the participant without first providing career services.

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<sup>19</sup> Refer to the State's policy on eligible training providers for information on satisfying consumer choice requirements for training services.

<sup>20</sup> Refer to the State's policy on priority of service for information on the State's priority system. Local priority systems must be established under local policy.

<sup>21</sup> 20 CFR § 680.220(b)

<sup>22</sup> 20 CFR § 680.220(b)

## (b) ITAs<sup>23</sup>

Except in certain cases as described in [Section II\(b\)\(1\)](#), training services must be funded through an ITA and provided by an eligible training provider. A local board may impose the following limits on ITAs.

- A limit may be established for an individual participant based on the needs identified in the participant's IEP, such as the participant's occupational choice or goal and the level of training needed to reach that goal.
- Local policy may establish a range of amounts or a maximum amount applicable to all ITAs.

**IMPORTANT.** An individual may select training that costs more than the maximum amount available for ITAs under local policy when other sources of funds are available to supplement the ITA, such as Pell Grants and scholarships.

ITA limitations established under local policies:

- must be described in the local board's local plan;
- must not be implemented in a manner that undermines WIOA's requirement that training services are provided in a manner that maximizes consumer choice in the selection of a training provider; and
- may include exceptions to ITA limitations for individual cases, which must be defined.

### (1) Exceptions

Contracts for training services may be used instead of ITAs only when the local board has fulfilled the consumer choice requirements of 20 CFR § 680.340<sup>24</sup> and at least one of the following five conditions exist.<sup>25</sup>

1. The training services are on-the-job-training (OJT), customized training, incumbent worker training, or transitional jobs.
2. The local board determines that there are an insufficient number of eligible training providers in the local area to accomplish the purpose of a system of ITAs, subject to the following requirements.
  - a. The local board's determination process must be described in its local plan, which must provide for a public comment period of at least 30 days for interested providers of training services.
3. The local board determines there is a program of training services having demonstrated effectiveness in serving individuals with barriers to employment offered in the local area

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<sup>23</sup> 20 CFR §§ 680.310 and 680.320; TEGL 19-16. Refer to the State's policy on eligible training providers for information on use of ITAs.

<sup>24</sup> Refer to the State's policy on workforce development boards and CEOs for information on consumer choice requirements for local boards.

<sup>25</sup> 20 CFR § 680.320

by a community-based organization or other private organization, subject to the following requirements.<sup>26</sup>

- a. The local board must develop criteria to be used in determining demonstrated effectiveness, particularly as it applies to the individuals with barriers to employment to be served. The criteria may include:
  - i. financial stability;
  - ii. demonstrated performance in the delivery of services to individuals with barriers to employment based on measures such as program completion rate; attainment of the skills, certificates, or degrees the program is designed to provide; placement after training in unsubsidized employment; and retention in employment; and
  - iii. how the specific program relates to the workforce investment needs identified in the board's local plan.
4. The local board determines that it would be most appropriate to contract with an institution of higher education (defined in [APPENDIX I](#)), or other accredited, authorized, or licensed provider of training services, in order to facilitate the training of multiple individuals in in-demand industry sectors or occupations, provided that the contract does not limit consumer choice. Providers of training services must be authorized by accrediting or governing authorities to provide training services in Nebraska or to Nebraska residents.
5. The local board is considering entering into a pay-for-performance contract, and the local board ensures that the contract is consistent with requirements of 20 CFR § 683.510.

The local board's local plan must describe the process to be used in selecting training providers under a contract for services. In addition to the local board's selection process established under its local plan, the procurement and selection of providers based on conditions 2, 4, and 5 must adhere to the requirements of the Uniform Guidance.<sup>27</sup>

### Section III. Supportive services<sup>28</sup>

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Each local board must develop policies and procedures regarding the provision and coordination of supportive services for adult and dislocated worker program participants. Local policy on supportive services:

- must be developed in consultation with one-stop partners and other community service providers in the local area;

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<sup>26</sup> *Individual with a barrier to employment* is defined under WIOA Sec. 3(24) and 20 CFR § 680.320(b).

<sup>27</sup> *Uniform Guidance* refers to 2 CFR Parts 200 and 2900. Refer to the State's policy in procurement for additional information.

<sup>28</sup> 20 CFR §§ 680.900 through 680.970; TEGL 19-16. While 20 CFR §§ 680.900 through 680.970 relate primarily to adults and dislocated workers, the State requires that local policy on supportive services also address supportive services for youth.

- must ensure resource and supportive service coordination in the local area;
- must comply with the requirements of 20 CFR §§ 680.900 through 680.970;
- must require that supportive services are provided only when necessary to enable the participant to take part in career services, training services, or youth employment and training activities;
- must ensure that supportive services are:
  - WIOA-funded only when supportive services are not available through other agencies or programs; and
  - necessary for the individual to participate in adult, dislocated worker, or youth activities;
- must require that participants in need of ongoing supportive services are taking part in career services (other than follow-up services), training services, or both in order to receive ongoing supportive services;
- if the local board elects to provide needs-related payments:
  - must establish maximum levels of needs-related payments for adults, dislocated workers, and youth;
  - must require that participants:
    - meet eligibility requirements for needs-related payments as described in 20 CFR §§ 680.940 and 680.950 and in [Section III\(a\)](#); and
    - are enrolled in training services in order to receive needs-related payments;
  - for dislocated workers, must ensure that payments do not exceed the greater of either of the following levels:
    - applicable weekly level of the unemployment compensation benefit, for participants who were eligible for unemployment compensation as a result of the qualifying dislocation; or
    - poverty level for an equivalent period, for participants who did not qualify for unemployment compensation as a result of the qualifying layoff, and the weekly payment level must be adjusted to reflect changes in total family income, as determined by local policies;
- should address procedures for referral to supportive services, including how the services will be funded when not otherwise available from other sources;
- may establish limits on the provision of supportive services;

- may provide the one-stop operator with the authority to establish limits on the provision of supportive services to an individual participant, including the maximum amount of funding and maximum duration; and
- may allow individual one-stop centers to grant exceptions to established limits.

#### (a) Needs-related payments<sup>29</sup>

Needs-related payments are a supportive service authorized under WIOA Sec. 134(d)(3) that provides financial assistance to participants for the purpose of enabling them to participate in training. Unlike other supportive services, a participant must be enrolled in training in order to qualify for needs-related payments and must meet the applicable eligibility requirements described in subsections (1) or (2) below.

##### (1) Adult eligibility

Adults must meet criteria 1 through 3 in order to receive needs-related payments:<sup>30</sup>

1. unemployed;
2. not qualified for, or have ceased to qualify for, unemployment compensation; and
3. enrolled in a program of training services.<sup>31</sup>

##### (2) Dislocated worker eligibility

Dislocated workers must meet criteria 1 or 2 in order to receive needs-related payments:<sup>32</sup>

1. unemployed and:
  - a. no longer qualifies for unemployment compensation or trade readjustment allowance under TAA; and
  - b. enrolled in a program of training services by the end of the 13<sup>th</sup> week after the most recent layoff that resulted in a determination of the worker's eligibility as a dislocated worker; or, if later, by the end of the eighth week after the worker is informed that a short-term layoff will exceed six months;
2. unemployed and does not qualify for unemployment compensation or trade readjustment allowance under TAA and enrolled in a program of training services.

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<sup>29</sup> 20 CFR § 680.930

<sup>30</sup> 20 CFR § 680.940

<sup>31</sup> Refer to Table 1 for a list of programs of training services.

<sup>32</sup> 20 CFR § 680.950

## Section IV. Co-enrollment and coordination of services

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### (a) Co-enrollment

Adults and dislocated workers must be co-enrolled in partner programs when eligibility permits and co-enrollment benefits the participant and the participant agrees to co-enrollment.<sup>33</sup>

### (b) Coordination of services

Each local board must ensure that the local adult and dislocated worker programs:<sup>34</sup>

- coordinate the provision of services, including career, training, and supportive services, with one-stop partners and other entities;
- identify and track funding streams that pay the costs of services provided to co-enrolled participants; and
- ensure no duplication of services across programs.

#### (1) Occupational skills training<sup>35</sup>

Adult and dislocated worker programs must ensure that occupational skills training provided by eligible training providers is WIOA-funded only when assistance from other sources is not available through other agencies or programs. When WIOA funds supplement other sources of funding for training, the local programs must:

- along with training providers, coordinate funds made available for training;
- make funding arrangements with one-stop partners and other entities regarding participants who require assistance beyond that available under grant assistance from other sources; and
- consider the availability of other sources of grants to pay for training costs such as TANF, training funds available from the state, Pell Grants, and other funding sources.

#### (2) Pell Grants<sup>36</sup>

In the event an adult or dislocated worker program participant has been awarded a Pell Grant, the Pell Grant must be applied against the cost of occupational skills training and any education fees the training provider charges to attend training before WIOA funds are utilized. If the participant has been awarded Pell Grant assistance for education-related expenses, the assistance must not be used to offset or reduce WIOA funding for the cost of occupational skills training and education fees.

If a participant's application for Pell Grant assistance is pending, a participant may enroll in occupational skills training and WIOA funds may be used to pay the costs of training, including

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<sup>33</sup> Refer to the State's policy on co-enrollment for additional requirements.

<sup>34</sup> 20 CFR §§ 680.230 and 681.430(b).

<sup>35</sup> 20 CFR § 680.230

<sup>36</sup> 20 CFR § 680.230(b) – (c)

any education fees, while the application is processed, subject to the following three requirements.

1. The applicable program must arrange with the training provider and participant for allocation of the Pell Grant should it be subsequently awarded.
2. If the Pell Grant is subsequently awarded and:
  - a. does not cover the cost of occupational skills training and required education fees to be paid during the Pell Grant award period, the training provider must reimburse the applicable program for WIOA funds paid to the training provider using the full amount disbursed for the Pell Grant award period; or
  - b. exceeds the cost of the occupational skills training and required education fees to be paid during the Pell Grant award period, the training provider must reimburse the applicable program only for the amount paid to the training provider by the program, with the balance belonging solely to the participant.
3. Pell Grant assistance disbursed on the participant's behalf for education-related expenses belongs solely to the participant and must not be used to offset or reduce WIOA funding for the cost of occupational skills training and education fees.

## Section V. Privacy

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Each local board must ensure that local adult and dislocated worker programs adhere to the confidentiality requirements of the Family Educational Rights and Privacy Act, established under Section 444 of the General Education Provisions Act,<sup>37</sup> including requirements regarding circumstances requiring written consent for disclosure of personally identifiable information from an education record.

## DISCLAIMER

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This policy is based on NDOL's reading of the applicable statutes, regulations, rules, and guidance released by the US 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>37</sup> 20 USC § 1232g; 34 CFR Part 99

## APPENDIX I. Definitions

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**PURPOSE.** Definitions in this appendix are provided as supplemental information that supports the provisions of the policy. The terms and phrases defined in this appendix should be read and understood in the context in which they are used in the policy and not as stand-alone information independent of that context.

### 1. community-based organization

*Community-based organization* means a private nonprofit organization (which may include a faith-based organization) that is representative of a community or a significant segment of a community and that has demonstrated expertise and effectiveness in the field of workforce development.<sup>38</sup>

### 2. in-demand industry sector or occupation

The term *in-demand industry sector or occupation* means an:<sup>39</sup>

- industry sector that has a substantial current or potential impact (including jobs that lead to economic self-sufficiency and opportunities for advancement) on the state, regional, or local economy, as appropriate, and that contributes to the growth or stability of other supporting businesses, or the growth of other industry sectors; or
- occupation that currently has or is projected to have a number of positions (including positions that lead to economic self-sufficiency and opportunities for advancement) in an industry sector so as to have a significant impact on the state, regional, or local economy.

### 3. institution of higher education<sup>40</sup>

*Institution of higher education* means an educational institution in any state that:

- admits, as regular students, only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, or persons who have completed a secondary school education in a home school setting that is treated as a home school or private school under State law;
- is legally authorized within the state to provide a program of education beyond secondary education;
- provides an educational program for which the institution awards a bachelor's degree or provides not less than a two-year program that is acceptable for full credit toward a bachelor's degree, or awards a degree that is acceptable for admission to a graduate or professional degree program, subject to review and approval by the Secretary of Education (Secretary);
- is a public nonprofit or other nonprofit institution; and
- is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted pre-accreditation status by such an

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<sup>38</sup> WIOA Sec. 3(10)

<sup>39</sup> WIOA Sec. 3(23)

<sup>40</sup> WIOA Sec. 3(28); 20 USC §§ 1001, 1002(a)(1), and 1091(d)

agency or association that has been recognized by the Secretary for the granting of pre-accreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

#### 4. meaningful assistance

With regard to individuals seeking assistance with filing a claim for unemployment compensation, *meaningful assistance* means:<sup>41</sup>

- providing assistance on-site using staff who are well-trained in unemployment compensation claims filing and the rights and responsibilities of claimants; or
- providing assistance by phone or via other technology, as long as the assistance is provided by trained and available staff and within a reasonable time.

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<sup>41</sup> 20 CFR § 678.430(a)(10)(i)

## 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
	Youth, Adult, and Dislocated Worker
	Effective date
	August 20, 2019
	Supersedes
	Youth Program (effective date February 9, 2018)

## Youth Program, Change 1

### 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

Local WIOA<sup>1</sup> Title I youth programs provide 14 high quality services for youth and young adults that lead to a good job along a career pathway or enrollment in postsecondary education.

### ACTION

This policy supersedes and cancels the State's<sup>2</sup> policy titled Youth Program (effective date February 8, 2018). Questions and comments on this policy may be submitted in writing to the WIOA policy mailbox at [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov).

Each local board must ensure that:

- selection and procurement of eligible youth service providers, including providers of occupational skills training, complies with the requirements described in Section I;

<sup>1</sup> WIOA refers to the Workforce Innovation and Opportunity Act of 2014.

<sup>2</sup> 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).

- local youth program design complies with the requirements described in Section II, including how the 14 program elements described in Section III are made available within that design;
- local policies are established that:
  - define methods for determining when an objective assessment or individual service strategy (ISS) is not required (Section II(a));
  - provide safeguards to protect the personally identifiable information of youth participants (Section II(h));
  - govern payments of stipends and incentives to youth participants (Section II(i)(4)(C)-(D));
  - describe local area requirements for individual training accounts (ITAs) (Section III.4.a); and
  - govern the provision of supportive services to youth participants (Section III.7);

In addition, each local board must ensure that its local plan describes:

- processes for determining there are an insufficient number of Eligible Training Providers (ETPs) in the local area to accomplish the purpose of a system of ITAs (Section I);
- the design framework for its local youth program (Section II(a)); and
- any established limitations for ITAs (Section III.4.a).

## CHANGES

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Provisions of the cancelled policy have been reorganized for clarity. In addition, this policy establishes the following material changes to the cancelled policy.

1. Section I(a) has been added to clearly define consumer choice requirements and their effect on selection and procurement of training services.
2. Timelines regarding submission of youth service provider lists have been adjusted to coincide with the start of each program year; and provisions have been added regarding the publication of youth service provider lists (Section I(b)).
3. Provisions regarding privacy have been revised to include requirements relating to confidentiality (Section II(h)).
4. Provisions regarding OSY expenditures have been added regarding the lowered minimum expenditure rate for Program Year (PY) 2019 permitted under Federal waiver (Section II(i)(2)(A)).
5. Provisions regarding the work experience priority have been revised to clarify which costs count toward the 20 percent minimum expenditure requirement (Section II(i)(3)).

6. Provisions regarding wages, stipends, and withholdings have been added as Section II(i)(4) and provisions on incentive payments have been moved to the same section.
7. Provisions have been added in order to define the required 14 program elements clearly (Section III).
8. Provisions regarding supportive services have been revised to clarify requirements for the availability of supportive services for youth participants (Section III.7).
9. A definition for *community-based organization* has been added in APPENDIX I.

## POLICY

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This policy identifies requirements for selection and procurement of youth service providers, the design framework of local youth programs, and program elements that must be made available through local youth programs.

This policy is organized into three sections and one appendix.

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### Section I. Service provider selection and procurement

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Each local board (or its fiscal agent) has the option of directly providing some or all of the required youth employment and training activities, rather than entering into a grant or contract to provide the activities.<sup>3</sup> If a local board chooses to award grants or contracts to youth service providers to carry out some or all of the youth employment and training activities, the following requirements apply.

1. The local board must ensure that grants and contracts are awarded on a competitive basis and must procure youth service providers in accordance with:<sup>4</sup>
  - a. local procurement policies and procedures and applicable state and local procurement laws; and
  - b. principles of competitive procurement in 2 CFR Parts 200 and 2900 (the Uniform Guidance), including 2 CFR Part 180 (OMB Guidelines to agencies on Government-wide Debarment and Suspension (Non-procurement)).
2. If the local board determines there are an insufficient number of youth service providers in the local area, such as a rural area, the local board may award grants or contracts on a

<sup>3</sup> WIOA Sec. 123(a); 20 CFR § 681.400(a)

<sup>4</sup> WIOA Sec. 123(a); 2 CFR § 200.213; 20 CFR § 681.400(b)(2); TEGL 21-16

non-competitive basis.<sup>5</sup> Non-competitive procurement must be conducted in accordance with:<sup>6</sup>

- a. local procurement policies and procedures and applicable state and local procurement laws; and
  - b. principles of non-competitive procurement in 2 CFR Parts 200 and 2900 (the Uniform Guidance), including 2 CFR Part 180 (OMB Guidelines to agencies on Government-wide Debarment and Suspension (Non-procurement)).
3. The local board may implement a pay-for-performance contract strategy for one or more of the required 14 program elements and may reserve and use not more than 10 percent of the total youth program funds allocated to the local area for pay-for-performance contract strategies.<sup>7</sup>
4. When selecting youth service providers, the local board must take into consideration the ability of youth service providers to meet performance accountability measures based on the primary indicators of performance for youth programs,<sup>8</sup> which are described in detail in the State's performance accountability policy.<sup>9</sup>
5. If the local board has a standing youth committee, the local board may assign the function of selecting and recommending youth service providers to the committee.<sup>10</sup>
6. Contracts for training services may be used instead of ITAs only when the local board has fulfilled the applicable consumer choice requirements described in [Section I\(a\)](#) and at least one of the following conditions exist.<sup>11</sup>
  - a. The training services are on-the-job-training (OJT), customized training, incumbent worker training, or transitional jobs.
  - b. The local board determines there are an insufficient number of ETPs in the local area to accomplish the purpose of a system of ITAs. The local board's determination process must be described in its local plan, which must provide for a public comment period of at least 30 days for interested providers of training services. If the local board elects to contract with training providers for occupational skills training, the local board must ensure the providers are authorized or licensed to provide training services in Nebraska or to Nebraska residents by applicable accrediting or governing authorities, which may include the Nebraska Department of Education according to the requirements of the Nebraska Private Postsecondary Career School Act (Title 92, Nebraska Administrative Code, Chapter 41).

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<sup>5</sup> WIOA Sec. 123(b); 20 CFR § 681.400(b)(4); TEGL 21-16

<sup>6</sup> 2 CFR § 200.213; 20 CFR § 681.400(b)(4); TEGL 21-16

<sup>7</sup> 20 CFR § 681.420(i). Refer to 20 CFR § 683.500 for regulations on pay-for-performance contract strategies. Local boards may request technical assistance on use of pay-for-performance contract strategies.

<sup>8</sup> 20 CFR § 681.400(b)(1)

<sup>9</sup> The State's policies are accessible at <https://dol.nebraska.gov/EmploymentAndTraining/LCRWP/WIOA/Policies>.

<sup>10</sup> 20 CFR § 681.400(b)(3); TEGL 8-15. Refer to the State's policy on workforce development boards and chief elected officials for information on standing youth committees.

<sup>11</sup> 20 CFR § 680.320(a)

- c. The local board determines there is a program of training services offered in the local area by a community-based organization (or other private organization) that has demonstrated effectiveness in serving individuals with barriers to employment, subject to the following requirements.
  - i. The local board must develop criteria to be used in determining demonstrated effectiveness, particularly as it applies to the individuals with barriers to employment to be served. The criteria may include:
    - 1. financial stability;
    - 2. demonstrated performance in the delivery of services to individuals with barriers to employment based on measures such as program completion rate; attainment of the skills, certificates, or degrees the program is designed to provide; placement after training in unsubsidized employment; and retention in employment; and
    - 3. how the specific program relates to the workforce investment needs identified in the board's local plan.
- d. The local board determines that it would be most appropriate to contract with an institution of higher education (or other accredited, authorized, or licensed provider of training services) in order to facilitate the training of *multiple individuals* in in-demand industry sectors or occupations, as long as the contract does not limit consumer choice. If the selected provider of training services is not an institution of higher education, the provider must be authorized or licensed to provide training services in Nebraska or to Nebraska residents by applicable accrediting or governing authorities, which may include the Nebraska Department of Education according to the requirements of the Nebraska Private Postsecondary Career School Act (Title 92, Nebraska Administrative Code, Chapter 41).
- e. The local board is considering entering into a pay-for-performance contract and ensures that the contract is consistent with the requirements of 20 CFR § 683.510.

**(a) Consumer choice requirements<sup>12</sup>**

Training services, whether funded under ITAs or contract, must be provided in a manner that maximizes informed consumer choice in the selection of a training provider. To satisfy consumer choice requirements for training services, the local board must ensure the following.

