



## 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>	<table border="1"> <tr> <td data-bbox="812 470 1242 556">Youth, Adult, and Dislocated Worker; Program Eligibility and Design</td> <td data-bbox="1242 470 1424 556">Policy category</td> </tr> <tr> <td data-bbox="812 556 1242 615"></td> <td data-bbox="1242 556 1424 615">Effective date</td> </tr> <tr> <td data-bbox="812 615 1242 722">Program Eligibility for Youth, Adults, and Dislocated Workers, Change 1 (effective September 12, 2017)</td> <td data-bbox="1242 615 1424 722">Supersedes</td> </tr> </table>	Youth, Adult, and Dislocated Worker; Program Eligibility and Design	Policy category		Effective date	Program Eligibility for Youth, Adults, and Dislocated Workers, Change 1 (effective September 12, 2017)	Supersedes
Youth, Adult, and Dislocated Worker; Program Eligibility and Design	Policy category						
	Effective date						
Program Eligibility for Youth, Adults, and Dislocated Workers, Change 1 (effective September 12, 2017)	Supersedes						

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

Eligibility criteria for WIOA Title I youth, adult, and dislocated worker programs are defined under the provisions of WIOA and its implementing rules, regulations, and guidance.

## ACTION

This policy supersedes and cancels the State’s<sup>1</sup> policy on Program Eligibility for Youth, Adults, and Dislocated Workers, Change 1 (effective date September 12, 2017). 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 that:<sup>2</sup>

- describes quantifiable methods that must be used to determine eligibility as an in-school youth (ISY) or out-of-school youth (OSY) based on the “basic skills deficient” criterion, which must include use of assessment instruments that are valid and appropriate for the

<sup>1</sup> The term “State” refers collectively 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>2</sup> 20 CFR § 681.290(b) – (c)

target population and the provision of reasonable accommodations during the assessment process for individuals with disabilities; and

- describes documentation required to demonstrate eligibility determinations, as required for Federal reporting, based on this criterion.

Each local board must establish a policy that:<sup>3</sup>

- 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 the definition must be reasonable, quantifiable, and based on objective evidence that the individual requires additional assistance;
- describes methods that must be used to determine eligibility based on this criterion; and
- describes documentation required to demonstrate eligibility determinations, as required for Federal reporting, based on this criterion.

Each local board must establish a policy that:<sup>4</sup>

- 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 the definition must be reasonable, quantifiable, and based on objective evidence that the individual requires additional assistance;
- describes methods that must be used to determine eligibility based on this criterion; and
- describes documentation required to demonstrate eligibility determinations, as required for Federal reporting, based on this criterion.

Each local board must establish a policy that:<sup>5</sup>

- 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 based on conditions affecting self-employed individuals, including family members and farm workers or ranch hands;
- describes methods that must be used to determine eligibility based on this criterion; and
- describes documentation required to demonstrate eligibility determinations, as required for Federal reporting, based on this criterion.

Each local board must ensure that local policies regarding eligibility for youth, adult, and dislocated worker programs comply and align with the requirements and defined terms

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<sup>3</sup> 20 CFR § 681.310(a)

<sup>4</sup> 20 CFR § 681.300

<sup>5</sup> 20 CFR § 680.130(b)(2)

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.

## CHANGES

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

- The [ACTION](#) section has been revised to clarify responsibilities of local boards under this policy.
- The minimum age requirement of 18 years for dislocated worker program eligibility has been rescinded.
- The definition for “high-poverty area” in [APPENDIX I](#), as it relates to youth program eligibility, has been revised.

## POLICY

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This policy establishes eligibility requirements for youth, adult, and dislocated worker programs.

This policy five has sections and two appendices.

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### Section I. General eligibility requirements

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In addition to the eligibility requirements described in Sections II, III, and IV, all youth, adult, and dislocated worker program participants must be:<sup>6</sup>

- citizens or nationals of the United States; or
- lawfully admitted permanent resident non-citizen, 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 male and age 18 or older who are participating youth, adult, and dislocated worker program activities have complied with the requirements of the Military Selective Service Act.<sup>7</sup>

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<sup>6</sup> 20 CFR § 683.285(a)(5)

<sup>7</sup> WIOA Sec. 189(h)

## Section II. Youth program eligibility

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### (a) ISY eligibility criteria

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

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

*Table 1. ISY level 1 eligibility criteria<sup>8</sup>*

ISY Level 1 Eligibility Criteria
1. The individual must provide equal opportunity (EO) data 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 school, including secondary school or postsecondary school.
4. The individual is a low-income individual. <sup>9</sup>

*Level 2.* The individual must meet at least one of the eight criteria listed in Table 2.

*Table 2. ISY level 2 eligibility criteria<sup>10</sup>*

ISY Level 2 Eligibility Criteria
1. The individual is basic skills deficient.
2. The individual is an English language learner.
3. The individual is an offender.
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 2; 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 pregnant or parenting.
7. The individual is an individual with a disability.