- 1. The local board, through the one-stop center, must make the state's Eligible Training Provider List (ETPL) available to customers.
- 2. A youth participant may select an ETP from the ETPL after consultation with a career planner. Unless the local youth program has exhausted training funds for the program year, the one-stop center must refer the individual to the selected ETP and establish an ITA for the participant to pay for training, subject to the limitations of [Section III.4.a](#).

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<sup>12</sup> 20 CFR § 680.340(a)-(f)

3. The cost of referral of an ITA is paid by the local youth program (or the adult or dislocated worker program for ISY who are co-enrolled).
4. The local board, through the one-stop center, may coordinate funding for ITAs with funding from other Federal, state, local, or private job training programs or sources to assist the individual in obtaining training services.
5. Priority consideration must be given to programs that lead to recognized postsecondary credentials<sup>13</sup> and are aligned with in-demand industry sectors or occupations in the local area.

#### (b) Youth service provider lists

NDOL is required to disseminate a list of youth service providers.<sup>14</sup> The following requirements and timelines apply to youth service provider lists.

- Each local board, or its designee, must submit a list of its youth service providers to NDOL by July 1 of each program year.
- The list must include the provider's name, complete address, and phone number and the name of the provider's primary point of contact.
- If the list of youth service providers changes in any way at any point during the program year, the local board must submit a revised list within 30 days of the change.
- Youth service provider lists must be prepared using the form provided by NDOL and submitted by email to [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov).<sup>15</sup>
- The lists are published annually by NDOL on the [WIOA Youth Program](#) page and revised lists will be published as needed.

## Section II. Program design

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#### (a) Framework

The design framework of the local youth program must include the following components:<sup>16</sup>

- an objective assessment for each participant that includes a review of the individual's academic and occupational skill levels, service needs, and strengths in order to identify appropriate services and career pathways;

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<sup>13</sup> Refer to the State's performance accountability policy for detailed information on *recognized postsecondary credentials*. The State's policies are accessible at <https://dol.nebraska.gov/EmploymentAndTraining/LCRWP/WIOA/Policies>.

<sup>14</sup> TEGL 21-16

<sup>15</sup> The form is available upon written request submitted to [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov).

<sup>16</sup> 20 CFR § 681.420(a)(1)-(3)

- development and updating of an individual service strategy (ISS) for each participant, which must be directly linked to one or more indicators of performance and must:
  - identify career pathways that include education and employment goals;
  - consider career planning and the results of the objective assessment; and
  - prescribe achievement objectives and services for the participant;
- case management of participants, including follow-up services.

An objective assessment or ISS is not required if the youth service provider determines that it is appropriate to use a recent objective assessment or ISS developed under another education or training program.<sup>17</sup> Methods for making such determinations must be established in local policy.

In its local plan, the local board must describe the design framework for its local youth program, including a description of how the 14 program elements are to be made available within that framework.

#### (b) Connections

The local youth program must be linked with entities that foster participation of eligible local area youth in the program, such as connections to local:<sup>18</sup>

- justice and law enforcement officials;
- public housing authorities;
- education agencies;
- human service agencies;
- WIOA Title II adult education providers;
- agencies and providers serving individuals with disabilities;
- health and mental health providers;
- Job Corps representatives; and
- representatives of youth initiatives, such as YouthBuild, those that serve homeless youth, and other public and private youth initiatives.

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<sup>17</sup> 20 CFR § 681.420(h)

<sup>18</sup> 20 CFR § 681.420(c)

### (c) Referral requirements<sup>19</sup>

The local board must ensure that youth service providers meet referral requirements for all youth participants, including:

- providing participants with information about the full array of applicable or appropriate services available through the local board, eligible providers, or one-stop partners; and
- referring participants to appropriate training and educational programs that have the capacity to serve them either on a sequential or concurrent basis.

If an individual applies for enrollment in the local youth program and does not meet the enrollment requirements or cannot be served by the program, the youth service provider must ensure that the individual is referred:

- for further assessment, if necessary; or
- to appropriate programs to meet the skills and training needs of the individual.

### (d) Community involvement<sup>20</sup>

The local board must provide opportunities for involvement of community members in the design and implementation of the program, including parents, participants, and other members of the community that have experience working with youth. Involvement in the local youth program may occur in a number of ways, including (i) serving on the local youth standing committee, if one exists and the individual is appointed by the local board; (ii) providing input into the design and implementation of the program; and (iii) serving as youth mentors and tutors. In addition, each local board must make volunteer opportunities available for successful youth participants to help other youth participants as mentors or tutors or through other activities.

### (e) Co-enrollment

As required under the State's performance accountability policy:

- youth participants must be co-enrolled in partner programs whenever eligibility permits, co-enrollment benefits the participants, and the participants agree to co-enrollment; and
- ISY ages 18 through 21 must be co-enrolled in an adult or dislocated worker program before ITA funds can be used for occupational skills training provided by an ETP, as described in [Section III.4.a.](#)<sup>21</sup>

### (f) Coordination of services

Each local board must ensure that the local youth program identifies and tracks funding streams that pay the costs of services provided to co-enrolled youth participants to ensure no duplication

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<sup>19</sup> WIOA Sec. 129(c)(3)(A)(i)-(ii); 20 CFR 681.420(d)-(f)

<sup>20</sup> 20 CFR §§ 681.420(g) and 681.650

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

of services across programs and youth service providers,<sup>22</sup> including supportive services and training services.

#### (1) Non-WIOA financial benefits and assistance

Prior to a participant's placement in work experience, the youth service provider must coordinate with other programs that are providing the participant with non-WIOA financial benefits and assistance (UI, TANF, SNAP, etc.) to determine if the payment of wages or stipends for work experience effects the participant's eligibility for assistance, as discussed in [Section II\(i\)\(4\)\(A\)](#). Following coordination with other programs, the youth service provider must also discuss with the participant any effects that work experience may have on the individual's eligibility for assistance provided by the non-WIOA programs.

#### (2) Occupational skills training and Pell Grants<sup>23</sup>

Each local youth program must ensure that occupational skills training is (a) WIOA-funded only when assistance from other sources is not available through other agencies or programs and (b) limited to participants who:

- are unable to obtain grant assistance from other sources to pay the costs of their training; or
- require assistance beyond that available under grant assistance from other sources to pay the costs of the training.

When WIOA funds supplement other sources of funding for occupational skills training, the local youth program must:

- along with training providers, coordinate funds made available for training;
- make funding arrangements with one-stop partners and other entities regarding participants who require assistance beyond what is available through grant assistance from other sources; and
- consider the availability of other sources to pay for training costs such as Temporary Assistance for Needy Families (TANF), training funds available from the state, Federal Pell Grants, and other funding sources.

If a participant has been awarded a Pell Grant, the Pell Grant must be applied against the cost of occupational skills training and any education fees the training provider charges to attend training before WIOA funds are utilized. Pell Grant assistance for *education-related expenses* belongs solely to the participant and must not be used to offset or reduce Title I funding of the cost of occupational skills training and education fees.

If a participant's application for Pell Grant assistance is pending, a participant may enroll in occupational skills training and Title I funds may be used to pay the costs of training, including any education fees, while the application is processed, subject to the following requirements.

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<sup>22</sup> 20 CFR § 681.430(b)

<sup>23</sup> 20 CFR § 680.230(a)-(c)

1. The local youth program must arrange with the training provider and participant for allocation of the Pell Grant to the local youth program, should the Pell Grant be subsequently awarded.
2. If the Pell Grant is subsequently awarded and does not cover the full cost of occupational skills training and required education fees to be paid during the Pell Grant award period, the training provider must reimburse the local youth program for the WIOA funds paid to the training provider using the full amount disbursed for the Pell Grant award period.
3. If the Pell Grant is subsequently awarded and exceeds the full cost of the occupational skills training and required education fees to be paid during the Pell Grant award period, the training provider must reimburse the local youth program only for the amount paid to the training provider by the program, with the balance belonging solely to the participant.

#### (g) Duration of services<sup>24</sup>

Each local youth program must provide services to a youth participant as long as necessary to ensure successful preparation to enter postsecondary education and/or unsubsidized employment. There is no minimum or maximum time a participant is allowed to take part in a local youth program. Each local youth program must link program participation to the participant's ISS, not the timing of contracts with youth service providers or program years.

In its coordination of local youth program services, the local one-stop operator must not establish practices that create disincentives to providing services to individuals with barriers to employment, including youth who may require longer-term services, such as intensive employment, training, and education services.

#### (h) Privacy and confidentiality<sup>25</sup>

The local board must ensure that the local youth program adheres to all applicable state and local privacy and confidentiality laws and the confidentiality requirements of the Family Educational Rights and Privacy Act (established under Sec. 444 of the General Education Provisions Act), including requirements regarding circumstances that written consent for disclosure of personally identifiable information from an education record. In addition, the local board must ensure its internal control structure and written policies provide safeguards to protect personally identifiable information regarding Title I program participants.

#### (i) Expenditures

##### (1) Prior to participation<sup>26</sup>

There are two limited instances where youth funds may be expended on costs related to individuals who are not yet participants in the program. Funds may be expended on (i) outreach and recruitment and (ii) assessments for eligibility determination *prior* to eligibility determination, such as assessing basic skills levels. Youth funds must not be spent on the provision of local youth program services (the 14 youth program elements) to individuals who are not participants.

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<sup>24</sup> 20 CFR § 681.450; TEGL 15-16

<sup>25</sup> 20 CFR § 683.220; 20 USC § 1232g; 34 CFR Part 99

<sup>26</sup> TEGL 21-16

## (2) OSY expenditure requirement<sup>27</sup>

Subject to the exception described below in [Section II\(i\)\(2\)\(A\)](#), the local board must ensure that the local youth program expends at least 75 percent of allocated youth funds on the provision of services to OSY. Local area administrative costs are not subject to this 75 percent minimum expenditure requirement.

### (A) Exception to the OSY expenditure requirement

For Program Year 2019 (July 1, 2019 through June 30, 2020), the minimum expenditure requirement is lowered to 50 percent pursuant to a waiver issued on June 21, 2019 by the US Department of Labor (USDOL). Under the waiver, each local board must ensure that the local youth program expends (a) at least 50 percent of allocated youth funds on the provision of services to OSY and (b) up to 50 percent of allocated youth funds on the provision of services to ISY. Local area administrative costs are not subject to this 50 percent minimum/maximum expenditure requirement. The local board must also ensure that spending under these modified expenditure requirements is prioritized to result in:

- youth participation in Registered Apprenticeship programs;
- youth participation in pre-apprenticeship programs; and
- ISY participation in the JAG<sup>28</sup> program if offered in the local area.

NDOL will provide local areas with technical assistance regarding implementation of the modified expenditure requirements.

## (3) Work experience priority<sup>29</sup>

Each local board must ensure that the local youth program:

- expends at least 20 percent of allocated youth funds on paid and unpaid work experiences; and
- tracks expenditures for paid and unpaid work experiences, including funds spent on:
  - wages, stipends, and incentives paid to youth in work experience;
  - costs of staff time spent identifying potential work experience opportunities;
  - staff time working with employers to develop work experience opportunities;
  - staff time spent working with employers to ensure successful work experience opportunities;
  - staff time spent evaluating work experience opportunities;

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<sup>27</sup> 20 CFR § 681.410

<sup>28</sup> JAG refers to Jobs for America's Graduates.

<sup>29</sup> WIOA Sec. 129(c)(4); 20 CFR § 681.590; TEGLs 8-15 and 21-16

- costs associated with participant and employer work experience orientation sessions; and
- costs of classroom training or the required academic education component directly related to the work experience.

The percentage of funds spent on work experience *is calculated* based on the total amount of youth funds allocated to the local area and *is not calculated* separately for ISY and OSY. Local area administrative costs are not subject to this 20 percent minimum expenditure requirement. Supportive services and leveraged resources<sup>30</sup> must not be used to fulfill any part of the 20 percent minimum expenditure requirement.

#### (4) Participant compensation

##### (A) Effect on non-WIOA financial benefits and assistance<sup>31</sup>

When compensating youth participants with wages or stipends for work experience, youth service providers and employers of record are expected to adhere to Internal Revenue Service (IRS) guidelines. The classification of a participant, specifically the employer/employee relationship, is a key factor used by the IRS to determine whether withholding taxes is applicable. The classification of the participant may effect a participant's eligibility for non-WIOA financial benefits and assistance, as compensation for work experience may be counted as earnings when the participant is collecting UI or receiving financial benefits or assistance from other programs, such as TANF or SNAP.

##### (B) Wages<sup>32</sup>

A wage is generally a payment for services rendered where an employer/employee relationship exists. This form of compensation is usually paid through a payroll system and subject to the taxes applicable to the employer of record and participants. Paying a wage usually indicates that a local youth program views the youth as an employee or a trainee. Paid work experiences and internships may fall under the Fair Labor Standards Act (FLSA). FLSA requires that individuals be compensated under the law for the services they perform for an employer. To determine whether a paid work experience or internship falls under FLSA, contact USDOL's Wage and Hour Division located at 222 South 15<sup>th</sup> Street, Suite 504A, Omaha, NE 68102, phone 402.221.4682 or 866.487.9243.

##### (C) Stipends<sup>33</sup>

A stipend is an allowable payment for participation in activities such as work experience or classroom activities, including work readiness or employability skills training. The local youth program must establish written policies and procedures governing the payment of stipends, based

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<sup>30</sup> For purposes of this policy, *leveraged resources* are resources that are acquired without expenditure of youth program funds.

<sup>31</sup> WorkforceGPS, sponsored by the US Department of Labor, Employment and Training Administration, "Our Journey Together: Work Experience Activities Brief," <https://youth.workforcegps.org/-/media/Communities/youth/Files/Our-Journey-Together/Work-Experience,-d-,TA,-d-,Final,-d-,10,-d-,18.ashx> [July 25, 2019]

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

on local program design and participant needs. Local policies on stipends must ensure that payments are:

- tied to the goals of the program;
- outlined in writing before the commencement of the stipend program;
- aligned with the program's organizational policies; and
- made in compliance with the requirements of 2 CFR Part 200.

#### (D) Incentive payments<sup>34</sup>

Incentive payments to youth participants are permitted for recognition and achievements directly tied to training activities and work experiences. The local youth program must establish written policies and procedures governing the award of incentives and must ensure that incentive payments are:

- tied to the goals of the program;
- outlined in writing before the commencement of the stipend program;
- aligned with the program's organizational policies; and
- made in compliance with the requirements of 2 CFR Part 200.

#### (E) Withholdings<sup>35</sup>

The classification of a participant, specifically the employer/employee relationship, is a key factor used by the IRS to determine whether withholding taxes is applicable. When determining whether to pay taxes on wages, stipends, and incentives, youth service providers and employers of record are expected to adhere to IRS guidelines. IRS publication 525 provides information on taxable and non-taxable income, which is accessible at <https://www.irs.gov/forms-pubs/about-publication-525>.

### Section III. Program elements

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The 14 program elements described in this section must be made available to all youth participants.<sup>36</sup> However, local youth programs are not required to provide every service to each youth participant and have the discretion to determine the services a youth participant receives based on the participant's objective assessment and ISS.<sup>37</sup>

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<sup>34</sup> 20 CFR § 681.640; TEGL 21-16

<sup>35</sup> WorkforceGPS, sponsored by the US Department of Labor, Employment and Training Administration, "Our Journey Together: Work Experience Activities Brief," <https://youth.workforcegps.org/-/media/Communities/youth/Files/Our-Journey-Together/Work-Experience,-d-,TA,-d-,Final,-d-,10,-d-,18.ashx> [July 25, 2019]

<sup>36</sup> 20 CFR § 681.460(a)(1)-(14); TEGL 21-16

<sup>37</sup> 20 CFR § 681.460(b); TEGL 21-16

### 1. Tutoring, study skills training, instruction, and dropout prevention<sup>38</sup>

Tutoring, study skills training, and instruction that lead to a high school diploma include services such as providing academic support, helping youth identify areas of academic concern, assisting with overcoming learning obstacles, or providing tools and resources to develop learning strategies. Tutoring, study skills training, and instruction can be provided one-on-one, in a group setting, or through developed resources and workshops.

Dropout prevention strategies intended to lead to a high school diploma include activities that keep youth in school and engaged in a formal learning or training setting. Strategies include, but are not limited to, tutoring, literacy development, active learning experiences, after-school opportunities, and individualized instruction.

Resources on tutoring, study skills training, instruction, and dropout prevention are available on the [WorkforceGPS Tutoring, Study Skills Training, Instruction, and Dropout Prevention](#) page.

### 2. Alternative secondary school and dropout recovery<sup>39</sup>

Alternative secondary school services are services that assist youth who have struggled in traditional secondary education. Dropout recovery services are those that assist youth who have dropped out of school. Both types of services help youth to re-engage in education that leads to the completion of a recognized high school equivalent. Examples of activities under this program element include:

- basic education skills training;
- individualized academic instruction;
- English-as-a-second-language training;
- credit recovery; and
- counseling and educational plan development.

Resources on alternative secondary school and dropout recovery are available on the [WorkforceGPS Alternative Secondary School and Dropout Recovery Services](#) page.

### 3. Paid and unpaid work experience<sup>40</sup>

Work experience is a planned, structured learning experience that takes place in a workplace for a limited period. Work experiences may be paid or unpaid, as appropriate. A work experience may take place in the private for-profit sector, non-profit sector, or public sector. Work experiences must include academic and occupational education components, as described in [Section III.3.a.](#)<sup>41</sup>

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<sup>38</sup> 20 CFR § 681.460(a)(1); TEGL 21-16

<sup>39</sup> 20 CFR § 681.460(a)(2); TEGL 21-16

<sup>40</sup> 20 CFR §§ 681.460(a)(3) and 681.600; TEGL 21-16

<sup>41</sup> Please note that work experiences under WIOA are not considered training, which has performance implications for the credential and measurable skills gain indicators. Participation in a work experience alone does not trigger

Types of work experiences include:

- summer employment opportunities and other employment opportunities available throughout the year;
- pre-apprenticeship programs;
- internships and job shadowing; and
- on-the-job training.

Resources on paid and unpaid work experience are available on the [WorkforceGPS Paid and Unpaid Work Experience](#) page.

a. **Academic and occupational education component**<sup>42</sup>

Work experiences must include academic and occupational education, meaning learning in academic and occupational contexts, which:

- may occur concurrently or sequentially with the work experience;
- may occur inside or outside the work site;
- includes information needed to understand and work in specific industries or occupations; and
- is provided by the employer or separately in a classroom setting or through other means.

For example, if a youth is participating in a work experience at a hospital:

- academic education could involve learning information that individuals in those occupations need to know, such as why blood type matters, the name of a specific bone in the body, or the function of a specific ligament; and
- occupational education could involve learning about different types of hospital occupations, such as a phlebotomist, radiology tech, or physical therapist.

Local programs have the flexibility to determine the appropriate type of academic and occupational education necessary for a specific work experience.

4. **Occupational skills training**<sup>43</sup>

Occupational skills training is an organized program of study that provides specific vocational skills that lead to proficiency in performing actual tasks and technical functions required by certain occupational fields at entry, intermediate, or advanced levels. Requirements for placing youth participants in occupational skills training are listed below.

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inclusion in those two indicators. For more information about performance indicators, refer to the State's policy on performance accountability or visit <https://www.doleta.gov/performance/>.

<sup>42</sup> TEGL 21-16

<sup>43</sup> 20 CFR §§ 681.460(a)(4) and 681.540; TEGL 21-16

1. Youth programs must give priority to programs that lead to recognized postsecondary credentials that align with in-demand industry sectors or occupations in the local area.
2. Occupational skills training must:
  - a. be outcome-oriented and focused on an occupational goal specified in the participant's ISS;
  - b. be of sufficient duration to impart the skills needed to meet the occupational goal; and
  - c. lead to the attainment of a recognized postsecondary credential.
3. Occupational skills training must be provided by:<sup>44</sup>
  - a. competitively selected training providers, as described in [Section I](#); or
  - b. ETPs, subject to the requirements and limitations described in [Section III.4.a](#).

Resources on occupational skills training are available on the [WorkforceGPS Occupational Skills Training](#) page.

a. ITAs<sup>45</sup>

To enhance individual participant choice in the selection of education and training programs and provide flexibility to local youth programs, ITA funds may be used, when appropriate, for occupational skills training for OSY youth ages 16 through 24. To use an ITA, the training provider must be on the ETPL.

ITAs funded by the local youth program may be used for OSY only. Use of ITAs funded by the local youth program for ISY ages 14 through 17 is strictly prohibited. However, ISY between the ages of 18 and 21 who are co-enrolled in an adult or dislocated worker program may receive training services from an ETP using an ITA funded by the adult or dislocated worker program as long as the individual is eligible for training services under the program in which the participant is co-enrolled.

The local board may impose the following limits on ITAs.

- A limit may be established for an individual participant based on the needs identified in the participant's ISS or IEP, such as the participant's occupational choice or goal and the level of training needed to reach that goal.
- Local policy may establish a range of amounts or a maximum amount applicable to all ITAs.

Limitations established under local policies:

- must be described in the local board's local plan;

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<sup>44</sup> 20 CFR §§ 681.400 and 681.550

<sup>45</sup> 20 CFR §§ 680.300, 680.310(b)-(d), and 681.550; TEGL 21-16

- must not be implemented in a way that undermines the requirement that training services are provided in a manner that maximizes consumer choice in the selection of a training provider;
- may include exceptions to ITA limitations for individual cases, which must be defined; and
- may allow a participant to select training that costs more than the maximum amount available for ITAs under local policy when other sources of funds are available to supplement the ITA, such as Pell Grants and scholarships.