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<sup>8</sup> 20 CFR §§ 680.110(c) and 681.220(a) – (c)

<sup>9</sup> A youth who lives in a high-poverty area is automatically considered a low-income individual [20 CFR §§ 681.250(d) and 681.260]. The current list of Nebraska’s high-poverty areas is provided in NDOL’s most recent Employment and Training Notice regarding high-poverty areas. Employment and Training Notices are accessible at <https://dol.nebraska.gov/EmploymentAndTraining/LCRWP/WIOA/Notices>.

<sup>10</sup> 20 CFR § 681.220(d); 42 USC §§ 14043e-2(6) and 11434a(2)

ISY Level 2 Eligibility Criteria
8. The individual requires additional assistance to complete an educational program or to secure or hold employment.

### (1) Age-based eligibility for ISY<sup>11</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>12</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 the public K–12 school system; and
- classify the individuals as still enrolled in school.

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 program classifies the individual as still enrolled in school.

### (3) Low-income exception<sup>13</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. 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, in this example, five of the 100 individuals who ordinarily would be required to meet the low-income criterion are not required to meet that criterion based on the low-income exception.

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<sup>11</sup> 20 CFR § 681.220(b)

<sup>12</sup> 20 CFR § 681.230; TEGL 21-16

<sup>13</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.

#### (4) Additional assistance limitation for ISY<sup>14</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 general eligibility requirements described in [Section I](#), two levels of criteria must be met for an individual to qualify as an OSY.

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

*Table 3. OSY level 1 eligibility criteria<sup>15</sup>*

OSY Level 1 Eligibility Criteria
1. The individual must provide EO 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 attending school, including secondary school or postsecondary school.

**Level 2.** The individual must meet at least one of the nine criteria listed in Table 4.

*Table 4. OSY level 1 eligibility criteria<sup>16</sup>*

OSY Level 2 Eligibility Criteria
1. The individual is a school dropout.
2. The individual is within the age of compulsory school attendance under state law <i>but</i> has not attended for at least the most recent complete school-year quarter or calendar-year quarter.
3. The individual is a recipient of a secondary school diploma or its recognized equivalent, a low-income individual, <sup>17</sup> and <i>either</i> basic skills deficient <i>or</i> an English language learner.
4. The individual is an offender.
5. The individual is a homeless individual who: a. lacks a fixed, regular, and adequate nighttime residence 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 5a and 5b of this Table 4;

<sup>14</sup> 20 CFR § 681.310(b)

<sup>15</sup> 20 CFR §§ 680.110(c) and 681.210(a) – (b)

<sup>16</sup> WIOA Sec. 3(24)(G); 20 CFR § 681.210(c); 42 USC §§ 14043e-2(6) and 11434a(2)

<sup>17</sup> A youth who lives in a high-poverty area is automatically considered a low-income individual [20 CFR §§ 681.250(d) and 681.260]. The current list of Nebraska's high-poverty areas is provided in NDOL's most recent Employment and Training Notice regarding high-poverty areas. Employment and Training Notices are accessible at <https://dol.nebraska.gov/EmploymentAndTraining/LCRWP/WIOA/Notices>.

OSY Level 2 Eligibility Criteria
d. lives in cars, parks, public spaces, abandoned buildings, substandard housing, bus or training stations, or similar settings; or e. is a runaway.
6. The individual: a. is in foster care; b. has aged out of the foster care system; c. has attained age 16 and left foster care for kinship guardianship or adoption; d. is eligible for assistance under the John H. Chafee Foster Care Independence Program; or e. is in an out-of-home placement.
7. The individual is pregnant or parenting.
8. The individual is an individual with a disability.
9. The individual requires additional assistance to enter or complete an educational program or secure or hold employment and is a low-income individual.

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

As stated above, an individual 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 the individual's participation in the youth program. Once enrolled, OSY may continue to receive services beyond age 24.

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

An individual must be low-income if the individual is the recipient of a secondary school diploma or a recognized equivalent and eligibility as an OSY is based on:<sup>19</sup>

- basic skills deficiency;
- being an English language learner; or
- a need for additional assistance to enter or complete an educational program or to secure or hold employment.

### (3) Low-income exception

As stated in [Section II\(a\)\(3\)](#), 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. Refer to Section II(a)(3) for an example of this scenario.

### (c) Transition of WIA youth participants to WIOA youth program<sup>20</sup>

WIA<sup>21</sup> youth program participants enrolled in the WIA youth program as of July 1, 2015 are automatically enrolled in the WIOA youth program, even if the participant would not be otherwise eligible. WIOA youth program operators are not required to redetermine eligibility if the participant

<sup>18</sup> 20 CFR § 681.210(b)

<sup>19</sup> 20 CFR § 681.250(a)

<sup>20</sup> TEGL 23-14

<sup>21</sup> WIA refers to the Workforce Investment Act of 1998.

was determined eligible and enrolled under WIA. WIA youth program participants must be allowed to complete the program services specified in their individual service strategy.