## 5. Education offered concurrently with workforce preparation and training

Education offered concurrently with workforce preparation and training for a specific occupation refers to an integrated education and training model and describes how workforce preparation activities, basic academic skills, and hands-on occupational skills training are to be taught within the same period and connected to training in a specific occupation, occupational cluster, or career pathway.<sup>46</sup>

Resources on education offered concurrently with workforce preparation and training are available on the [WorkforceGPS Education offered Concurrently with Workforce Preparation and Training](#) page.

## 6. Leadership development opportunities<sup>47</sup>

Leadership development opportunities are opportunities that encourage responsibility, confidence, employability, self-determination, and other positive social behaviors. Leadership development includes activities such as:

- exposure to postsecondary educational possibilities;
- community and service learning projects;
- peer-centered activities, including peer mentoring and tutoring;
- organizational and teamwork training, including team leadership training;
- training in decision making, including determining priorities and problem solving;
- citizenship training, including life skills training such as parenting and work behavior training;
- civic engagement activities that promote the quality of life in a community; and
- other leadership activities that place youth in a leadership role, such as serving on youth leadership committees.

Resources on leadership development opportunities are available on the [WorkforceGPS Leadership Development Opportunities](#) page.

<sup>46</sup> 20 CFR §§ 681.460(a)(5) and 681.630; TEGL 21-16

<sup>47</sup> 20 CFR §§ 681.460(a)(6) and 681.520; TEGL 21-16

## 7. Supportive services<sup>48</sup>

Supportive services are services that enable a youth participant to take part in local youth program activities. Supportive services include, but are not limited to, the following:

- linkages to community services;
- assistance with transportation;
- assistance with childcare and dependent care;
- assistance with housing;
- needs-related payments that provide financial assistance to participants to enable them to take part in local youth program activities;
- assistance with educational testing;
- reasonable accommodations for youth with disabilities;
- legal aid services;
- referrals to health care;
- assistance with uniforms or other appropriate work attire and work-related tools, including such items as eyeglasses and protective eye gear;
- assistance with books, fees, school supplies, and other necessary items for students enrolled in postsecondary education classes; and
- payments and fees for employment and training-related applications, tests, and certifications.

The local board must develop policies and procedures regarding the provision and coordination of supportive services for youth participants, which:<sup>49</sup>

- must be developed in consultation with one-stop partners and other community service providers in the local area;
- must ensure resource and supportive service coordination in the local area;
- must require that supportive services, including needs-related payments, are provided only if the youth is enrolled in the local youth program and participating in WIOA activities;
- must ensure that supportive services are WIOA-funded only when supportive services are not available through other agencies or programs;

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<sup>48</sup> WIOA Sec. 3(59); 20 CFR §§ 681.460(a)(7) and 681.570; TEGL 21-16

<sup>49</sup> 20 CFR §§ 680.900, 680.910(a)(2), 680.920(a), and 681.570

- should address procedures for referral to supportive services, including how the services will be funded when not otherwise available from other sources; and
- may establish limits on the provision of supportive services, or provide the one-stop center with the authority to establish limits, including the maximum amount of funding and maximum length of time supportive services may be made available to youth participants.

Resources on supportive services are available on the [WorkforceGPS Supportive Services](#) page.

## 8. Adult mentoring<sup>50</sup>

Adult mentoring is a formal relationship between a youth participant and an adult mentor that includes structured activities where the mentor offers guidance, support, and encouragement to develop the competence and character of the mentee. Mentoring may include workplace mentoring where the local program matches a youth participant with an employer or employee of a company. Adult mentoring must last *at least* 12 months and may take place during program participation and following exit from the program.

While group mentoring activities and mentoring through electronic means are allowable as part of the mentoring activities, the local youth program must, at a minimum, match the youth with an individual mentor with whom the youth interacts on a face-to-face basis. Local programs should ensure appropriate processes are in place to adequately screen and select mentors.

USDOL acknowledges that in some areas of the country finding mentors may present a burden to a program. While USDOL strongly prefers that case managers not serve as mentors, the final rule allows case managers to serve as mentors in areas where adult mentors are scarce.

Resources on adult mentoring are available on the [WorkforceGPS Adult Mentoring](#) page.

## 9. Follow-up services<sup>51</sup>

Follow-up services are critical services provided following a youth's exit from the program to help ensure that youth are successful in employment and/or postsecondary education and training. Follow-up services may include:

- regular contact with a youth participant's employer, including assistance in addressing work-related problems that arise; and
- the following program elements:
  - supportive services;
  - adult mentoring;
  - financial literacy education;

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<sup>50</sup> 20 CFR §§ 681.460(a)(8) and 681.490; TEGL 21-16

<sup>51</sup> 20 CFR §§ 681.460(a)(9) and 681.580(a)-(b)

- services that provide labor market and employment information about in-demand industry sectors or occupations available in the local area, such as career awareness, career counseling, and career exploration services; and
- activities that help youth prepare for and transition to postsecondary education and training.

Requirements for the provision of follow-up services for youth are described below.<sup>52</sup>

1. All participants must be offered an opportunity to receive follow-up services that align with their ISS. Types of follow-up services provided and the duration of follow-up services must be determined based on the needs of the individual and, therefore, the type and intensity of follow-up services may differ for each participant.
2. At the time of enrollment, youth must be informed that follow-up services will be provided for a *minimum* of 12 months following exit. (Follow-up services may be provided beyond 12 months at the local board's discretion.) If, at any point during participation in the program *or* during the 12 months following exit, the youth participant requests to opt out of follow-up services, they may do so. In this case, the participant's request to opt out or discontinue follow-up services must be documented in case notes.
3. Follow-up services must be provided to all participants for a *minimum* of 12 months after the last expected date of service in the local youth program, and any NDOL-administered programs in which the participant may be co-enrolled,<sup>53</sup> unless the participant declines to receive follow-up services or the participant cannot be located or contacted. (Local programs should have policies in place to establish how to document and record when a participant cannot be located or contacted.)
4. Follow-up services may begin immediately following the last expected date of service. The exit date is determined when the participant has not received services through the local youth program, or any NDOL-administered programs in which the participant may be co-enrolled, for 90 days and no additional services are scheduled.
5. When the following program elements are provided as follow-up services, they must be recorded as follow-up services in NEworks, rather than program services, in order to (a) clearly differentiate follow-up services from program services provided prior to program exit and (b) prevent a change in the exit date and trigger re-enrollment in the program:
  - a. supportive services;
  - b. adult mentoring;
  - c. financial literacy education;

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<sup>52</sup> 20 CFR § 681.580(c); TEGL 21-16

<sup>53</sup> For purposes of this policy, *NDOL-administered programs* means Wagner-Peyser, JVSG, TAA, and DWG programs. For information on co-enrollment, exit, and common exit, refer to the State's policy on performance accountability.

- d. services that provide labor market and employment information about in-demand industry sectors or occupations available in the local area, such as career awareness, career counseling, and career exploration services; and
- e. activities that help youth prepare for and transition to postsecondary education and training.

In addition, it must be documented in case notes that these program elements were provided as follow-up services after program exit.

- 6. Follow-up services must be more than just an attempt to contact the participant and must not be made just to secure documentation to support or report a performance outcome.

Resources on follow-up services are available on the [WorkforceGPS Follow-up Services](#) page.

#### 10. Comprehensive guidance and counseling<sup>54</sup>

Comprehensive guidance and counseling involves the provision individualized counseling to participants. This program element also includes substance and alcohol abuse counseling, mental health counseling, and referral to qualified partner programs. When referring participants to necessary counseling that cannot be provided by the local youth program or its service providers, the local youth program must coordinate with the organization to which it refers the youth participant in order to ensure continuity of service. When resources exist within the local program or its service providers, it is allowable to provide counseling services directly to participants rather than referring youth to partner programs.

Resources on comprehensive guidance and counseling are available on the [WorkforceGPS Comprehensive Guidance and Counseling](#) page.

#### 11. Financial literacy education<sup>55</sup>

Financial literacy education refers to activities that provide youth with the knowledge and skills that they need to achieve long-term financial stability, including activities that:

- support the ability of participants to create budgets, initiate checking and savings accounts at banks, and make informed financial decisions;
- supports participants in learning how to effectively manage spending, credit, and debt, including student loans, consumer credit, and credit cards;
- teach participants about the significance of credit reports and credit scores, what their rights are regarding their credit and financial information, how to determine the accuracy of a credit report and how to correct inaccuracies, and how to improve or maintain good credit;
- support a participant's ability to understand, evaluate, and compare financial products, services, and opportunities and to make informed financial decisions;

<sup>54</sup> 20 CFR §§ 681.460(a)(10) and 681.510; TEGL 21-16

<sup>55</sup> 20 CFR §§ 681.460(a)(11) and 681.500; TEGL 21-16

- educate participants about identity theft, ways to protect themselves from identify theft, how to resolve cases of identity theft, and understand their rights and protections related to personal identity and financial data;
- support activities that address the particular financial literacy needs of non-English speakers, including providing the support through the development and distribution of multilingual financial literacy and education materials;
- support activities that address the particular financial literacy needs of youth with disabilities, including connecting them to benefits planning and work incentives counseling;
- provide financial education that is age appropriate, timely, and provides opportunities to put lessons into practice, such as providing access to safe and affordable financial products that enable money management and savings; and
- implement other approaches to help participants gain the knowledge, skills, and confidence to make informed financial decisions that enable them to attain greater financial health and stability through the use of high quality, age-appropriate, and relevant strategies and channels, including, where possible, timely and customized information, guidance, tools, and instruction.

Resources on financial literacy education are available on the [WorkforceGPS Financial Literacy Education](#) page.

## 12. Entrepreneurial skills training<sup>56</sup>

Entrepreneurial skills training provides training on the basics of starting and operating a small business and must develop the skills associated with entrepreneurship, such as the ability to:

- take initiative;
- creatively seek out and identify business opportunities;
- develop budgets and forecast resource needs;
- understand various options for acquiring capital and the trade-offs associated with each option; and
- communicate effectively and market oneself and one's ideas.

Examples of approaches to teaching youth entrepreneurial skills include:

- entrepreneurship education that provides an introduction to the values and basics of starting and running a business, such as developing a business plan and simulations of business start-up and operation;

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<sup>56</sup> 20 CFR §§ 681.460(a)(12) and 681.560; TEGL 21-16

- enterprise development that provides supports and services that incubate and help youth develop their own businesses, such as helping youth access small loans or grants and providing more individualized attention to the development of viable business ideas; and
- experiential programs that provide youth with experience in the day-to-day operation of a business.

Resources providing information and ideas on entrepreneurial skills training are available on the [WorkforceGPS Entrepreneurial Skills Training for Youth](#) page.

### 13. Labor market information services<sup>57</sup>

Labor market information (LMI) services refers to services that provide labor market and employment information about in-demand industry sectors or occupations available in the local area and includes career awareness, career counseling, and career exploration services. LMI services also help youth identify employment opportunities and provide knowledge of job market expectations, including education and skill requirements and potential earnings.

Resources on LMI services are available on the [WorkforceGPS Services that Provide Labor Market Information](#) page.

### 14. Postsecondary preparation and transition activities<sup>58</sup>

Postsecondary preparation and transition activities are activities that help youth prepare for and transition to postsecondary education and training. These activities include helping youth explore postsecondary education options, including technical training schools, community colleges, four-year colleges and universities, and Registered Apprenticeship programs. Examples of other postsecondary preparation and transition activities include (i) assisting youth with preparation for SAT/ACT testing; (ii) assisting with college admission applications; (iii) searching and applying for scholarships and grants; (iv) filling out the proper financial aid applications and adhering to changing guidelines; and (v) connecting youth to postsecondary education programs.

Resources on postsecondary preparation and transition activities are available on the [WorkforceGPS Postsecondary Preparation and Transition Activities](#) page.

## DISCLAIMER

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

<sup>57</sup> 20 CFR § 681.460(a)(13); TEGL 21-16

<sup>58</sup> 20 CFR § 681.460(a)(14); TEGL 21-16

## APPENDIX I. Definitions

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**PURPOSE.** Definitions in this appendix are provided as supplemental information that supports the provisions of the policy. The terms and phrases defined in this appendix should be read and understood in the context in which they are used in the policy and not as stand-alone information independent of that context.

### 1. community-based organization

*Community-based organization* means a private nonprofit organization (which may include a faith-based organization) that is representative of a community or a significant segment of a community *and* has demonstrated expertise and effectiveness in the field of workforce development.<sup>59</sup>

### 2. in-demand industry sector or occupation

The term *in-demand industry sector or occupation* means an:<sup>60</sup>

- industry sector that has a substantial current or potential impact (including through jobs that lead to economic self-sufficiency and opportunities for advancement) on the state, regional, or local economy, as appropriate, and that contributes to the growth or stability of other supporting businesses, or the growth of other industry sectors; or
- occupation that currently has or is projected to have a number of positions (including positions that lead to economic self-sufficiency and opportunities for advancement) in an industry sector that is projected to have a significant impact on the state, regional, or local economy.

### 3. individuals with barriers to employment

*Individuals with barriers to employment* include those who fall under one or more of the following categories:<sup>61</sup>

- displaced homemakers;
- low-income individuals;
- Indians, Alaska Natives, and Native Hawaiians;
- individuals with disabilities;
- older individuals (those aged 55 or over);
- ex-offenders;
- homeless individuals;
- youth who are in, or have aged out of, the foster care system;

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<sup>59</sup> WIOA Sec. 3(10)

<sup>60</sup> WIOA Sec. 3(23)

<sup>61</sup> WIOA Sec. 3(24)

- individuals who are English-language learners, individuals who have low levels of literacy, and individuals facing substantial cultural barriers;
- eligible migrant and seasonal farmworkers, defined in WIOA Sec. 167(i);
- individuals within two years of exhausting lifetime eligibility under TANF;
- single parents, including single pregnant women; or
- long-term unemployed individuals (unemployed for 27 or more consecutive weeks).<sup>62</sup>

#### 4. institution of higher education<sup>63</sup>

*Institution of higher education* means an educational institution in any state that meets all of the following five criteria:

1. admits, as regular students, only persons having a certificate of graduation from a school providing secondary education, or its recognized equivalent, or persons who have completed a secondary school education in a home school setting that is treated as a home school or private school under state law;
2. is legally authorized within the state to provide a program of education beyond secondary education;
3. provides an educational program for which the institution awards a bachelor's degree or provides not less than a two-year program that is acceptable for full credit toward a bachelor's degree, or awards a degree that is acceptable for admission to a graduate or professional degree program, subject to review and approval by the US Secretary of Education (Secretary);
4. is a public or other nonprofit institution; and
5. is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted pre-accreditation status by such an agency or association that has been recognized by the Secretary for the granting of pre-accreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

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<sup>62</sup> TEGL 19-16

<sup>63</sup> WIOA Sec. 3(28); 20 USC § 1001(a)(1)

## 5. objective assessment<sup>64</sup>

*Objective assessment* means an assessment of the academic levels, skill levels, and service needs of a participant, which must include a review of an individual's:

- basic academic skills;
- occupational skills;
- prior work experience;
- employability;
- interests;
- aptitudes;
- supportive service needs; and
- developmental needs.

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<sup>64</sup> WIOA Sec. 129(c)(1)(A); 20 CFR § 681.420(a)(1)

## 5.2. Training

## State Policy

## Workforce Innovation and Opportunity Act (WIOA)

Nebraska Department of Labor (NDOL) Division of Reemployment Services 550 South 16 <sup>th</sup> Street Lincoln, NE 68508 402.471.9000 <a href="mailto:ndol.wioa_policy@nebraska.gov">ndol.wioa_policy@nebraska.gov</a>	Policy category
	Training
	Effective date
	February 7, 2023
	Supersedes
	Eligible Training Providers, Change 1 (effective date September 10, 2022)

## Eligible Training Providers, Change 2

## REFERENCE

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

## BACKGROUND

An Eligible Training Provider List<sup>1</sup> (ETPL) is a list of training providers that are qualified to receive WIOA Title IB funding for the provision of training services to eligible individuals through approved training programs, including Registered Apprenticeship programs.

## CHANGES

This policy establishes the following material changes to the superseded and cancelled policy.

- Revisions have been made to [Section I](#) to clarify eligibility criteria for training providers and programs; and reference to “industry recognized apprenticeship programs” has been removed from the list of eligible entity types in Section I(a)(1), as [Executive Order 13081](#) which authorized establishment of such programs has been revoked pursuant to [Executive Order 14016](#).

<sup>1</sup> Nebraska’s ETPL is accessible online. To access the list, go to <https://neworks.nebraska.gov>. On the NEworks homepage under the *Job Seekers* column click on *Training Services*, then click on *ETPL Approved Programs*.

- Revisions have been made to [Section II](#) to refine eligibility processes, including:
  - addition of timelines for training provider eligibility determinations have been established;
  - timelines for determining eligibility for programs of training services have been reduced from 45 calendar days to 30 calendar days; and
  - submission of program-specific performance data in order to determine initial and continued program eligibility.
- Provisions in [Section III](#) relating to Registered Apprenticeship programs have been revised to clarify:
  - eligibility and information requirements for inclusion of the programs on Nebraska's ETPL;
  - outreach practices to promote participation by Registered Apprenticeship programs in the ETPL; and
  - maintenance of the programs on the ETPL.
- Revisions have been made in [Section IV](#) to clarify requirements and rights relating to denial or termination of ETPL inclusion, including program removal processes and related appeal processes.
- Revisions have been made in [Section V](#) regarding performance reporting, including the addition of minimum performance standards for program eligibility determinations.
- [APPENDIX I](#) now includes a definition for program of training services.

## ACTION

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This policy supersedes and cancels the State's policy titled *Eligible Training Providers, Change 1* (effective date September 10, 2022). Questions and comments on this policy may be submitted in writing to the WIOA policy mailbox at [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov).

- Training providers, including sponsors of Registered Apprenticeship programs, subject to applicable requirements described in [Section I](#), [Section II](#), [Section III](#), [Section IV](#), [Section V](#), and [Section VI\(b\)](#).
- Local boards must ensure that local area staff, including service provider staff, are knowledgeable of all requirements of this policy, including consumer choice and consultation requirements described in [Section VIII\(b\)\(1\)](#).

## POLICY

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This policy has eight sections and one appendix.

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### Section I. ETPL eligibility criteria

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ETPL eligibility criteria for inclusion on Nebraska's ETPL are based on characteristics of training providers and training provider programs, as described in [Section I\(a\)](#), [Section I\(b\)](#), [Section I\(c\)](#), and [Section I\(d\)](#).

#### (a) Training provider eligibility requirements

##### (1) Training providers that are not sponsors of Registered Apprenticeship programs

For training providers that are not sponsors of Registered Apprenticeship programs, all eligibility criteria listed below must be met.<sup>2</sup>

1. The training provider must provide information about its organization and information for its primary representative.<sup>3</sup>
2. The training provider must be one of the following types of entities:
  - a. postsecondary education institution; or
  - b. other public or private provider of training, including, but not limited to:
    - i. community-based organization;
    - ii. joint labor-management organization; or
    - iii. provider of Title II Adult Education and Family Literacy Act activities, provided the activities occur in combination with work-based training.

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<sup>2</sup> WIOA Secs. 116(d)(4), 122(a)(2); 122(b), and 188; 20 CFR §§ 680.410(d), 680.460(f)(5), and 683.250(a)(4); 29 CFR §§ 38.1, 38.2(a)(1), and 38.4(zz); TEGLs 03-18 and 8-19; Neb Rev. Stat. §§ 85-1601 – 85-1658 (Title 92, Chapter 41)

<sup>3</sup> This is a State-established information requirement pursuant to 20 CFR § 680.450(a)

3. At the time of application, the training provider must be authorized by appropriate accrediting or governing authorities to provide training services in Nebraska or to Nebraska residents *and* have been in operation at least 12 months as an authorized training provider. This is a State requirement, as permitted under WIOA Sec. 122(b)(1)(J).
  - a. For “traditional” postsecondary schools, such as four-year universities and colleges and community colleges, the governing authority is the higher education authority that accredited the school.
  - b. For private postsecondary career schools operating in Nebraska or outside of Nebraska, the governing authority is the Nebraska Department of Education, in accordance with the Nebraska Private Postsecondary Career School Act.
4. The training provider must provide information on its participation (or non-participation) in the Federal Pell Grant Program.
5. The training provider must:
  - a. comply with the requirements of:
    - i. WIOA Sec. 188 and 29 CFR Part 38, which prohibit discrimination on the basis of age, disability, sex, race, color, national origin, political affiliation or belief, or student status; discrimination against certain noncitizens; and assistance for facilities used for religious instruction or worship; and
    - ii. the Americans with Disabilities Act, as amended;
  - b. provide physical and programmatic accessibility to its programs for individuals who are employed and individuals with barriers to employment, including individuals with disabilities;
  - c. submit timely and accurate program-specific performance reports as required under [Section II\(a\)](#), [Section II\(b\)](#), [Section II\(c\)](#), and [Section V\(b\)](#); and
  - d. retain documentation concerning the validity of submitted program-specific performance reports and provide access to the documentation as required under [Section VI\(b\)](#).
6. The training provider must not be debarred, suspended, or otherwise excluded from or ineligible for participation in Federal programs or activities.

## (2) Training providers that are sponsors of Registered Apprenticeship programs

Certain Registered Apprenticeship sponsors and programs are automatically eligible for inclusion on Nebraska’s ETPL and *exempt* from the eligibility requirements and processes described in [Section I\(a\)\(1\)](#), [Section I\(a\)\(3\)](#), [Section I\(b\)](#), [Section I\(c\)](#), and [Section II](#).<sup>4</sup> Eligibility requirements for Registered Apprenticeship programs are defined in [Section III\(a\)](#) and [Section III\(b\)](#).

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<sup>4</sup> TEGLs 08-19 and 08-19 Change 1

### (3) Training providers that are non-sponsoring intermediaries of Registered Apprenticeship programs

Training providers who act as non-sponsoring intermediaries<sup>5</sup> of Registered Apprenticeship programs *are not* automatically eligible for inclusion on Nebraska's ETPL and are subject to all eligibility requirements and processes, program performance requirements, and record retention and access requirements described in [Section I\(a\)\(1\)](#), [Section I\(b\)\(1\)](#), [Section I\(c\)](#), [Section I\(d\)](#), [Section II](#), [Section V\(b\)](#), and [Section VI\(b\)](#). However, employers who sign participation agreements with non-sponsoring intermediaries pursuant to intermediary standards approved by the US Department of Labor *Nebraska* Office of Apprenticeship are automatically eligible for inclusion on Nebraska's ETPL, because they become sponsors of the Registered Apprenticeship programs upon execution of participation agreements with their respective *non-sponsoring intermediaries*.

#### (b) Program eligibility requirements

##### (1) Programs provided by training providers that are not sponsors of Registered Apprenticeship programs

###### (A) Initial eligibility

In addition to the applicable provider eligibility requirements described above in [Section I\(a\)\(1\)](#) and [Section I\(a\)\(3\)](#), the requirements listed below for initial eligibility for new programs must be met.<sup>6</sup>

1. The program must provide one or more courses or classes leading to one or more of the following outcomes:
  - a. industry-recognized certificate or certification;
  - b. license recognized by the Federal government, State of Nebraska, or another state;
  - c. postsecondary diploma;
  - d. associate or baccalaureate degree;
  - e. secondary-school diploma or its equivalent earned in conjunction with occupational skills training;
  - f. employment; or
  - g. measurable skills gains toward employment.

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<sup>5</sup> The term *non-sponsoring intermediary* refers to an entity that provides only the related technical instruction (i.e., occupational skills training) portion of a Registered Apprenticeship program and is not the registered sponsor of the program.

<sup>6</sup> 20 CFR §§ 680.450(e) and 680.490; TEGL 8-19

2. The training provider must submit a complete program application for the program through NEworks that includes:<sup>7</sup>
  - a. a thorough program description;
  - b. clear information about the provider's business partnerships in relation to the program;
  - c. full cost information for the program;
  - d. identification of all locations where the program is offered;
  - e. information addressing the program's alignment with in-demand occupations in Nebraska;<sup>8</sup> and
  - f. verifiable program-specific performance data, as required under [Section II\(a\)](#), [Section II\(b\)](#), or [Section II\(c\)](#), as applicable, and [Section V\(b\)](#); and
  - g. other information required in the program application.

Initial program eligibility is granted for only one year starting on the date initial eligibility is granted.<sup>9</sup>

#### (B) Continued eligibility

In addition to the applicable provider eligibility requirements described above in [Section I\(a\)\(1\)](#) and [Section I\(a\)\(3\)](#), the requirements listed below for continued eligibility for new programs must be met.<sup>10</sup>

1. The program must continue to provide one or more courses or classes leading to one or more of the following outcomes:
  - a. industry-recognized certificate or certification;
  - b. license recognized by the Federal government, State of Nebraska, or another state;
  - c. postsecondary diploma;
  - d. associate or baccalaureate degree;
  - e. secondary-school diploma or its equivalent earned in conjunction with occupational skills training;
  - f. employment; or
  - g. measurable skills gains toward employment.

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<sup>7</sup> TEGL 08-19

<sup>8</sup> Data on in-demand occupations in Nebraska is provided by the Nebraska Department of Labor and is accessible at <https://neworks.nebraska.gov/vosnet/gsipub/documentView.aspx?enc=oduMpwMRTIQnt7W7WO2/Ew==>.

<sup>9</sup> WIOA Sec. 122(b)(4)(B)

<sup>10</sup> 20 CFR §§ 680.450(e) and 680.490; TEGL 8-19

2. The training provider must resubmit a complete program application through NEworks for the program that includes:<sup>11</sup>
  - a. a thorough program description;
  - b. clear information about the provider's business partnerships in relation to the program;
  - c. complete cost information for the program;
  - d. identification of all locations where the program is offered;
  - e. information addressing the program's alignment with in-demand occupations in Nebraska;<sup>12</sup>
  - f. verifiable program-specific performance data, as required under [Section II\(a\)](#), [Section II\(b\)](#), or [Section II\(c\)](#), as applicable, and [Section V\(b\)](#); and
  - g. other information required in the program application.

Continued program eligibility is granted for only two years starting on the date continued eligibility is granted.<sup>13</sup>

#### (C) Additional eligibility criteria that may be considered

In addition to the eligibility requirements described in [Section I\(a\)\(1\)](#) and [Section I\(a\)\(3\)](#), as applicable, and the limitations described in [Section I\(c\)](#), NDOL may also consider the following factors when determining training provider eligibility and initial and continued program eligibility:<sup>14</sup>

- NDOL's obligation to ensure access to training services throughout Nebraska and through the use of technology;
- information reported to state agencies regarding Federal and state training programs other than programs authorized under WIOA Title IB;
- encouraging the use of industry-recognized certificates and credentials;
- quality of programs and ability of training providers to offer programs leading to postsecondary credentials; and
- other factors NDOL may determine as appropriate.

#### (c) Training provider use of third parties to provide training

If a training provider contracts with a third party to provide training services for a program *and* that third party awards the resulting credential, that third party must be authorized by accrediting or

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<sup>11</sup> TEGL 08-19

<sup>12</sup> Data on in-demand occupations in Nebraska is provided by the Nebraska Department of Labor and is accessible at <https://neworks.nebraska.gov/vosnet/gsipub/documentView.aspx?enc=oduMpwMRTIQnt7W7WO2/Ew==>.

<sup>13</sup> TEGL 08-19, Attachment II

<sup>14</sup> WIOA Secs. 122(b)(1)(B) – (C) and (F) – (H); 20 CFR § 680.460(f)

governing authorities to provide training services in Nebraska or to Nebraska residents.<sup>15</sup> This limitation applies to all “traditional” postsecondary schools (four-year universities and colleges and community colleges) and private postsecondary career schools operating in Nebraska or outside of Nebraska.<sup>16</sup>

#### (d) Ineligible programs

The following types of programs *are not* eligible for inclusion on Nebraska’s ETPL:

- programs associated with occupations resulting solely in commission-only earnings; and
- programs that are not linked to employment opportunities in in-demand occupations in Nebraska.

#### (e) Excluded training services

The following training services funded with WIOA Title IB program funds are excluded from inclusion on Nebraska’s ETPL:<sup>17</sup>

1. on-the-job training;
2. customized training;
3. incumbent worker training;
4. internships;
5. paid or unpaid work experiences; and
6. transitional jobs.

#### (f) Technical assistance

NDOL provides technical assistance to training providers upon written request regarding eligibility requirements. Requests for technical assistance from training providers must be submitted by email to [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov).

## Section II. Eligibility processes

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### (a) Initial eligibility application processes

#### (1) New training provider; new program

A training provider that wishes to apply for new training provider eligibility *and* new program eligibility must take the following actions.

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<sup>15</sup> WIOA Sec. 122(b)(1)(E); 20 CFR § 680.460(f)(5)

<sup>16</sup> Neb Rev. Stat. §§ 85-1601 – 85-1658 (Title 92, Chapter 41)

<sup>17</sup> 20 CFR § 680.530(a)

1. On the NEworks [sign-in page](#) under “Option 3”, register for a new *provider* account (takes approximately 10 minutes).
  - a. Training providers may contact the policy mailbox at [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov) and request a video on how to register for a provider account.
2. Once the new account request is approved, the training provider must access the NEworks [sign-in page](#) and sign into the provider account under “Option 1” using the username and password created during the account registration process.
3. Then, the training provider must add the new education or training program by completing a program application, which must include uploading (within the program application) of verifiable program-specific performance data, as required under [Section V\(b\)](#).
  - a. Training providers may contact the policy mailbox at [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov) for videos on how to add a new education or training program and upload program performance data.

As stated above, initial program eligibility may be granted for only one year<sup>18</sup> starting on the date initial eligibility is granted.

## (2) Current training provider; new program

An approved current training provider that wishes to apply for new program eligibility must take the following actions.

1. Access the NEworks [sign-in page](#) and sign into the provider account under “Option 1” using the username and password created during the account registration process.
2. Then, the training provider must add the new education or training program by completing a program application, which must include uploading (within the program application) of verifiable program-specific performance data, as required under [Section V\(b\)](#).
  - a. Training providers may contact the policy mailbox at [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov) for videos on how to add a new education or training program and upload program performance data.

As stated above, initial program eligibility may be granted for only one year<sup>19</sup> starting on the date initial eligibility is granted.<sup>20</sup>

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<sup>18</sup> WIOA Sec. 122(b)(4)(B)

<sup>19</sup> WIOA Sec. 122(b)(4)(B)

<sup>20</sup> Ibid.

## (b) Continued eligibility application processes

### (1) Current provider; current program

Current training providers that wish to apply for continued eligibility for currently approved programs must take the following actions during the 30-day period preceding expiration of the program's eligibility.

1. Access the NEworks [sign-in page](#) and sign into the provider account under "Option 1" using the username and password created during the account registration process.
2. Then, the training provider must review and update the currently approved education or training program application and resubmit the program application for the program, which must include uploading (within the program application) of verifiable program-specific performance data, as required under [Section V\(b\)](#).
  - a. Training providers may contact the policy mailbox at [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov) for videos on how to add a new education or training program and upload program performance data.

As stated above, continued program eligibility may be granted for only two years<sup>21</sup> starting on the date continued eligibility is granted.

## (c) Eligibility determinations

### (1) New training provider eligibility

During review of an NEworks new provider account registration, NDOL verifies the training provider meets eligibility requirements described in [Section I\(a\)\(1\)](#) and [Section I\(a\)\(3\)](#). NDOL will issue an eligibility determination to the applying training provider by email within 15 calendar days of commencement of the review process, absent extenuation circumstances.

### (2) Current training provider eligibility

As part of the review process for initial or continued eligibility for programs, NDOL verifies that the current training provider continues to meet eligibility requirements described in [Section I\(a\)\(1\)](#) and [Section I\(a\)\(3\)](#), as applicable. If NDOL determines the training provider no longer meets eligibility requirements, NDOL will notify the training provider by email within 15 calendar days of commencement of the review process, absent extenuation circumstances.

### (3) Initial and continued eligibility for programs

Program applications for initial and continued eligibility are reviewed by NDOL based on the applicable requirements defined in [Section I\(b\)\(1\)](#), [Section I\(c\)](#), [Section I\(d\)](#), as well as the requirements of [Section V\(b\)](#). Program eligibility determinations will not be completed until:

1. training provider eligibility has been verified for initial eligibility or reverified for continued eligibility; and

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<sup>21</sup> TEGL 08-19, Attachment II

2. each submitted program application is fully complete, including uploaded program-specific performance data, as required under [Section II\(a\)](#), [Section II\(b\)](#), and [Section II\(c\)](#), as well [Section V\(b\)](#).

NDOL will issue a program eligibility determination to the training provider by email within 30 calendar days of the date of submission of a complete application, absent extenuation circumstances.

#### (d) Technical assistance

NDOL provides technical assistance to training providers upon written request regarding eligibility processes, uploading of program-specific performance data, eligibility determinations, and minimum program-specific performance standards. Requests for technical assistance must be submitted by email to [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov).

### Section III. Registered Apprenticeship programs

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#### (a) Nebraska Registered Apprenticeship programs

##### (1) Automatic eligibility

Registered Apprenticeship programs registered by the US Department of Labor *Nebraska* Office of Apprenticeship are automatically eligible for inclusion on Nebraska's ETPL<sup>22</sup> and are not subject to:

- eligibility requirements defined in [Section I\(a\)\(1\)](#), [Section I\(a\)\(3\)](#), [Section I\(b\)](#), [Section I\(c\)](#), and [Section I\(d\)](#); or
- program-specific performance reporting requirements described in [Section V\(b\)](#).

##### (2) Outreach to non-participating Nebraska Registered Apprenticeship sponsors

On an annual basis, NDOL contacts the US Department of Labor *Nebraska* Office of Apprenticeship to obtain contact information for Nebraska sponsors of active Registered Apprenticeship programs. NDOL then contacts the sponsors of those programs:

- to promote participation in Nebraska's ETPL, providing information on the benefits of participation; and
- advises the sponsors that, if interested in participating, all that's required is submission of complete program standards (including all applicable attachments) to the policy mailbox at [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov).

NDOL may also request information on the cost of the related technical instruction (RTI) if the sponsor is not the provider of RTI.<sup>23</sup>

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<sup>22</sup> 20 CFR § 680.470(a)

<sup>23</sup> TEGL 8-19

## (b) National Registered Apprenticeship programs

### (1) Automatic eligibility

Sponsors and programs that have been approved by the US Department of Labor National Office of Apprenticeship *and* have an operational presence in Nebraska *or* provide on-line instruction that is available in Nebraska are automatically eligible for inclusion on Nebraska's ETPL<sup>24</sup> and are not subject to:

- eligibility requirements defined in [Section I\(a\)\(1\)](#), [Section I\(a\)\(3\)](#), [Section I\(b\)](#), [Section I\(c\)](#), and [Section I\(d\)](#); or
- program-specific performance reporting requirements described in [Section V\(b\)](#).

### (2) Outreach to non-participating National Registered Apprenticeship sponsors

#### (i) Direct contact with NDOL

Sponsors of National Registered Apprenticeship programs are not contacted by NDOL to promote participation in Nebraska's ETPL. However, if the sponsors contact NDOL directly requesting inclusion in Nebraska's ETPL, NDOL contacts the US Department of Labor *Nebraska* Office of Apprenticeship and requests confirmation of registration status of the sponsor and program. If sponsor and program status is confirmed by the US Department of Labor *Nebraska* Office of Apprenticeship *and* NDOL confirms the sponsor has an operational presence in Nebraska *or* provides on-line instruction that is available in Nebraska, NDOL advises the sponsor that all that's required for inclusion on Nebraska's ETPL is submission of a PDF version of the USDOL-approved program standards (including all applicable attachments) to the policy mailbox at [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov). NDOL may also request information on the cost of RTI if the sponsor is not the provider of the RTI.<sup>25</sup>

#### (ii) Indirect contact with NDOL

If the National Office of Apprenticeship contacts NDOL on behalf of a National Registered Apprenticeship program that is interested in inclusion on Nebraska's ETPL, NDOL requests confirmation that the sponsors *have* operational presence in Nebraska *or* provide on-line instruction that is available in Nebraska. If the National Office of Apprenticeship, *confirms* operational presence in Nebraska *or* availability of on-line instruction in Nebraska, NDOL advises the sponsor that all that's required for inclusion on Nebraska's ETPL is submission of a PDF version of the USDOL-approved program standards (including all applicable attachments) to the policy mailbox at [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov).

NDOL may also request information on the cost of RTI if the sponsor is not the provider of the RTI.<sup>26</sup>

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<sup>24</sup> 20 CFR § 680.470(a); TEGL 8-19 Change 1

<sup>25</sup> TEGL 8-19

<sup>26</sup> TEGL 8-19

### (c) Maintenance of Registered Apprenticeship programs on Nebraska's ETPL

Once included on Nebraska's ETPL, Registered Apprenticeship program records are maintained on Nebraska's ETPL:<sup>27</sup>

- for as long as the program remains registered with the US Department of Labor *Nebraska* Office of Apprenticeship or the US Department of Labor *National* Office of Apprenticeship *and* the sponsor confirms biennially that the program should remain on Nebraska's ETPL;
- until the sponsor contacts NDOL by email at [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov) and requests to be removed from Nebraska's ETPL; or
- the sponsor's or program's eligibility is denied or terminated, as required under [Section IV](#).

NDOL is responsible for addition of eligible Registered Apprenticeship programs to Nebraska's ETPL and maintenance of the program applications on the ETPL.

## Section IV. Denial or termination of eligibility

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### (a) Denial or termination by NDOL

NDOL is solely responsible for making determinations on the denial or termination of eligibility for inclusion on Nebraska's ETPL and will do so based on:<sup>28</sup>

- the provisions of WIOA, its implementing rules and regulations, and other applicable laws, rules, regulations, and guidance;
- eligibility documentation that substantiates the determination; and
- any supplemental criteria and information and performance requirements established by a local board under local policy, as applicable.

#### (1) Reasons for denial or termination

1. NDOL must deny or terminate ETPL inclusion of any training provider or program that fails to meet eligibility requirements described in [Section I](#) and [Section II](#),<sup>29</sup> including failure to submit timely verifiable program-specific performance data as required under [Section V\(b\)](#) and failure meet minimum performance standards described under [Section V\(b\)\(4\)](#).
2. NDOL must deny or terminate ETPL inclusion of sponsors of Registered Apprenticeships and their respective programs and when it is determined that the programs are no longer registered with the US Department of Labor *Nebraska* Office of Apprenticeship or the US Department of Labor *National* Office of Apprenticeship, as applicable, based on confirmation by the applicable registering authority. In the event that sponsors have more than one

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<sup>27</sup> 20 CFR §§ 680.460(j) and 680.470(b)

<sup>28</sup> 20 CFR §§ 680.470(c) and 680.480

<sup>29</sup> 20 CFR § 680.480(c)

program, the sponsor will remain on Nebraska's ETPL along with any of the sponsor's programs that are still registered with the applicable registering authority.

3. NDOL must terminate the eligibility of a training provider, sponsor of a Registered Apprenticeship program for a period of not less than two years *and* require repayment of Title I funds received by the provider or sponsor during the period of noncompliance, when it is determined through investigation by the Commissioner of Labor, Reemployment Services Division Director, and the NDOL Office of the General Counsel that the training provider or sponsor:<sup>30</sup>
  - a. intentionally supplied inaccurate information, or an individual supplying information on behalf of the training provider or sponsor intentionally supplied inaccurate information;
  - b. substantially violated any provision of WIOA Title I:<sup>31</sup>
    - i. including the requirement to adhere to the nondiscrimination requirements of WIOA Sec. 188 and 29 CFR Part 38, including the requirement to adhere to the requirements of the Americans with Disabilities Act, as amended; or
    - ii. by refusing to submit timely, accurate, and verifiable program-specific performance data as required under this policy (does not apply to sponsors of Registered Apprenticeship programs);
  - c. intentionally failed to retain or provide access to program-specific documentation, as required under [Section VI\(b\)](#).
4. NDOL may terminate the eligibility of a training provider or program for other substantial violations relating to the provisions of WIOA, its implementing rules and regulations, and other applicable laws, rules, and regulations, including requirements established by a local board under local policy.

The remedies and penalties prescribed under WIOA, its implementing rules, regulations, and guidance and this policy, supplement but do not supplant other civil and criminal remedies and penalties in other provisions of law.<sup>32</sup>

## (2) Removal process based on conditions of ineligibility

In the event that NDOL determines that a training provider or sponsor of a Registered Apprenticeship program is no longer eligible for ETPL inclusion based on the conditions described in the applicable provisions of [Section IV](#), NDOL will notify the training provider or sponsor by email that eligibility has been denied or terminated and provide:

- reason(s) for denial or termination based on applicable provisions of this policy;
- a copy of this policy; and

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<sup>30</sup> 20 CFR §§ 680.460(l)(2), 680.470(c), and 680.480(b)

<sup>31</sup> When determining a substantial violation, NDOL must take into account exceptional circumstances beyond the training provider's or sponsor's control, such as natural disasters, unexpected personnel transitions, and unexpected technology-related issues [20 CFR § 680.460(l)(2)].

<sup>32</sup> WIOA Sec. 122(f)(2)

- if applicable, supporting documentation provided to NDOL by the US Department of Labor *Nebraska* Office of Apprenticeship or the US Department of Labor *National* Office of Apprenticeship.

The training provider or sponsor may appeal the decision to deny or terminate ETPL inclusion in accordance with [Section IV\(a\)\(4\)](#).

### (3) Removal process based on substantial violations

The Commissioner of Labor, Reemployment Services Division Director, and the NDOL Office of the General Counsel (collectively, the Review Panel) investigates allegations of substantial violations, based on conditions described in [Section IV\(a\)\(1\)](#), by:

- reviewing all available documentation allegedly supporting allegations of substantial violations, including applicable Federal laws, rules, regulations, and guidance and the provisions this policy, along with the submitted complaint and its supporting documentation, as available; and
- interviewing involved program staff and complainants, when possible.

Once the Review Panel reasonably determines the allegations of substantial violations are valid, NDOL issues written notice to the applicable training provider, *Nebraska* Registered Apprenticeship program sponsor, or *National* Registered Apprenticeship program sponsor of NDOL's intent to:

- remove the effected provider and/or program from Nebraska's ETPL; and
- impose applicable time-based and financial sanctions described in [Section IV\(a\)\(1\)](#).

In its written notice, NDOL advises the provider or sponsor of its right to appeal, which is described in [Section IV\(a\)\(4\)](#).

### (4) Appeal process

Training providers and sponsors of Registered Apprenticeship programs may appeal denials or terminations of eligibility, including denial or termination of local eligibility by a local board.<sup>33</sup> To appeal, the training provider or sponsor must submit a written request for a hearing to the Commissioner of Labor at the address provided below within 30 calendar days of notification of denial or termination.

Commissioner of Labor  
Nebraska Department of Labor  
PO Box 94600  
Lincoln, NE 68509-4600

Absent extenuating circumstances, the Commissioner will assign a hearing officer and a hearing will take place within 30 calendar days of the Commissioner's receipt of the written request for a hearing. The hearing will include:

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<sup>33</sup> 20 CFR §§ 680.480(d) and 683.630(b)

- a statement of the reasons why training provider or sponsor eligibility was denied or terminated; and
- an appeal by the training provider or sponsor describing why the decision should be reversed or a compromise established.

The Commissioner will render a final judgment that will include the length of time the training provider or sponsor remains ineligible, financial sanctions to be imposed, and conditions under which reinstatement of training provider or sponsor eligibility are justified.

A decision issued under this appeal process may not be appealed to the Secretary of Labor.<sup>34</sup>

#### (b) Denial or termination by local boards<sup>35</sup>

If a local board requires supplemental criteria and information from local training providers or has established levels of performance higher than those required by NDOL under [Section V\(b\)\(4\)](#) based on local policy, as permitted under [Section VIII\(b\)](#) (refer to Table 3, row 4), the local board may deny or terminate local eligibility for failure to meet those supplemental requirements or standards. Training providers may appeal a local board's denial or termination of local eligibility, according to the procedures described in [Section IV\(a\)\(4\)](#).

### **Section V. Performance reporting<sup>36</sup>**

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#### (a) NDOL performance reporting<sup>37</sup>

WIOA Secs. 116(d)(4) and 116(d)(6)(B) and 20 CFR § 677.230 require states to report performance information relating outcomes served by each approved program of training services included on their respective ETPLs. States report this information annually through the ETP Performance Report (ETA-9171), as described in TEGL 03-18. The US Department of Labor publishes the results of the ETA-9171 ETP Performance Reports on the [Training Provider Results](#) website. Consumers can use the website to explore training programs and careers. The website allows users to compare programs of study nationally, within a state, and across similar fields of study. Consumers can also compare training provider performance outcomes and program costs and filter selections to programs that meet their needs, such as online-only, in-person, or blended learning programs. The website contains all output information states provide in ETA-9171 reports.

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<sup>34</sup> 20 CFR § 683.630(b)(3)

<sup>35</sup> 20 CFR § 680.480(e)

<sup>36</sup> 20 CFR §§ 680.460(h)(1) and 680.490

<sup>37</sup> TEN 24-19

## (b) Training provider program performance reporting

### (1) Requirements and timelines for initial program performance reporting

#### (i) Requirements

Each training provider applying for initial eligibility for a new program must submit to NDOL program performance data for all students enrolled in the applicable program during the previous reporting period, as required under [Section II\(a\)](#), [Section II\(b\)](#), and [Section II\(c\)](#) and described directly below in [Section V\(b\)\(1\)\(ii\)](#).

#### (ii) Timelines

As part of the initial eligibility determination process, all-student program performance data for the new program must be submitted no later than 45 calendar days after submission of the application for initial eligibility for the new program for the 12-month period beginning July 1 of the previous calendar year. This 12-month period is the “reporting period” for initial eligibility purposes.

#### (iii) Technical assistance

NDOL will provide technical assistance upon written request regarding submission of initial all-student program performance data for new programs for initial eligibility purposes. Requests for technical assistance must be submitted by email to [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov).

#### (iv) Denial of initial eligibility

Failure to submit initial all-student program performance data will result in denial of eligibility, as described in [Section IV\(a\)\(1\)](#) and [Section IV\(a\)\(2\)](#).

### (2) Requirements and timelines for annual program performance reporting for existing programs

#### (i) Requirements

Each training provider wishing to maintain continued eligibility for each of its approved ETPL programs must submit to NDOL program performance data on an annual basis for all of the provider’s approved programs, as stated in [Section II\(a\)](#), [Section II\(b\)](#), and [Section II\(c\)](#) and described directly below in [Section V\(b\)\(2\)\(ii\)](#).

#### (ii) Timelines

As part of the continued eligibility determination process, annual program performance data for a training provider’s currently approved programs must be submitted no later than August 1 of each calendar year for the 12-month period beginning July 1 of the previous calendar year. This 12-month period is the “reporting period” for continued eligibility purposes.

#### (iii) Technical assistance

NDOL will provide technical assistance upon written request regarding submission of annual all-student program performance reports. Requests for technical assistance must be submitted by email to [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov).

#### (iv) Denial of continued eligibility

Failure to submit annual all-student program performances will result in denial or termination of eligibility, as described in [Section IV\(a\)\(1\)](#) and [Section IV\(a\)\(2\)](#). Further, failure to comply with any of the annual program performance reporting requirements may result in questioned costs as determined by NDOL.

#### (3) Program performance reporting tool for annual program performance reporting purposes

The State provides a reporting tool through NEworks for purposes of initial eligibility determinations and annual program performance reporting purposes for continued eligibility. The tool is an .xlsx file that can be downloaded by the training provider, populated with the required program performance data, and then uploaded to NEworks. Within the tool, the following data elements are collected:

##### 1. *Social Security Number (SSN)*

Enter the nine-digit (all-numeric) SSN for all students who were enrolled or exited during the program year (i.e., reporting period). A missing SSN entry will result in an error message and upload failure. If the SSN is not available, please enter a nine-digit (all-numeric) student identifier. Note that invalid SSNs will affect employment performance outcomes.

##### 2. *Start date*

Enter start date for all students who were enrolled or exited during the program year. The start date must be in MM/DD/YYYY format and cannot be a future date. A missing or invalid start date entry will result in an error message and upload failure.

##### 3. *Status*

Select status from the drop-down list for all students (selection options: completed, withdrew; transferred). If no status is selected, the system will default to a status of enrolled.

##### 4. *Exit date*

An exit date is required for all students who were enrolled and have exited during the program year (selection options: completed, withdrew, transferred). The exit date must be in MM/DD/YYYY format and cannot be a future date or earlier than the start date. A missing or invalid exit date entry will result in an error message and upload failure.

##### 5. *Credential*

Select credential from the drop-down list (selection options: yes, no, unknown) if the student attained the credential displayed at the top of the worksheet. Credential is required for all students who exited during the program year.

#### (4) Program performance reporting requirements

As part of the initial and continued eligibility application processes described in [Section II\(a\)](#) and [Section II\(b\)](#), program performance data must be provided for each program.

#### (5) Program performance calculations

Based on uploaded performance data pursuant to [Section V\(b\)](#) and wage matching data, NEworks calculates program-specific performance outcomes for WIOA students *and* all students, in aggregate. To clarify, outcomes for indicators 1 through 4 are based on data reported by the training provider, and outcomes for indicators 5, 6, and 7 are calculated based on NDOL's wage matching systems. As stated above, program performance outcomes are reported in aggregate; no student-level data appears in the program-specific outcomes report, in compliance with requirements established under Federal law regarding FERPA and protection of personally identifiable information.

Following receipt of performance data from the training provider and wage-matching processes within NEworks, information on program-specific performance outcomes will appear in each program application for the following seven performance indicators for WIOA students *and* all students, in aggregate:

1. total enrolled;
2. total exited;
3. program completers;
4. credential rate;
5. employment rate 6 months after exit;
6. employment rate 12 months after exit; and
7. median earnings 6 months after exit.

#### (6) Minimum performance standards for program eligibility determinations

Programs must meet the following four minimum program performance standards for each reporting period for *all students* in order to receive initial or continued eligibility for inclusion on Nebraska's ETPL:

1. 50 percent or more of *all students* enrolled<sup>38</sup> in the program attained a credential;
2. 50 percent or more of *all students* who enrolled in the program are employed 6 months after exit;

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<sup>38</sup> Performance reporting is required only for individuals enrolled in the program of training services and is not required for individuals who elect to take an individual course that is part of the program [TEGLs 03-18 and 08-19 Attachment I].

3. 50 percent or more of *all students* enrolled in the program are employed 12 months after exit; and
4. median earnings 6 months after exit for *all students* who enrolled in the program are at least 50 percent or more of the average of the State's Federally-negotiated levels of performance for median earnings at the second quarter after exit from all Title I programs (youth, adult, and dislocated worker).

#### (c) Technical assistance

As stated above in [Section V\(b\)\(1\)\(iii\)](#) and [Section V\(b\)\(2\)\(iii\)](#), NDOL provides technical assistance to training providers upon written request regarding submission of program-specific performance data. Requests for technical assistance must be submitted by email to [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov).

## Section VI. Records retention and access requirements<sup>39</sup>

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#### (a) State record retention and access requirements

NDOL's record retention and access requirements are defined in the State's records management policy.<sup>40</sup>

#### (b) Training provider record retention and access requirements

Any documents, papers, or other records of a training provider that pertain to *all student* program-specific performance data provided through NEworks must be retained by the training provider for a minimum period of three years from the date of submission through NEworks, except under the following circumstances.

- If any litigation, claim, or audit relating to a training provider's program is started before the expiration of the three-year retention period, the records must be retained until all litigation, claims, or audit findings involving the program have been resolved and final action taken.
- When the training provider is notified in writing by a Federal agency or NDOL to extend the retention period for program-related data.

The US Department of Labor and NDOL, or any of their authorized representatives, must have rights of access to any documents, papers, or other records of a training provider which pertain to program-specific performance data, in order to make audits, examinations, excerpts, and transcripts.

The right of access also includes timely and reasonable access to training provider personnel for the purpose of interview and discussion related to such documents, papers, or other records. These rights of access are not limited to the required retention period described above, as rights

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<sup>39</sup> 2 CFR §§ 200.333 and 200.336(a) and (c)

<sup>40</sup> The State's record retention policy is included in the State policy manual, which is accessible at <https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies>.

of access last as long as the documents, papers, or other records are retained by the training provider.

## **Section VII. Participants enrolled in ineligible programs**

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(a) When a program is removed from the state ETPL for a substantial violation of the requirements of WIOA as described in Section V of this policy, a participant is not permitted to use Title I funds to continue attending the removed program. If the participant wishes to continue with Title I training services, the case manager must assist the participant with transition to another program on the Nebraska ETPL.

(b) When a program of training is removed from the state ETPL for a reason other than a substantial violation of the requirements of WIOA as described in Section V(3) of this policy, a participant already enrolled in that program can complete their training using an already-established ITA. However, an ITA should not be modified or extended for a participant beyond the original plan approval as it relates to a program of training that is no longer on the ETPL. If a participant in a removed program wishes to transition to another program on the ETPL, the case manager must assist the participant in transitioning to such a program.

## **Section VIII. Roles and responsibilities<sup>41</sup>**

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### **(a) NDOL**

NDOL's responsibilities regarding Nebraska's ETPL are listed in Table 1.

Table 1. NDOL responsibilities

Description
1. Managing Nebraska's ETPL
2. Clarifying NDOL and local board roles and responsibilities
3. Establishing eligibility criteria, processes, and performance reporting requirements
4. Establishing a method for adding Registered Apprenticeship and National Registered Apprenticeship programs to Nebraska's ETPL
5. Ensuring the development, maintenance, and dissemination of Nebraska's ETPL
6. Providing an opportunity for interested members of the public, including local boards, to make recommendations and submit comments regarding eligibility criteria and processes and performance reporting requirements
7. Verifying the status of Registered Apprenticeship programs once every 2 years
8. Ensuring training providers and their programs meet established eligibility criteria and adhere to the eligibility processes and performance reporting requirements
9. Receiving and reviewing training provider and program applications and making eligibility determinations for training provider and program eligibility
10. Removing training providers and programs from Nebraska's ETPL that fail to meet established requirements
11. Taking enforcement actions against training providers, as required under WIOA and its implementing rules, regulations, and guidance, as defined in this policy

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<sup>41</sup> 20 CFR §§ 680.430(b)(1) – (5), 680.450, 680.460, 680.470, and 680.500(d)(1) – (4)

Description
12. Establishing an appeals process for denied or terminated training provider and program eligibility
13. Publication of state-level training provider program-specific performance reports on the <a href="#">Training Provider Results</a> website through its submission of annual performance of programs on Nebraska's ETPL to USDOL

## (b) Local boards

Responsibilities of local boards regarding Nebraska's ETPL are listed in Table 2.

Table 2. Responsibilities of local boards regarding Nebraska's ETPL <sup>42</sup>

Description
1. Carrying out ETPL-related procedures assigned by NDOL
2. Working with NDOL to ensure sufficient numbers and types of training providers are serving local areas, including training providers with expertise in serving individuals with disabilities and adults in need of education and literacy activities
3. Ensuring the dissemination and appropriate use of Nebraska's ETPL in and throughout the local area's one-stop delivery system
4. Ensuring adherence to consumer choice and consultation requirements described <a href="#">Section VIII(b)(1)</a>

In addition to the responsibilities described in Table 2, local boards may take the actions described in Table 3 regarding training providers and programs.<sup>43</sup>

Table 3. Permitted actions of local boards regarding Nebraska's ETPL

Description
1. Making recommendations to NDOL on the process used in determining eligibility of training providers and programs
2. Requiring supplemental (not alternative) criteria and information from local area training providers to become or remain eligible in the local area
3. Setting higher local levels of program performance for training providers than the minimum program-specific performance standards established by NDOL
4. Supplementing criteria and information requirements established under Federal law, rules, regulations, and guidance and this policy in support of informed consumer choice requirements and the achievement of locally established performance indicators, including: <ol style="list-style-type: none"> <li>information on training programs that are linked to in-demand occupations in the local area;<sup>44</sup></li> <li>performance and cost information, including program performance and cost information, for local area outlet(s) of multi-site eligible training providers;</li> <li>information that shows how programs are responsive to local requirements; and</li> <li>other appropriate information related to the objectives of WIOA</li> </ol>

Note that local boards *are not* permitted impose additional requirements and criteria upon Registered Apprenticeship programs beyond those established under WIOA, its implementing rules, regulations, and guidance and those articulated in this policy.<sup>45</sup>

<sup>42</sup> 20 CFR §§ 680.340 and 680.430(c)

<sup>43</sup> 20 CFR §§ 680.430(d) – (e) and 680.510

<sup>44</sup> Data on in-demand occupations Nebraska's regions is provided by the Nebraska Department of Labor and is accessible at <https://newworks.nebraska.gov/vosnet/gsipub/documentView.aspx?enc=oduMpwMRTIQnt7W7WO2/Ew==>.

<sup>45</sup> 20 CFR § 680.510(a)

### (1) Consumer choice and consultation requirements<sup>46</sup>

Training services must be provided in a manner that maximizes informed consumer choice and meets consultation requirements during a participant's selection of a training provider available on Nebraska's ETPL, as described below.

1. Each local board, through its one-stop centers, must make Nebraska's ETPL available to one-stop center customers.
2. An individual who has been determined eligible for training services may select a program from Nebraska's ETPL only after consultation with a case manager.
  - a. *Consultation* with a case manager must include:<sup>47</sup>
    - i. either an interview, evaluation, or assessment and career planning informed by local labor market information and training provider performance information;
    - ii. appraisal of the participant's need for training services based on an interview, evaluation, or assessment and career planning informed by local labor market information and training provider performance information or any other career service received; and
    - iii. documenting the participant's need for training services in the participant's case file.
3. There is no requirement that career services be provided as a condition for receipt of training services. However, if career services are not provided before training, the case manager must document the circumstances that justify the decision to authorize training services without first providing the services mentioned in paragraph 3 above.
4. Priority consideration must be given to programs that:
  - a. lead to recognized postsecondary credentials; and
  - b. align with in-demand occupations in the local area.
5. Unless the applicable Title I program has exhausted training funds for the program year, the case manager must refer the individual to the selected training provider on Nebraska's ETPL and establish an ITA for the individual to pay for training.
6. Costs for training services paid through an ITA to a training provider must be funded by out-of-school youth,<sup>48</sup> adult, or dislocated worker program funds, depending on the program in which the participant is enrolled or co-enrolled.
  - a. In the event that NDOL has an active waiver from the US Department of Labor Employment and Training Administration allowing for establishment of ITAs for in-

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<sup>46</sup> 20 CFR § 680.340

<sup>47</sup> 20 CFR § 680.220

<sup>48</sup> Refer to the State's youth program policy for information regarding ITAs and in-school youth. The State's policy manual is accessible at <https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies>.

school youth, in-school youth program funds may be used to fund an ITA, subject to the requirements and limitations established in the waiver.<sup>49</sup>

7. The local board, through the one-stop center, may coordinate funding for ITAs with funding from other Federal, state, local, or private job training programs or sources to assist participants with obtaining training services, subject to requirements for coordination of WIOA training funds under 20 CFR § 680.230.

## DISCLAIMER

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

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<sup>49</sup> Local area administrative entity staff must confirm with NDOL the existence of an active waiver before authorizing use of ISY funds to establish ITAs for ISY.

## APPENDIX I. Definitions

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**PURPOSE.** Definitions in this appendix are provided as supplemental information that supports the provisions of the policy. The terms and phrases defined in this appendix should be read and understood in the context in which they are used in the policy and not as stand-alone information independent of that context.

### 1. business partnership

For purposes of determining the eligibility of a program, *business partnership* means an informal or formal partnership with regional or local employers that relates directly to the program. Information to be provided by a training provider about the business partnership includes:

- a description of the quality and quantity of employer partnerships; and
- the role of that partnership in relation to the program.

### 2. enrolled

The meaning of the term *enrolled*, with regard to a program of training services that is included on Nebraska's ETPL, is determined by each training provider in accordance with its organizational standards.

### 3. linked to in-demand occupations

The phrase *linked to in-demand occupations* refers to the alignment of a program with in-demand occupations in Nebraska.<sup>50</sup>

### 4. program of training services

A *program of training services* is one or more courses or classes, or a structured regimen that leads to:<sup>51</sup>

- a. industry-recognized certificate or certification;
- b. license recognized by the Federal government, State of Nebraska, or another state;
- c. postsecondary diploma;
- d. associate or baccalaureate degree;
- e. secondary-school diploma or its equivalent earned in conjunction with occupational skills training;
- f. employment; or
- g. measurable skills gains toward employment.

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<sup>50</sup> Data on in-demand occupations in Nebraska is provided by the Nebraska Department of Labor and is accessible at <https://neworks.nebraska.gov/vosnet/gsipub/documentView.aspx?enc=oduMpwMRTIQnt7W7WO2/Ew==>.

<sup>51</sup> 20 CFR § 680.420

## 5. recognized postsecondary credential

A *recognized postsecondary credential* is one of the following:<sup>52, 53</sup>

- industry-recognized certificate or certification;
- certificate of completion of an apprenticeship;
- license recognized by the Federal Government or State of Nebraska;
- associate degree; or
- baccalaureate degree.

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<sup>52</sup> WIOA Sec. 3(52)

<sup>53</sup> Refer to the State's performance accountability for detailed information on recognized postsecondary credentials. The State's policy manual is accessible at <https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies>.

## 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 402.471.9000 <a href="mailto:ndol.wioa_policy@nebraska.gov">ndol.wioa_policy@nebraska.gov</a>	Policy category
	Youth, Adult, and Dislocated Worker; Training
	Effective date
	April 10, 2019
	Supersedes
	On-the-Job Training (OJT), Change 1 (effective August 31, 2018)

## On-the-Job Training (OJT), Change 2

### 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

Under WIOA, work-based training is employer driven with the goal of unsubsidized employment after training for WIOA Title I (youth, adult, and dislocated worker) program participants. On-the-job training (OJT) is one of several types of work-based training. OJT is provided under a contract with an employer or the sponsor of a Registered Apprenticeship program.<sup>1</sup>

### ACTION

This policy supersedes and cancels the State's On-the-Job Training (OJT) policy (effective date August 31, 2018). Questions and comments on this policy may be submitted in writing to the WIOA policy mailbox at [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov).

<sup>1</sup> 20 CFR § 680.700(a)

Each local board must:

- establish and document, in its local plan or local policy on OJT, methods for determining OJT duration as described in [Section I\(a\)\(3\)](#);
- establish and document, in its local plan or local policy on OJT, local area criteria and procedures for determining that an eligible employed worker is not earning a self-sufficient wage comparable to or higher than wages from previous employment as described in [Section I\(c\)\(1\)\(i\)](#);
- provide for continual oversight and monitoring to make certain that Title I funds are utilized to provide participants with the OJT necessary to successfully retain employment as described in [Section I\(c\)\(2\)](#); and
- document the factors used when deciding to increase the employer-reimbursement rate above 50 percent (but not more than 75 percent)<sup>2</sup> as described in [Section II\(a\)\(1\)](#).

## CHANGES

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This policy eliminates requirements relating to a cap on wage reimbursements to employers, as described in Section I(b)(2) of the superseded policy. No other material changes have been made.

## POLICY

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This policy establishes:

- requirements for OJT, including training, employer, and contract requirements;
- permitted and prohibited uses of Title I funds for OJT; and
- appeal and grievance procedures relating to OJT.

This policy has three sections and two appendices.

Section I.	Requirements for OJT .....	3
Section II.	Use of OJT Funds .....	7
Section III.	Appeal and Grievance Procedures .....	9
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<sup>2</sup> 20 CFR § 680.730(b); TEGL 19-16

## Section I. Requirements for OJT

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OJT is provided under a contract with an employer, or sponsor of a Registered Apprenticeship program, in the public, private nonprofit, or private sector. Occupational skills training is provided for the participant according to the OJT contract. The employer is reimbursed for a portion of the participant's wages to compensate for the extraordinary costs of providing training and supervision related to the training. Except as described in [Section I\(c\)\(1\)](#), OJT is intended for unemployed participants as a method for providing training necessary to successfully retain employment. In its design of the local OJT program, each local board is strongly encouraged to refer to and use the *Strategies for Implementing OJT Simply and Effectively*, developed by the US Department of Labor Employment and Training Administration.<sup>3</sup>

### (a) Training requirements

#### (1) In-demand industry sectors and occupations

OJT must be directly linked:<sup>4</sup>

- to an in-demand industry sector or occupation in the local area or planning region, or in another area to which the participant is willing to relocate; or
- upon approval of the local board, to an occupation determined by the local board to be in a sector of the economy that has a high potential for sustained demand or growth in the local area.

#### (2) Wages, benefits, and working conditions<sup>5</sup>

Participants in OJT must be compensated at the same wage rates, including periodic increases, as trainees or employees who:

- are similarly situated in similar occupations by the same employer; and
- have similar training, experience, and skills.

In addition, OJT wage rates must comply with all applicable Federal and state laws, including laws relating to minimum hourly wages; and participants in OJT must be provided benefits and working conditions comparable to those of other trainees or employees working a similar length of time and doing the same type of work for the employer.

#### (3) OJT duration<sup>6</sup>

Each local board must establish and document, in its local plan or local policy on OJT, methods for determining OJT duration. The duration of OJT must be limited to the period of time required

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<sup>3</sup> The resource guide is accessible through WorkforceGPS at [https://www.workforcegps.org/events/2016/05/02/13/26/Strategies\\_for\\_Implementing\\_OJT-Simply\\_and\\_Effectively](https://www.workforcegps.org/events/2016/05/02/13/26/Strategies_for_Implementing_OJT-Simply_and_Effectively).

<sup>4</sup> WIOA Sec. 134(c)(3)(G)(iii)

<sup>5</sup> WIOA Secs. 181(a)(1) and 181(b)(5); 29 USC § 206(a)(1); 20 CFR § 683.275; Neb. Rev. Stat. §§ 48-1201 to 48-1209.01

<sup>6</sup> 20 CFR § 680.700(c)

for the participant to become proficient in the occupation for which the training is being provided. In determining the appropriate length of the contract, consideration should be given to the:

- skills required for the occupation;
- academic and occupational skill level of the participant, which must be based on a skills-gap assessment;
- prior work experience of the participant; and
- participant's individual employment plan (IEP) or individual service strategy (ISS), as applicable.

#### (4) Training plan<sup>7</sup>

An OJT training plan must be (a) established for each participant placed in OJT and (b) based on the skills to be acquired during OJT. In addition, each OJT training plan must be unique and tailored to the specific training needs of the participant. There is no need for detailed descriptions of the training methods to be used. The training plan should focus on the skills and competencies to be attained, not the manner in which skills will be developed or the individual tasks to be performed.

#### (b) Employer requirements

##### (1) Pre-award (pre-OJT contract) review<sup>8</sup>

Prior to entering into an OJT contract with an employer (a) local area staff must conduct a pre-award review and (b) the employer must successfully complete the pre-award review. The purpose of the pre-award review is to determine whether the employer is qualified and capable of providing OJT that complies with the requirements of an OJT contract, this policy, and the applicable provisions of WIOA. The pre-award review must be conducted and documented as described in [APPENDIX II](#).

##### (2) Records retention<sup>9</sup>

Each employer providing OJT must maintain records relating to the participant and the OJT for a period of no less than three years from the close of the applicable program year, or longer if any litigation or audit has begun or any claim is instituted which involves these records. In that case, the employer must retain the records for a period of no less than three years from the conclusion or resolution of the litigation, audit findings, or claim. The employer must allow access to those records for authorized entities, including local area staff performing the oversight and monitoring activities described in [Section I\(c\)\(2\)](#).

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<sup>7</sup> For an example of an effective training plan, refer to *Strategies for Implementing OJT Simply and Effectively*, which is accessible through WorkforceGPS at [https://www.workforcegps.org/events/2016/05/02/13/26/Strategies\\_for\\_Implementing\\_OJT-Simply\\_and\\_Effectively](https://www.workforcegps.org/events/2016/05/02/13/26/Strategies_for_Implementing_OJT-Simply_and_Effectively).

<sup>8</sup> 20 CFR § 683.260(b)

<sup>9</sup> Refer to the State's current policy on records management for additional information on records retention.

### (3) Employer performance

Employers providing OJT are not subject to the eligibility and performance reporting requirements established by NDOL for eligible training providers and are not included on Nebraska's Eligible Training Provider List.<sup>10</sup>

### (4) Ineligible employers<sup>11</sup>

1. If it is determined during a pre-award review that an employer's business, or any part of its business, has relocated and employees at the employer's other location(s) were laid off as a result of the relocation, the employer is not eligible to receive Title I funds for the provision of OJT until the employer has been in operation at its current location at least 120 calendar days.
2. Any employer that does not agree to an OJT contract that includes all of the elements described in Table 1 of [Section I\(c\)](#) is not eligible to receive Title I funds for the provision of OJT.
3. Local boards must not enter into an OJT contract with an employer that has:
  - a. failed to successfully complete the pre-award review procedures described in [APPENDIX II](#); or
  - b. exhibited a pattern of failing to provide OJT participants with continued long-term employment as regular employees with wages and employment benefits (including health benefits) and working conditions at the same level and to the same extent as other employees working a similar length of time and doing the same type of work.

### (c) Contract requirements

OJT contracts must, at a minimum address the elements described in Table 1 and be procured in accordance with all Federal, state, and local procurement requirements and policies.

*Table 1. Required OJT contract elements*

Element	Description
OJT occupation	The occupation for which OJT will be provided must be described and must comply with the requirements of <a href="#">Section I(a)</a> .
OJT wage, benefits, and working conditions	The OJT wage, benefits, and working conditions must be defined and must comply with the requirements of <a href="#">Section I(a)(2)</a> .
OJT duration	The duration of the OJT must be defined and must comply with the requirements of <a href="#">Section I(a)(3)</a> .
Training plan	A training plan, as described in <a href="#">Section I(a)(4)</a> , must be included and must consist of: <ul style="list-style-type: none"><li>▪ comprehensive list of the occupational skills the participant will acquire during OJT, which must be directly linked to the OJT occupation; and</li><li>▪ if classroom training is part of the OJT, a clear description of the classroom training to be provided, which must be directly linked to the OJT occupation.</li></ul>
Recordkeeping and record retention	Provisions describing the employer's responsibilities with regard to recordkeeping and maintenance must be included and must comply with the requirements of <a href="#">Section I(b)(2)</a> .

<sup>10</sup> 20 CFR § 680.530(a)

<sup>11</sup> WIOA Secs. 181(d) and 194(4); 20 CFR §§ 680.700(b) and 683.260

Element	Description
Justification for OJT for employed participant	If the OJT participant is an eligible employed worker, the contract must include a justification of the participant's need for OJT, which must comply with the requirements of <a href="#">Section I(c)(1)</a> .
Employer reimbursement	Employer reimbursement must be defined and must comply with the requirements of <a href="#">Section II(a)</a> , including subsection (1).

**IMPORTANT.** Recontracting with an employer is allowable and desirable when the employer has demonstrated a high success rate with regard to successful completion of OJT by participants and retention of those participants.

### (1) Contracts for employed participants

While OJT is intended for unemployed participants, OJT contracts may be established for eligible employed workers when all of the following requirements are met:<sup>12</sup>

- the employed worker is not earning a self-sufficient wage comparable to or higher than wages from previous employment (refer to [Section I\(c\)\(1\)\(i\)](#) regarding determining self-sufficient wage);
- requirements for a pre-award review ([Section I\(b\)\(1\)](#)) and OJT contract requirements ([Section I\(c\)](#)) are met; and
- the OJT relates to one or more of the following factors:
  - introduction of new technologies;
  - introduction to new production or service procedures;
  - upgrading to a new job that requires additional skills;
  - workplace literacy; or
  - other appropriate purposes identified by the local board.

#### (i) Determining self-sufficient wages

Determining that an eligible employed worker is not earning a self-sufficient wage comparable to or higher than wages from previous employment must be based on criteria and procedures established under the local board's policy on OJT.

### (2) Oversight and monitoring

The local board must provide for oversight and continual monitoring<sup>13</sup> of OJT contracts to ensure that Title I funds provided through OJT contracts are utilized to provide participants with the training necessary to successfully retain employment. At a minimum, oversight must be based

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<sup>12</sup> 20 CFR § 680.710

<sup>13</sup> 20 CFR § 683.410(a)

on the requirements of the OJT contract, this policy, and applicable WIOA provisions and must include monitoring of:

- participant progress;
- working conditions;
- compensation made and benefits provided to the participant;
- invoicing by and reimbursement to the employer; and
- recordkeeping and record retention by the employer, including records describing wages, benefits, time and attendance records, and other personnel records generated and maintained by the employer for other trainees or employees.

## **Section II. Use of OJT funds**

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### **(a) Payments to employers<sup>14</sup>**

Reimbursement of a portion of the participant's wages made to the employer providing OJT constitutes compensation for the extraordinary costs associated with training the participant and potentially lower productivity of the participant while in OJT. (Employers are not required to document the extraordinary costs.) Employers may be reimbursed up to 50 percent of the wages paid to a participant during OJT. The 50 percent employer-reimbursement rate may be increased to 75 percent by the local board as described in [Section II\(a\)\(1\)](#).

**IMPORTANT.** Co-enrollment may assist in making additional funds available for OJT.<sup>15</sup> For example, Title I allows up to 75 percent reimbursement to employers for OJT, while the Trade Adjustment Assistance (TAA) program allows reimbursement up to 50 percent. For OJT approved training for a co-enrolled TAA participant, the TAA Program may reimburse employers up to 50 percent, and Title I may reimburse employers up to an additional 25 percent to bring the total reimbursement to employers up to 75 percent to align TAA Program benefits with Title I benefits.

### **(1) Increased employer-reimbursement rate<sup>16</sup>**

A local board may increase the employer-reimbursement rate under an OJT contract, when taking into account the:

- characteristics of the participant, including whether the participant is an individual with a barrier to employment;
- size of the employer, with an emphasis on small businesses;

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<sup>14</sup> 20 CFR § 680.720

<sup>15</sup> TEGL 19-16

<sup>16</sup> 20 CFR § 680.730; TEGL 19-16

- quality of employer-provided training and advancement opportunities (e.g., whether the OJT will lead to an industry-recognized credential); and
- other factors the local board may determine appropriate, including the:
  - number of participants involved in the OJT;
  - wage and benefit levels of the participants, at the beginning of OJT and after completion; and
  - relative benefit of the training to the competitiveness of the participant.

The local board must document the factors used when deciding to increase the employer-reimbursement rate above 50 percent. The local board must not increase the employer-reimbursement rate beyond 75 percent.

#### (b) OJT and Registered Apprenticeship programs<sup>17</sup>

OJT funds may be used for the OJT portion of a Registered Apprenticeship program. An OJT contract may be entered into with (a) the sponsor of the Registered Apprenticeship program; or (b) an employer participating in the sponsor's Registered Apprenticeship program, provided that employer meets the requirements established in [Section I\(b\)](#). Depending on the length of the Registered Apprenticeship program and the requirements or limitations of the local board's policy on OJT, OJT funds may be used for some or all OJT required under the Registered Apprenticeship program.

#### (c) OJT and ITA funds<sup>18</sup>

OJT funds and Individual Training Account (ITA) funds may be used in combination when placing participants into OJT, including training services provided under pre-apprenticeship programs and Registered Apprenticeship programs.

#### (d) Prohibited uses<sup>19</sup>

Funds provided for OJT under Title I must not be used for any business or part of a business that has relocated until 120 calendar days after the date the business commences operations at its new location. This prohibition on the use of OJT funds applies when the relocation of the business, or part of the business, results in a loss of employment for any employee of the business at the original location; provided that the original location is within the United States.<sup>20</sup> If the Secretary of the US Department of Labor (Secretary) determines that a violation of this prohibition has occurred, the Secretary must require repayment to the United States an amount equal to the amount expended in violation of the prohibition.

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<sup>17</sup> 20 CFR § 680.740; TEGL 19-16

<sup>18</sup> 20 CFR §§ 680.320 and 680.750

<sup>19</sup> WIOA Secs. 181(d)(2) – (3) and 194(4); 20 CFR § 683.260

<sup>20</sup> Refer to [Section I\(b\)\(4\)](#) for additional information on this prohibition.

### Section III. Appeal and grievance procedures<sup>21</sup>

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#### (a) Denial of employer eligibility to provide OJT

An employer that has been denied eligibility as an OJT provider may file a complaint through the local board's established grievance procedures.

An appeal may be made to the State according to the procedures described in the State's policy on grievances and complaints if the complainant:

- does not receive a determination on a complaint filed at the local level within 60 calendar days of filing; or
- is dissatisfied with the local-level determination.

#### (b) Displacement of regular employees and participants

An OJT participant must not displace any current employee of the employer providing OJT. Displacement includes any partial displacement, such as a reduction in the hours of non-overtime work, wages, or employment benefits. Regular employees and OJT participants alleging such a displacement may file a complaint through the local board's established grievance procedures.

An appeal may be made to the State according to the procedures described in the State's policy on grievances and complaints if the complainant:

- does not receive a determination on a complaint filed at the local level within 60 calendar days of filing; or
- is dissatisfied with the local-level determination.

### DISCLAIMER

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This policy is based on NDOL's reading of the applicable statutes, regulations, rules, and guidance released by the US 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>21</sup> 20 CFR §§ 683.270 and 683.600

## APPENDIX I. Definitions

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**PURPOSE.** Definitions in this appendix are provided as supplemental information that supports the provisions of the policy. The terms and phrases defined in this appendix should be read and understood in the context in which they are used in the policy and not as stand-alone information independent of that context.

### 1. eligible employed worker

An *eligible employed worker* means an individual that meets the eligibility criteria for enrollment in one or more Title I programs (youth, adult, or dislocated worker).

### 2. on-the-job training (OJT)<sup>22</sup>

The term *on-the-job training* (OJT) means training provided by an employer to a participant who is paid while engaged in productive work in a job that:

- provides knowledge or skills essential to the full and adequate performance of the job;
- is made available through a program that provides reimbursement to the employer of up to 75 percent of the participant's wage rate for the extraordinary costs of providing the training and additional supervision related to the training; and
- is limited in duration as appropriate to the occupation for which the participant is being trained, taking into account the content of the training, the prior work experience of the participant, and the participant's IEP or ISS, as appropriate.

### 3. pass-through entity

The term *pass-through entity* means a non-Federal entity, like a local board, that provides a subaward to a subrecipient, like an employer providing OJT, to carry out some or all of the activities permitted or required under a Federal program.<sup>23</sup>

### 4. pre-apprenticeship program<sup>24</sup>

A *pre-apprenticeship program* is a program designed to prepare individuals to enter and succeed in a Registered Apprenticeship program. A *pre-apprenticeship program* should include the following elements:

- training and curriculum that aligns with the skill needs of employers in the economy of the state or region involved;
- access to educational and career counseling and other supportive services, directly or indirectly;

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<sup>22</sup> WIOA Sec. 3(44)

<sup>23</sup> 2 CFR § 200.74

<sup>24</sup> 20 CFR § 681.480. Refer to TEN 13-12 for more information on quality pre-apprenticeship programs, which is accessible at [https://wdr.doleta.gov/directives/attach/TEN/TEN\\_13-12\\_Acc.pdf](https://wdr.doleta.gov/directives/attach/TEN/TEN_13-12_Acc.pdf).

- hands-on, meaningful learning activities that are connected to education and training activities, such as exploring career options, and understanding how the skills acquired through coursework can be applied toward a future career;
- opportunities to attain at least one industry-recognized credential; and
- a partnership with one or more Registered Apprenticeship programs that assist in placing individuals who complete the pre-apprenticeship program in a Registered Apprenticeship program.

## 5. Registered Apprenticeship program

A *Registered Apprenticeship program* is an apprenticeship program that is registered with the US Department of Labor Office of Apprenticeship.

## 6. subaward<sup>25</sup>

The term *subaward* means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out some or all of the activities permitted or required under a Federal award received by the pass-through entity. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

## 7. subrecipient<sup>26</sup>

The term *subrecipient* means a non-Federal entity that receives a subaward from a pass-through entity to carry out some or all of the activities permitted or required under a Federal program (e.g., Title I youth, adult, and dislocated worker programs). The term *subrecipient* also refers to any entity to which a local board provides a subaward for the administration of some or all of the requirements of the subaward provided to the local board by NDOL for administration of Title I youth, adult, and dislocated worker activities. The term *subrecipient* does not include an individual that is a participant in the program.

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<sup>25</sup> 2 CFR § 200.92

<sup>26</sup> 2 CFR § 200.93

## APPENDIX II. Pre-award review procedures

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As stated in [Section I\(b\)\(1\)](#) of the policy, local area staff must conduct a pre-award review to determine an employer's eligibility to provide OJT prior to entering into an OJT contract with the employer. The pre-award review must be documented using the *Employer Assurances and Certifications for On-the-Job Training* form provided as part of this appendix.

**IMPORTANT.** The pre-award requirements described in this appendix must be completed and documented jointly by local area staff and the employer.<sup>27</sup> If the employer has signed an *Employer Assurances and Certifications for On-the-Job Training* form and an OJT contract within the preceding six months, the employer is not required to execute a new *Employer Assurances and Certifications for On-the-Job Training* form in order to enter into a new OJT contract for placement of another participant.

1. The pre-award review must include:
  - a. verification of the employer's period of operation at its current location:
    - i. if at its current location less than 120 calendar days proceed as described below in item 2;
  - b. review and discussion of the *Employer Assurances and Certifications for On-the-Job Training* form by local area staff with the employer, either in person or by phone; and
  - c. completion of the *Employer Assurances and Certifications for On-the-Job Training* form, including the employer's signature.
2. If the employer has relocated from another area in the United States, local area staff must verify that employees at the employer's other location(s) have not been laid off as a result of the relocation.<sup>28</sup> To perform this verification, local area staff must complete steps 2.a. and 2.b.
  - a. Collect from the employer the:<sup>29</sup>
    - i. names under which the employer does or has done business, including predecessors and successors in interest;<sup>30</sup>
    - ii. information confirming whether WIOA Title I assistance is sought in connection with past or impending job losses at other facilities owned or operated by the employer, including predecessor and successors in interest; and
    - iii. name, title, and address of the company official certifying the accuracy of collected information.

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<sup>27</sup> 20 CFR § 683.260(b)

<sup>28</sup> WIOA Sec. 181(d)(2). Refer to [Sections I\(b\)\(4\)](#) and [II\(d\)](#) of the policy for information on this restriction.

<sup>29</sup> 20 CFR § 683.260(b)

<sup>30</sup> The phrase *predecessors and successors in interest* refers to previous and current persons or entities who held or hold rights or interests in the employer's business.

- b. Consult with the Program Coordinator for NDOL's Rapid Response Program to determine and document whether WARN notices relating to the employer have been filed.<sup>31</sup>

Local area staff may also consult with labor organizations and others in the local area(s) from which the business relocated.<sup>32</sup>

As stated in [Section I\(b\)\(4\)](#) of the policy, if the employer's business, or any part of its business, has relocated and employees at the employer's other location(s) were laid off as a result of the relocation, the employer is not eligible to receive WIOA Title I funds for the provision of OJT until the employer has been in operation at its current location at least 120 calendar days.

3. The completed and signed *Employer Assurances and Certifications for On-the-Job Training* form must be incorporated into and made part of the OJT contract.

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<sup>31</sup> 20 CFR § 683.260(b)

<sup>32</sup> Ibid.

## Employer Assurances and Certifications for On-the-job Training

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The assurances and certifications in this document detail specific requirements regarding on-the-job training (OJT) under the Workforce Innovation and Opportunity Act of 2014 that apply to <insert employer/business name> (Employer) as a provider of OJT. The assurances and certifications herein do not limit in any way the responsibilities of Employer. Employer is subject to all applicable Federal and state laws, rules, regulations, policies, and procedures with regard to the provision of OJT to an individual participating in the OJT. By signing this document, Employer assures and certifies, as applicable, that Employer will abide by the requirements, limitations, and restrictions described herein, in addition to all applicable Federal and state laws, rules, regulations, policies, and procedures.

### Assurances

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1. Employer assures that during OJT:
  - a. an individual participating in OJT will be compensated at the same rates, including periodic increases, as other trainees or employees who are similarly situated in similar occupations by Employer and who have similar training, experience, and skills;
  - b. the compensation rate for an individual participating in OJT will comply with all applicable Federal and state laws and not be less than the higher of the Federal minimum wage rate, state minimum wage, or local minimum wage; and
  - c. an individual participating in OJT will be provided benefits and working conditions comparable to those of other trainees or employees working a similar length of time and doing the same type of work for Employer.
2. Employer assures that:
  - a. an individual participating in OJT is not displacing (including partial displacement, such as a reduction in the hours of non-overtime work, wages, or employment benefits) any current employee of the employer as of the date of the individual's participation in OJT;
  - b. the placement of an individual participating in OJT is not impairing existing contracts for services or collective bargaining agreements, or, if the placement is inconsistent with a collective bargaining agreement, the appropriate labor organization and Employer have provided written agreement with the placement before the placement begins;
  - c. no other employee of Employer is on layoff from the same or any substantially equivalent job;
  - d. Employer has not terminated the employment of any regular, unsubsidized employee or otherwise caused an involuntary reduction in its workforce with the intention of filling the vacancy with the participant;
  - e. Employer has not created a position for the participant within a promotional line that infringes in any way on the promotional opportunities of current employees (as of the individual's date of participation in OJT); and
  - f. regular employees and individuals participating in OJT who are alleging displacement are informed of their right to file a complaint according to the grievance procedures described in the State's current policy on OJT.
3. Employer assures that it will abide by all applicable Federal and state health and safety standards and that workers' compensation coverage will be provided for an individual participating in OJT as required under the Nebraska Workers' Compensation Act (Neb. Rev. Stat. §§ 48-101 through 48-1,118).
4. Employer assures that it will not discriminate against any individual participating in OJT on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, citizenship or status as a lawfully admitted immigrant authorized to work in the United States.
5. Employer assures that Employer will not discriminate against any individual participating in OJT with respect to the terms and conditions affecting, or rights provided to, the individual solely because of the individual's status as an OJT participant.

6. Employer assures that no individual participating in OJT will carry out the construction, operation, or maintenance of any part of any facility that is or will be used for religious instruction or as a place for religious worship.
7. Employer assures that no funds provided under an OJT contract will be used to encourage or induce the relocation of a business, or part of a business, that results in a loss of employment for any employee at the original location of the business.
8. Employer assures that no individual in a decision-making capacity within Employer's business, including any member of the Nebraska Workforce Development Board or a local workforce development board, will engage in any activity that creates a conflict of interest with regard to any OJT, including participation in (i) the selection, award, or administration of an OJT contract; and (ii) decisions relating to any matter which would provide any direct financial benefit to that individual or that individual's immediate family.
9. Employer assures that no funds provided to Employer for OJT will be used to directly or indirectly assist, promote or deter union organizing.
10. Employer assures that it will not charge any individual, including an individual participating in OJT, a fee for referral or placement of an individual in OJT.
11. Employer assures that it will not require or permit an individual participating in OJT to engage in any political activities as part of or during OJT.
12. Employer assures that, after an individual's completion of OJT, Employer intends to (i) retain the individual in the occupation for which the individual was trained and (ii) continue to compensate the individual at the hourly wage rate specified in the OJT contract or at a higher rate. Employer's retention of the individual is subject to Employer's right to terminate the individual for normal business or personnel reasons. However, "normal business or personnel reasons" does not include termination of the individual in order to enter into another OJT contract to train a new individual through OJT.

#### Certifications

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13. Employer certifies that neither it, nor any of its principals, is (i) debarred, suspended, excluded, or declared ineligible by any Federal department or agency with regard to use of Federal funds; or (ii) proposed for debarment, suspension, exclusion, or ineligibility by any Federal department or agency with regard to use of Federal funds; or (iii) voluntarily excluded with regard to use of Federal funds.
14. Employer certifies that it complies with all Federal, state, and local laws regarding taxation and licensing, including the Nebraska Employment Security Law.
15. Employer certifies that it complies with the requirements of the Davis-Bacon Act, with regard to compensation of any individual including an individual participating in OJT, who is working as a laborer and/or mechanic in any construction, alteration or repair (including painting and decorating) of public buildings or works. Employer further certifies that all such individuals will be compensated in compliance with the Davis-Bacon Act.
16. Employer certifies that it has registered with and is using a Federal immigration verification system, as required under Neb. Rev. Stat. § 4-114, to determine the work eligibility status of all new employees physically performing services within the State of Nebraska.

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Signature of authorized signatory for Employer

Date

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Printed name of authorized signatory for Employer

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Employer's business name, complete address, and phone number

## 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 402.471.9000 <a href="mailto:ndol.wioa_policy@nebraska.gov">ndol.wioa_policy@nebraska.gov</a>	<b>Policy category</b>
	Youth, Adult, and Dislocated Worker
	<b>Effective date</b>
	April 6, 2018
	<b>Supersedes</b>
	Preliminary Policy on Work Experiences for Youth, Adults, and Dislocated Workers (Rev. 4/17/15)
	Interim Policy on Incumbent Worker Training Programs (Rev. 08/31/2015)

## Work-based Training

### 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

Work-based training can be an effective training strategy that provides additional opportunities for employers and adults and dislocated worker program participants.

### ACTION

This policy supersedes and cancels the State's<sup>1</sup> Preliminary Policy on Work Experiences for Youth, Adults, and Dislocated Workers (Rev. 4/17/2015) and Interim Policy on Incumbent Worker Training Programs (Rev. 08/31/2015). Questions and comments on this policy may be submitted in writing to the WIOA policy mailbox at [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov).

<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).

Each local board must:

- if it uses transitional jobs as part of its service delivery strategy, implement a policy addressing the requirements stated in [Section I\(a\)\(1\)](#);
- if it uses customized training as a service strategy, implement a policy addressing the requirements stated in [Section II\(a\)](#);
- if it uses incumbent worker training as a service strategy, implement a policy addressing the requirements stated in [Section II\(b\)](#); and
- ensure that funds provided to employers for work-based training are not used to directly or indirectly engage in the prohibited activities described in [Section IV](#).

## POLICY

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This policy establishes requirements regarding work-based training opportunities, including:

- internships, work experiences, and transitional jobs for adults and dislocated workers;
- customized and incumbent worker training services for employers; and
- Registered Apprenticeship programs.

Requirements regarding on-the-job training (OJT) and work-based training for youth are addressed separately in the State's OJT and youth program policies.

This policy is organized into four sections.

Section I. Work-based training services for adults and dislocated workers .....	2
Section II. Work-based training services for employers .....	4
Section III. Registered Apprenticeship programs .....	8
Section IV. Prohibited activities .....	9

### **Section I. Work-based training services for adults and dislocated workers**

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#### **(a) Internships and work experiences**

An internship or work experience:<sup>2</sup>

- is a planned, structured learning experience that takes place in a workplace for a limited period of time;

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<sup>2</sup> 20 CFR § 680.180

- may be paid or unpaid, as appropriate and consistent with laws such as the Fair Labor Standards Act (FLSA);<sup>3</sup> and
- may be arranged within the public, private, or non-profit sectors.

Labor standards apply in any work experience setting where an employee-employer relationship exists as defined by FLSA.

#### (1) Transitional jobs<sup>4</sup>

Transitional jobs:

- provide a participant with work experience that takes place within the context of an employee-employer relationship, with the local program provider generally acting as the employer;
- are time-limited work experiences that are wage-paid and subsidized up to 100 percent and in the public, private, or non-profit sectors;
- are only available for adults and dislocated workers with barriers to employment who are chronically unemployed or have inconsistent work history.

Transitional jobs must be combined with other career services<sup>5</sup> and supportive services and must be designed to:

- establish a work history for the participant;
- demonstrate success in the workplace; and
- develop skills that lead to entry into and retention in unsubsidized employment.

There is no requirement that the employer retain the individual upon completion of the transitional job; however, retention is preferred for the benefit of the worker and employer when appropriate.

#### (A) Funding

A local board may use up to 10 percent of the combined total of its adult and dislocated worker allocations for a program year for transitional jobs.<sup>6</sup>

#### (B) Local policy<sup>7</sup>

If a local board uses transitional jobs as part of its service delivery strategy, it must identify appropriate employers and implement a local policy that:

- establishes the amount of reimbursements for the jobs (up to 100 percent of the wage);

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<sup>3</sup> Information on FLSA is accessible at <https://www.dol.gov/whd/flsa/>.

<sup>4</sup> 20 CFR §§ 680.190 and 680.195; TEGL 19-16

<sup>5</sup> Transitional jobs are a type of individualized career service.

<sup>6</sup> 20 CFR § 680.195

<sup>7</sup> 20 CFR § 680.195; TEGL 19-16

- defines what supportive services must be included;
- establishes limits on the duration of the transitional job; and
- defines and identifies individuals who are *chronically unemployed* or *have an inconsistent work history*, such as long-term unemployed individuals, ex-offenders, and individuals who are currently receiving or have exhausted Temporary Assistance for Needy Families (TANF) benefits.

## Section II. Work-based training services for employers

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### (a) Customized training

Customized training is training:<sup>8</sup>

- designed to meet the special requirements of an employer or group of employers; and
- conducted with a commitment by the employer or employers to employ an individual or group of individuals upon successful completion of the training.

Customized training of eligible employed individuals may be provided for an employer or group of employers when the:<sup>9</sup>

- employee or group of employees are not earning a self-sufficient wage or wages comparable to or higher than wages from previous employment;
- training relates to:<sup>10</sup>
  - introduction of new technologies, introduction to new production or service procedures, upgrading to new jobs that require additional skills, or workplace literacy; or
  - other appropriate purposes identified by the local board.

### (1) Funding<sup>11</sup>

The employer or group of employers receiving work-based training services must pay for a significant portion of the cost of customized training, taking into account:

- the size of the employer or group of employers; and
- other factors, including the:
  - number of employees participating in training;

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<sup>8</sup> WIOA Sec. 3(14); 20 CFR § 680.760

<sup>9</sup> 20 CFR § 680.770

<sup>10</sup> 20 CFR § 680.710(c)

<sup>11</sup> TEGL 19-16

- wage and benefit levels of participating employees, at present and anticipated upon completion of the training;
- relation of the training to the competitiveness of the participating employees; and
- other employer-provided training and advancement opportunities.

In the case of an employer or group of employers located in multiple local areas in the state, the employer or group of employers receiving work-based training services must pay a significant portion of the cost of the training as determined by NDOL, taking into account the size of the employer or group of employers and other factors NDOL determines appropriate.

## (2) Local policy<sup>12</sup>

If a local board uses customized training as part of its service delivery strategy, it must implement a policy for determining what constitutes the employer's payment of a *significant portion of the cost of training*, taking into account the:

- size of the employer; and
- other factors the local board determines are appropriate, which may include the:
  - number of employees participating in training;
  - wage and benefit levels of participating employees, at present and anticipated upon completion of the training;
  - relation of the training to the competitiveness of the participating employees; and
  - other employer-provided training and advancement opportunities.

## (b) Incumbent worker training<sup>13</sup>

Incumbent worker training (IWT) is training designed to meet the special requirements of an employer or group of employers. IWT must not be used to provide occupational training for new hires. IWT services may be provide to either:

- help avert potential layoffs of employees; or
- assist employees in obtaining the skills necessary to retain employment, such as increasing skill levels so they can be promoted within the company and create backfill opportunities for less-skilled employees.

IWT services must be conducted with a commitment by the employer to retain or avert the layoffs of the workers trained.

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<sup>12</sup> TEGL 19-16

<sup>13</sup> 20 CFR § 680.790; TEGL 19-16

### (1) Employer eligibility<sup>14</sup>

The local board must determine an employer's eligibility for IWT services based on the following factors to evaluate whether IWT services would increase the competitiveness of the workers only or the workers and employer:

- characteristics of the workers to be trained;
- whether IWT improves the labor market competitiveness of the workers only or the workers and employer; and
- other factors, including:
  - employer size;
  - number of workers to be trained;
  - wages and benefits, both pre- and post-training increases;
  - existence of other training and advancement opportunities provided by the employer;
  - credentials and skills to be gained as a result of IWT;
  - layoffs averted as a result of IWT; or
  - utilization of IWT services as part of a larger sector and/or career pathway strategy.

### (2) Worker eligibility<sup>15</sup>

For an employer to receive IWT services, the workers to be trained must:

- be employed by the employer;
- meet FLSA requirements for an employer-employee relationship; and
- have an established employment history with the employer of six months or more, with the following exception.

**EXCEPTION.** In the event that IWT is being provided to a cohort of workers, not every worker in the cohort must have an established employment history with the employer of six months or more, as long as a majority of workers being trained meet the employment history requirement.

A worker does not have to meet eligibility requirements for career and training services unless the worker is enrolled as a participant in the local adult or dislocated worker program.

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<sup>14</sup> WIOA Sec. 134(d)(4)(A)(ii); 20 CFR § 680.810; TEGL 19-16

<sup>15</sup> 20 CFR § 680.780; TEGL 19-16. Refer to the State's adult and dislocated worker program policy for information on eligibility requirements for career and training services.

### (3) Funding<sup>16</sup>

The local board may reserve up to 20 percent of its combined total of adult and dislocated worker allocations for a program year for IWT services. This 20 percent may be used for IWT activities that are programmatic in nature. Administrative IWT activities must be paid out of the local board's administrative funds.

#### (A) Cost-sharing requirements<sup>17</sup>

Employers participating in IWT must pay the non-Federal share of the cost of providing training to their incumbent workers. The minimum amount of the employer's non-Federal share depends on the size of the employer and must not be less than:

- 10 percent of the costs, for employers with 50 or fewer workers;
- 25 percent of the costs, for employers with between 51 and 100 workers; and
- 50 percent of the costs, for employers with more than 100 workers.

The employer share must be reported by the local board as program income in its quarterly financial reports.<sup>18</sup>

### (4) Local policy<sup>19</sup>

If a local board uses IWT as part of its service delivery strategy, it must implement a policy, which must comply with the requirements established under 20 CFR §§ 680.780 through 680.820 and TEGL 19-16 and must:

- establish methods for determining which employers and workers are eligible for incumbent worker services;
- establish methods for determining the non-Federal share of the cost of IWT services, which must include consideration of:
  - wage and benefit levels of the employees, pre- and post-training;
  - relationship of IWT to the competitiveness of the workers and employer; and
  - availability of other employer-provided training and advancement opportunities;
- establish methods for payment of the non-Federal share of the cost of IWT, which may be done through both cash payments and fairly evaluated in-kind contributions and may include the wages the employer pays to the worker trainee while the worker is attending training;
- define processes for documenting the six-month work-history requirement; and

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<sup>16</sup> WIOA Sec. 134(a)(3)(A)(i); 20 CFR §§ 680.790, 680.800, 682.210(b), and 682.320(b)(4); TEGL 19-16

<sup>17</sup> WIOA Secs. 134(d)(4)(C) and 134(d)(4)(D)(i)-(iii); 20 CFR § 680.820; TEGL 19-16

<sup>18</sup> Refer to the State's policy on quarterly reporting.

<sup>19</sup> 20 CFR § 680.780; TEGL 19-16

- require a contract between the local board and the employer that:
  - defines the scope of IWT services;
  - identifies the non-Federal share of the cost of IWT to be paid by the employer; and
  - describes the process for documenting the six-month work-history requirement with the employer.

Local IWT policies must be consistent with local plans and career pathways and sector strategy approaches for in-demand occupations.

### Section III. Registered Apprenticeship programs<sup>20</sup>

As an earn-and-learn strategy, Registered Apprenticeship (RA) offers job seekers immediate employment opportunities that pay sustainable wages and offer advancement along a career pathway. Graduates of RA programs receive nationally-recognized, portable credentials, and their training may be applied toward further postsecondary education. WIOA funds may be used to support RA programs through the services listed in Table 1.

*Table 1. WIOA services supporting RA*

Service	Method of support
Youth occupational skills training (OST)	Youth program funds may be used for RA as an OST option for youth ages 16 – 24.
Individual training accounts (ITAs)	ITAs can be used to support: <ul style="list-style-type: none"> <li>▪ the educational portion (i.e., related instruction component) of the RA for eligible apprentices, provided the RA program is included on the ETPL; and</li> <li>▪ pre-apprenticeship training in preparation for formal RA, provided the pre-apprenticeship program is on the ETPL.</li> </ul>
On-the-job training (OJT)	OJT contracts may be entered into with RA program sponsors, or employers participating in RA programs, for the OJT portion of the program. Depending on the length of the program and the requirements of State and local OJT policies, WIOA funds may cover some or all of the OJT. If WIOA-funded, the OJT portion of an RA program <u>must</u> be conducted according to the requirements of 20 CFR §§ 680.700 and 680.710 and State and local policies on OJT.
Supportive services	WIOA funds may support a variety of supportive services for apprentices, including books, supplies, child care, transportation, tools, and uniforms, subject to the requirements and limitations of 20 CFR § 680.900 through 680.970 and state and local policies on supportive services.
Contracted classes for training cohorts for related instruction	In certain cases, a local board may, instead of using ITAs, contract with an ETP to train a cohort of potential apprentices in in-demand industry sectors or occupations, provided the apprentices (or potential apprentices) meet the youth, adult, or dislocated worker eligibility requirements for training services. Such a contract <u>must</u> adhere to the procurement standards found in the Uniform Guidance and the requirements of the State's adult and dislocated worker program policy. A local board may also use incumbent worker training funds to provide training to a cohort of apprentices.

<sup>20</sup> 20 CFR § 680.740; TEGL 13-16

Service	Method of support
Customized training	A local board can support RA program sponsors and apprentices through customized training agreements.
Incumbent worker training	A local board may use up to 20 percentage of the local allocations for adult and dislocated worker programs to pay the Federal share of the cost of incumbent worker training, enabling current workers to remain on the job while in training provided through an RA program.

#### Section IV. Prohibited activities

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Funds provided to employers for work-based training must not be used to directly or indirectly:

- assist, promote, or deter union organizing;<sup>21</sup> or
- aid in the filling of a job opening which is vacant because the former occupant is on strike, or is being locked out in the course of a labor dispute, or the filling of which is otherwise an issue in a labor dispute involving a work stoppage.<sup>22</sup>

#### DISCLAIMER

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This policy is based on NDOL's reading of the applicable statutes, regulations, rules, and guidance released by the US 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>21</sup> 20 CFR § 680.830

<sup>22</sup> 20 CFR § 680.840

## 6. Rapid Response

## 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 402.471.9000 <a href="mailto:ndol.wioa_policy@nebraska.gov">ndol.wioa_policy@nebraska.gov</a>	Policy category
	Rapid Response
	Effective date
	August 23, 2019
	Supersedes
	None

## Rapid Response Services

## 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

Rapid Response plays an important role in providing customer-focused services to dislocated workers and employers, promoting economic development and vitality, and delivering critically important solutions to workers and businesses in transition.

## ACTION

Questions and comments on this policy may be submitted in writing to the WIOA<sup>1</sup> policy mailbox at [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov).

The Rapid Response unit staff, Title I and Title III programs, including their service provider staff, and the TAA program and its staff must adhere to the requirements of this policy, including requirements regarding roles and responsibilities described in [Section III](#) and NDOL's [WIOA Rapid Response Procedures Manual](#).

<sup>1</sup> WIOA refers to the Workforce Innovation and Opportunity Act of 2014.

## POLICY

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The State's<sup>2</sup> policy on Rapid Response Services describes the:

- purpose and types of Rapid Response services;
- circumstances when Rapid Response services must be delivered; and
- roles and responsibilities of staff involved in the delivery of Rapid Response services.

This policy is organized into three sections.

Section I.	Rapid Response purpose and services.....	2
Section II.	Circumstances requiring Rapid Response .....	4
Section III.	Rapid Response roles and responsibilities.....	5

### Section I. Rapid Response purpose and services

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The purpose of Rapid Response is to promote economic recovery and vitality by

- developing an ongoing, comprehensive approach to identifying, planning for, responding to layoffs and dislocations; and
- preventing or minimizing the impact of layoffs and dislocations on workers, businesses, and communities.

A successful Rapid Response system includes:<sup>3</sup>

- informational and direct reemployment services for workers, including information and support for filing unemployment insurance claims, information on the impacts of layoff on health coverage or other benefits, information on and referral to career services, reemployment-focused workshops and services, and training;
- delivery of solutions to address the needs of businesses in transition, provided across the business lifecycle (expansion and contraction), including comprehensive business engagement and layoff aversion strategies and activities designed to prevent or minimize the duration of unemployment;
- convening, brokering, and facilitating the connections, networks, and partners to ensure the ability to assist dislocated workers and their families, such as home heating assistance, legal aid, and financial advice; and

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<sup>2</sup> 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).

<sup>3</sup> 20 CFR §§ 682.300(b)(1)-(4); TEGL 19-16

- strategic planning, data gathering and analysis designed to anticipate, prepare for, and manage economic change.

Rapid Response services must include:<sup>4</sup>

1. layoff aversion activities, as applicable;
2. immediate and on-site contact with the employer, representatives of the affected workers, and the local community, including an assessment of and plans to address the:
  - a. layoff plans and schedule of the employer;
  - b. background and probable assistance needs of the affected workers;
  - c. reemployment prospects for workers; and
  - d. available resources to meet the short and long-term assistance needs of the affected workers;
3. provision of information and access to unemployment compensation benefits and programs, such as short-time compensation, comprehensive one-stop delivery system services, and employment and training activities, including information on the TAA program, Pell Grants, the GI Bill, and other resources;
4. delivery of other necessary services and resources including workshops and classes, use of worker transition centers, and job fairs, to support reemployment efforts for affected workers;
5. partnership with local workforce development boards (local boards) and local area chief elected officials (CEOs) to ensure a coordinated response to the dislocation event and, as needed, obtain access to state or local economic development assistance, which may include the development of an application for a National Dislocated Worker Grant;
6. provision of emergency assistance adapted to the particular layoff or disaster;
7. as appropriate, development of systems and processes for:
  - a. identifying and gathering information for early warning of potential layoffs or opportunities for layoff aversion;
  - b. analyzing, and acting upon, data and information on dislocations and other economic activity in the state, region, or local area; and
  - c. tracking outcome and performance data and information related to the activities of the rapid response program;
8. developing and maintaining partnerships with other appropriate Federal, state and local agencies and officials, employer associations, technical councils, other industry business

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<sup>4</sup> 20 CFR § 682.330; TEGL 19-16

councils, labor organizations, and other public and private organizations, as applicable, in order to:

- a. conduct strategic planning activities to develop strategies for addressing dislocation events and ensuring timely access to a broad range of necessary assistance; and
  - b. develop mechanisms for gathering and exchanging information and data relating to potential dislocations, resources available, and the customization of layoff aversion or rapid response activities, to ensure the ability to provide rapid response services as early as possible;
9. delivery of services to worker groups for which a petition for TAA has been filed;
10. provision of additional assistance to local areas that experience disasters, mass layoffs, or other dislocation events for the provision of direct career services to participants if there are not adequate local funds available to assist the dislocated workers;
11. provision of guidance and financial assistance as appropriate, in establishing a labor-management committee (if voluntarily agreed to by the employee's bargaining representative and management), which may devise and oversee an implementation strategy that responds to the reemployment needs of the workers, such as:
  - a. provision of training and technical assistance to members of the committee; and
  - b. funding the operating costs of a committee to enable it to provide advice and assistance in carrying out rapid response activities and the design and delivery of WIOA-authorized services to affected workers.

## **Section II. Circumstances requiring Rapid Response**

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Rapid Response services must be delivered when one or more of the following circumstances occur:<sup>5</sup>

- announcement or notification of a permanent closure, regardless of the number of workers affected;
- announcement or notification of a *mass layoff*;
- a mass job dislocation resulting from a natural or other disaster; or
- the filing of a Trade Adjustment Assistance (TAA) petition.

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<sup>5</sup> 20 CFR § 682.302(a)-(d); TEGL 19-16

A *mass layoff* occurs when at least one of the following conditions has been met:<sup>6</sup>

- when a layoff affects 50 or more workers; or
- when a Worker Adjustment and Retraining Notification (WARN) Act notice has been filed, regardless of the number of workers affected by the layoff.

NOTE: Only the State is permitted to define *mass layoff* differently.<sup>7</sup>

### **Section III. Rapid Response roles and responsibilities<sup>8</sup>**

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Using funds reserved by the Governor from the state's allotment of dislocated worker funds, Rapid Response activities are carried out by the State, in conjunction with local workforce development boards, Chief Elected Officials, and other workforce system shareholders.

NDOL's Rapid Response unit carries out and oversees Rapid Response services statewide. Delivery of Rapid Response services must be carried out in accordance with the NDOL's [WIOA Rapid Response Procedures Manual](#). This requirement applies to Rapid Response unit staff, Title I and Title III programs, including their service provider staff, and the TAA program and its staff. For technical assistance regarding Rapid Response services or the procedures manual, contact Erin Cooper at [erin.cooper@nebraska.gov](mailto:erin.cooper@nebraska.gov).

### **DISCLAIMER**

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This policy is based on NDOL's reading of the applicable statutes, regulations, rules, and guidance released by the US 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>6</sup> 20 CFR § 682.305(b)-(c); TEGL 19-16

<sup>7</sup> 20 CFR § 682.305(a)-(b); TEGL 19-16

<sup>8</sup> WIOA Secs. 133(a)(2) and 134(a)(2); 20 CFR § 682.310; TEGL 19-16

## 7. Trade Adjustment Assistance

## State Policy

## Trade Adjustment Assistance (TAA)

Nebraska Department of Labor (NDOL) Division of Reemployment Services 550 South 16 <sup>th</sup> Street Lincoln, NE 68508 402.471.9000 <a href="mailto:ndol.wioa_policy@nebraska.gov">ndol.wioa_policy@nebraska.gov</a>	Policy category
	Trade Adjustment Assistance
	Effective date
	September 16, 2022
	Supersedes
	Trade Adjustment Assistance Program, Change 1 (effective July 6, 2017)

## Trade Adjustment Assistance Program, Change 2

## 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

The Trade Adjustment Assistance program (TAA) is a Federal program that assists US workers who have lost or may lose their jobs because of foreign trade. TAA provides trade-affected workers with opportunities to obtain the skills, credentials, resources, and support necessary for reemployment.<sup>1</sup> TAA benefits available to eligible workers vary depending on whether the workers are covered by the provisions of statutes authorizing the 2002 program, 2009 program, 2011 program, 2015 program, or Reversion 2021.<sup>2</sup> In addition to the benefits provided under the applicable Federal TAA program, trade-affected workers are generally eligible for basic and individualized career services provided at or through American Job Centers by NDOL TAA.

<sup>1</sup> Refer to [APPENDIX I](#) for a side-by-side comparison of benefits available under the various TAA programs.

<sup>2</sup> Refer [APPENDIX II](#) for a list of the statutes amending the Trade Act of 1974.

## CHANGES

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Sections I and II in the superseded policy have been combined and now appear as [Section I](#) in this policy, and the remaining sections have been renumbered accordingly.

[Section III](#) has been revised to provide:

- an updated expenditure cap for TAA funded training services and clarification on costs that *are* and *are not* included in the expenditure cap;
- procedures for requesting authorization to exceed the established expenditure cap; and
- an appeal process has been added regarding requests to exceed the expenditure cap that have been denied.

[APPENDIX I](#) and [APPENDIX II](#) have been revised to include information relating to Reversion 2021.

[APPENDIX III](#) has been simplified, referring now to the listing of directives and guidance applicable to TAA on the US Department of Labor website.

## ACTION

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This policy supersedes and cancels the policy titled *Trade Adjustment Assistance Program, Change 1* (effective date July 6, 2017). Questions and comments on this policy may be submitted in writing to the Trade program mailbox at [ndol.tradeact@nebraska.gov](mailto:ndol.tradeact@nebraska.gov).

NDOL must administer TAA in accordance with applicable authorizing Federal statutes and directives and guidance issued by the US Department of Labor regarding the 2002, 2009, 2011, and 2015 programs and Reversion 2021.

## POLICY

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This policy:

- establishes requirements regarding mandatory co-enrollment of eligible TAA participants in local WIOA Title I dislocated worker programs;
- establishes a revised expenditure cap on TAA funded training services;
- establishes a process for TAA staff to submit requests to exceed the expenditure cap on TAA funded training services;
- establishes a process for TAA participants to appeal denied request to exceed the established expenditure cap on TAA funded training services; and

- identifies statutes, directives, and guidance issued by the US Department of Labor governing NDOL's implementation of TAA.

This policy has three sections and three appendices.

Section I.	TAA program authorizing statutes, directives, and guidance .....	3
Section II.	Co-enrollment of TAA participants and coordination of services.....	3
Section III.	Expenditure cap for TAA-funded training services .....	3
APPENDIX I.	Side-by-Side Comparison of TAA Program Benefits under the 2002, 2009, 2011, and 2015 programs and Reversion 2021 .....	5
APPENDIX II.	Trade Adjustment Assistance for Workers Programs: Amending statutes.....	8
APPENDIX III.	Directives and guidance for Trade Act programs .....	9

## **Section I. TAA authorizing statutes, directives, and guidance**

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The original authorizing statute for TAA is the Trade Act of 1974. The Trade Act has been amended many times since its enactment in January 1975.<sup>3</sup> NDOL implements TAA in accordance with the statutes, directives, and guidance identified in [APPENDIX II](#) and [APPENDIX III](#).

## **Section II. Co-enrollment of TAA participants and coordination of services**

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Participants enrolled in TAA must be co-enrolled, if eligible, in the applicable local Title I dislocated worker program.<sup>4</sup> Further, TAA staff and local Title I dislocated worker program staff must coordinate service delivery and use of funding.

## **Section III. Expenditure cap for TAA funded training services**

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NDOL has established an expenditure cap for TAA funded training services.

- No more than \$25,000 may be expended for TAA funded training services for an individual TAA participant.
- Costs for allowable travel *are* included in the calculation of the \$25,000 expenditure cap.
- Costs for allowable relocation, job search assistance, etc., *are not* included in the calculation of the \$25,000 expenditure cap.

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<sup>3</sup> Refer to [APPENDIX II](#) for list of statutes amending the Trade Act of 1974.

<sup>4</sup> 20 CFR § 618.325. The State's current performance accountability policy addresses co-enrollment requirements and is included in the State's policy manual, which is accessible at <https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies>.

#### (a) Submitting requests to exceed the expenditure cap

All requests to exceed the expenditure cap for TAA funded training services must be approved based on dollar amount by either the Director of NDOL's Reemployment Services Division or the Commissioner of Labor.

- The Director authorizes excess expenditures up to \$5,000.
- The Commissioner authorizes excess expenditures exceeding \$5,000.

TAA staff must submit requests to exceed the cap by email to [ndol.tradeact@nebraska.gov](mailto:ndol.tradeact@nebraska.gov).

#### (b) Appealing denied requests to exceed the expenditure cap

TAA participants who wish to appeal denial of a request to exceed the expenditure cap on TAA funded training services must submit a written request for a hearing to the Commissioner of Labor within 20 calendar days of notification of denial. Written requests for a hearing must be sent to:

Commissioner of Labor  
Nebraska Department of Labor  
PO Box 94600  
Lincoln, NE 68509-4600

Absent extenuating circumstances, the Commissioner will assign a hearing officer and a hearing will take place within 20 calendar days of the Commissioner's receipt of the written request for a hearing. The hearing will include:

- a statement of the reasons why the request to exceed the expenditure cap was denied; and
- an appeal by the participant describing why the decision should be reversed or a compromise established.

#### DISCLAIMER

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

## APPENDIX I. Side-by-side comparison of TAA benefits under the 2002, 2009, 2011, and 2015 programs and Reversion 2021<sup>5</sup>

Benefit	2002 program	2009 program	2011/2015 programs	2021 program
<u>Group eligibility</u> Defines the worker group that is eligible to apply for and potentially receive benefits through the TAA program	Manufacturing sector workers <b>ONLY</b>	<ul style="list-style-type: none"> <li>Manufacturing sector workers</li> <li>Service sector workers</li> <li>Public sector workers</li> </ul>	<ul style="list-style-type: none"> <li>Manufacturing sector workers</li> <li>Service sector workers</li> </ul>	Manufacturing sector workers <b>ONLY</b>
	Workers who have lost their jobs because their company's decline in production and/or sales was due to increased imports or to the outsourcing of jobs to a country with which the U.S. has a Free Trade Agreement	ITC workers (those who work for a firm that has been identified by the International Trade Commission as a domestic industry that has been injured/is a party to a market disruption)	ITC workers (those who work for a firm that has been identified by the International Trade Commission as a domestic industry that has been injured/is a party to a market disruption)	No ITC-based certifications
		Workers who have lost their jobs because their company's decline in production and/or sales was due to increased imports or to outsourcing to ANY country	Workers who have lost their jobs because their company's decline in production and/or sales was due to increased imports or to outsourcing to ANY country	No adversely affected incumbent workers.
<u>Trade Readjustment Allowances (TRA)</u> Income support available in the form of weekly cash payments to workers who are enrolled in a full-time training course	Up to 104 weeks of TRA available to workers enrolled in full-time training  OR  Up to 130 weeks of TRA available to workers enrolled in remedial training  Must enroll in training within 8 weeks of certification or 16 weeks of layoff	Up to 130 weeks of TRA available to workers enrolled in full-time training  OR  Up to 156 weeks of TRA available to workers enrolled in remedial training  Must enroll within 26 weeks of either certification or layoff	Up to 130 weeks of TRA available to workers enrolled in full-time training, the last 13 of which are only available if needed for completion of a training program and training benchmarks are met  Must enroll within 26 weeks of either certification or layoff	Up to 130 weeks of TRA available to workers enrolled in full-time training, the last 13 of which are only available if needed for completion of a training program and training benchmarks are met  Must enroll within 8 weeks of certification or 16 weeks of layoff

<sup>5</sup> U.S. Department of Labor, "Side-by-Side Comparison of TAA Program Benefits under the 2002 Program, 2009 Program, 2011 Program, 2015 Program, and Reversion 2021," <https://www.dol.gov/sites/dolgov/files/ETA/tradeact/pdfs/side-by-side.pdf> (accessed September 16, 2022)

Benefit	2002 program	2009 program	2011/2015 programs	2021 program
<u>Training waivers</u> Basic TRA is payable if an individual participates in TAA training OR is under a waiver of the requirement to participate in training. Training may be determined not feasible or appropriate and waived as a requirement for basic TRA eligibility for the following reasons:	1. The worker will be recalled to work reasonably soon 2. The worker has marketable skills for suitable employment and a reasonable expectation of employment in the foreseeable future 3. The worker is within two years of eligibility for a pension or social security 4. The worker is unable to participate in or complete training due to a health condition 5. No training program is available 6. An enrollment date is not immediately available	1. The worker will be recalled to work reasonably soon 2. The worker has marketable skills for suitable employment and a reasonable expectation of employment in the foreseeable future 3. The worker is within two years of eligibility for a pension or social security 4. The worker is unable to participate in or complete training due to a health condition 5. No training program is available 6. An enrollment date is not immediately available	1. The worker is unable to participate in or complete training due to a health condition 2. No training program is available 3. An enrollment date is not immediately available	1. The worker is unable to participate in or complete training due to a health condition 2. No training program is available 3. An enrollment date is not immediately available
<u>Training funding</u> Funds to states to pay for TAA training.	\$220 Million Statutory Cap Applies to Training Funds Only	\$575 Million Statutory Cap Applies to Training Funds Only	\$575 Million (2011) \$450 Million (2015) Statutory Cap Applies to Training, Job Search and Relocation Allowances, Case Management and Employment Services, and related State Administration	\$220 Million Statutory Cap Applies to Training Funds Only
<u>State administration funding</u> Funds to states to pay for state administration of TAA benefits, not administration of TRA or ATAA/RTAA (covered by UI Funding Agreement)	An additional 15% above the amount provided for training is available for State Administration	An additional 15% above the amount provided for training is available for State Administration, and Case Management and Employment Services	No more than 10% of the amount provided may be spent for State Administration	Funding available for state administration
<u>Job search and relocation allowances funding</u> Funds to states to pay allowances	Additional funds are available for job search and relocation allowances	Additional funds are available for job search and relocation allowances	Included in training funding	Additional funds are available for job search and relocation allowances
<u>Case management funding</u> Funds to states to pay for TAA case management and employment services	No funds are available for TAA Case Management and Employment Services	<ul style="list-style-type: none"> <li>At least 1/3 of these funds must be used for TAA Case Management and Employment Services</li> <li>States also receive \$350,000/year for TAA case management and employment services</li> </ul>	<ul style="list-style-type: none"> <li>No less than 5% of the amount provided may be spent for TAA Case Management and Employment Services</li> <li>DOL may recapture unobligated funds and redistribute funds, as needed</li> </ul>	No funding for employment services
<u>Job search allowances</u> A cash allowance provided to workers who cannot find an available job within the commuting area (e.g., 50 miles); used to cover transportation costs, etc.	90% of allowable job search costs, up to a maximum of \$1,250	100% of allowable job search costs, up to a maximum of \$1,500	90% of allowable job search costs, up to a maximum of \$1,250	90% of allowable job search costs, up to a maximum of \$1,250

Benefit	2002 program	2009 program	2011/2015 programs	2021 program
<u>Relocation allowances</u> A cash allowance provided to workers who have to accept a job outside of their commuting area and relocate	90% of allowable relocation costs, plus an additional lump sum payment of up to \$1,250	90% of allowable relocation costs, plus an additional lump sum payment of up to \$1,250	90% of allowable relocation costs, plus an additional lump sum payment of up to \$1,250	90% of allowable relocation costs, plus an additional lump sum payment of up to \$1,250.
<u>Alternative Trade Adjustment Assistance (ATAA)/Reemployment Trade Adjustment Assistance (RTAA)</u> A wage supplement provided to eligible workers over the age of 50 that supplements a portion of the wage difference between their new wage and their old wage (up to a specified maximum amount).	<u>Alternative Trade Adjustment Assistance (ATAA)</u> <ul style="list-style-type: none"> <li>Requires a separate group certification</li> <li>Available to workers earning less than an annual salary of \$50,000</li> <li>Maximum total ATAA benefit of up to \$10,000</li> <li>Reemployed within 26 weeks of separation</li> <li>Reemployed in full time employment</li> <li>Training benefit NOT available</li> </ul>	<u>Reemployment Trade Adjustment Assistance (RTAA)</u> <ul style="list-style-type: none"> <li>Does not require a separate group certification</li> <li>Available to workers earning less than an annual salary of \$55,000</li> <li>Maximum total income support (RTAA and TRA) benefit of \$12,000</li> <li>Reemployed with no deadline</li> <li>Reemployed in full-time or part-time employment in combination with approved training</li> <li>Training benefit is also available</li> </ul>	<u>Reemployment Trade Adjustment Assistance (RTAA)</u> <ul style="list-style-type: none"> <li>Does not require a separate group certification</li> <li>Available to workers earning less than an annual salary of \$50,000</li> <li>Maximum total income support (RTAA and TRA) benefit of \$10,000</li> <li>Reemployed with no deadline</li> <li>Reemployed in full-time or part-time employment in combination with approved training</li> <li>Training benefit is also available</li> </ul>	<u>Alternative Trade Adjustment Assistance (ATAA)</u> <ul style="list-style-type: none"> <li>Requires a separate group certification</li> <li>Available to workers earning less than an annual salary of \$50,000</li> <li>Maximum total ATAA benefit of \$10,000</li> <li>Reemployed within 26 weeks of separation</li> <li>Reemployed in full time employment</li> <li>Training benefit NOT available</li> </ul>
<u>Health Coverage Tax Credit (HCTC)</u> A tax credit offered to eligible TAA recipients to help pay for qualified health insurance premiums of the worker and their family	72.5% of qualifying health insurance premium costs (refer to <a href="http://www.irs.gov/Individuals/HCTC">http://www.irs.gov/Individuals/HCTC</a> )	72.5% of qualifying health insurance premium costs (refer to <a href="http://www.irs.gov/Individuals/HCTC">http://www.irs.gov/Individuals/HCTC</a> )	72.5% of qualifying health insurance premium costs (refer to <a href="http://www.irs.gov/Individuals/HCTC">http://www.irs.gov/Individuals/HCTC</a> )	72.5% of qualifying health insurance premium costs (refer to <a href="http://www.irs.gov/Individuals/HCTC">http://www.irs.gov/Individuals/HCTC</a> )

## APPENDIX II. Trade Adjustment Assistance for Workers Programs: Amending statutes<sup>6</sup>

Year	Law Amending Trade Act of 1974	TAA program, as Amended by this law	Effective dates of amendments	Explanation
2002	Trade Adjustment Assistance Reform Act of 2002 (TAA Reform Act)	The Trade Act of 1974, title II, chapter 2, as amended in 2002 by the TAA Reform Act (2002 TAA Program)	Applies to petitions filed between November 4, 2002 and May 18, 2009 and on or after February 15, 2011 through October 20, 2011* <i>*Some workers covered under these petitions may receive 2011 TAA Program benefits</i>	The President signed into law the Trade Adjustment Assistance Reform Act of 2002 (TAA Reform Act) on August 6, 2002. It reauthorized the TAA Program through fiscal year 2007.
2009	Trade and Globalization Adjustment Assistance Act of 2009 (TGAAA)	The Trade Act of 1974, Title II, Chapter 2, as amended in 2009 by the TGAAA (2009 TAA Program)	Applies to petitions filed between May 18, 2009 and February 14, 2011	The President signed into law the ARRA, which contained the TGAAA, on February 17, 2009. The Omnibus Trade Act of 2011 (Public Law 111-344) extended the 2009 Amendments for six weeks
2011	Trade Adjustment Assistance Extension Act of 2011 (TAAEA)	Trade Act of 1974, title II, chapter 2, as amended in 2011 by the TAAEA)	Applies to petitions filed on or after October 21, 2011* <i>*Some workers covered under petitions filed on or after February 15, 2011 through October 20, 2011 may be eligible for 2011 TAA Program benefits</i>	The President signed into law the TAAEA on October 21, 2011.
2015	Trade Adjustment Assistance Reauthorization Act of 2015 (TAARA 2015)	Trade Act of 1974, title II, chapter 2, as amended in 2015 by the TAARA 2015 (2015 Program)	Applies to petitions filed between June 29, 2015* and June 30, 2021 <i>*OTAA will:</i> <ul style="list-style-type: none"> <li>• <i>automatically reconsider negative determinations (denials) of petitions filed on or after January 1, 2014, and before June 29, 2015;</i></li> <li>• <i>investigate petitions filed during that period for which a determination has not yet been issued; and</i></li> <li>• <i>make a determination under the 2015 Program criteria.</i></li> </ul>	The President signed into law the TAARA 2015 on June 29, 2015.
Reversion 2021	Trade Adjustment Assistance Reauthorization Act of 2015 (TAARA 2015)	Trade Act of 1974, title II, chapter 2, as amended in 2015 by the TAARA 2015 (2015 Program)	Applies to petitions filed on or after July 1, 2021	TAARA 2015, at Section 406, includes a provision that creates a modified version of the TAA Program, Reversion 2021, effective for all petitions filed on or after July 1, 2021.

<sup>6</sup> U.S. Department of Labor, “TAA Statutes,” <https://www.dol.gov/agencies/eta/tradeact/laws/statutes> (accessed September 16, 2022)

### **APPENDIX III. Directives and guidance for Trade Act programs**

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The current listing of directives for Trade Act programs is accessible at <https://www.dol.gov/agencies/eta/tradeact/law/directives>.