### **Section III. Adult program eligibility**

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In addition to the general eligibility requirements described in [Section I](#) and in order to receive career services<sup>22</sup> through the adult program, an individual must be age 18 or older.<sup>23</sup>

### **Section IV. Dislocated worker program eligibility<sup>24</sup>**

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In addition to the general eligibility requirements described in [Section I](#) and in order to receive career services and training services through the dislocated worker program, an individual must meet the criteria described in one of the following five categories.

#### **Category I. Ordinary layoff**

This eligibility category covers an individual who has been terminated or laid off, or who has received a notice of termination or layoff from employment, but not because of a permanent closure or mass layoff, and is either:

- eligible for or has exhausted entitlement to unemployment compensation; or
- has 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 individual must also be unlikely to return to a previous industry or occupation.

#### **Category II. Permanent closure or mass layoff**

This eligibility category covers an individual who has been dislocated because of a permanent closure or mass layoff, meaning an individual who:

- has been terminated or laid off, or has received a notice of termination or layoff, from employment because of any permanent closure of or any substantial layoff at a plant, facility, or enterprise; or
- is employed at a facility at which the employer has made a general announcement that the facility will close within 180 calendar days; or

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<sup>22</sup> For a description of career services, refer to 20 CFR § 678.430

<sup>23</sup> 20 CFR § 680.120

<sup>24</sup> WIOA Sec. 3(15); 20 CFR § 680.120; TEGL 19-16



- for purposes of eligibility to receive services other than training services, career services, or supportive services, is employed at a facility at which the employer has made a general announcement that the facility will close.

### Category III. Conditions affecting self-employment

This eligibility category covers a self-employed<sup>25</sup> individual, including family members and farm workers or ranch hands, who is unemployed as a result of general economic conditions in the community in which the individual resides or a natural disaster.

### Category IV. Displaced homemaker<sup>26</sup>

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

- has been dependent on the income of another family member but is no longer supported by that income; or
- is the dependent spouse of a member of the US Armed Forces on active duty and whose family income is significantly reduced because of a:
  - deployment;
  - call or order to active duty;
  - permanent change of duty station or the service-connected death or disability of the service member.

The individual must also be unemployed or underemployed and experiencing difficulty in obtaining or upgrading employment.

### Category V. Service member or military spouse<sup>27</sup>

*Service member.* This eligibility category covers a service member who has separated or is separating from the US Armed Forces with a discharge that is anything other than dishonorable and:

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

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

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<sup>25</sup> This includes including self-employment in farming, ranching, and fishing industries.

<sup>26</sup> WIOA Sec. 3(16)(A) – (B); 20 CFR § 680.630(d)

<sup>27</sup> 20 CFR § 680.660; TEGL 19-16

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

## Section V. Nondiscrimination

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All programs and activities funded or financially assisted in whole or in part under WIOA must comply with all laws on the prohibition against discrimination based on age, disability, or sex, or based on race, color, national origin, or political affiliation or belief.<sup>28</sup>

Participation in programs and activities funded under WIOA must be available to eligible:<sup>29</sup>

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

## DISCLAIMER

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This policy is based on NDOL's reading of the applicable statutes, regulations, rules, and guidance released by the 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>28</sup> WIOA Sec. 188. Also, refer to the State's policy on nondiscrimination and equal opportunity.

<sup>29</sup> 20 CFR § 683.285(a)(5)

## 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<sup>30</sup>

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

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

### 2. age of compulsory school attendance<sup>31</sup>

An individual who is within the *age of compulsory school attendance* is an individual who is subject to compulsory school attendance according to state law. In Nebraska, individuals ages six 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.

### 3. attachment to the workforce<sup>32</sup>

The phrase *attachment to the workforce* 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.

### 4. attending postsecondary school<sup>33</sup>

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

- community college classes; and
- continuing education classes.

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<sup>30</sup> 10 USC § 101(d)(1)

<sup>31</sup> TEGL 21-16; Neb. Rev. Stat. § 79-201

<sup>32</sup> This is a term defined by the State.

<sup>33</sup> TEGL 21-16

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.

#### 5. attending school (secondary school)<sup>34</sup>

The phrase *attending school* is defined by state law. Nebraska State Law defines *attending school* 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
- high school equivalency programs,<sup>35</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.

#### 6. basic skills deficient

An individual who is *basic skills deficient* is:<sup>36</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.

#### 7. call or order to active duty<sup>37</sup>

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

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<sup>34</sup> 20 CFR § 681.550(a); TEGL 21-16; Neb. Rev. Stat. §§ 79-201, 79-202, 79-319, and 79-1601

<sup>35</sup> Refer to [Section II\(a\)\(2\)](#) for information on high school equivalency and drop-out reengagement programs.

<sup>36</sup> WIOA Sec. 3(5)

<sup>37</sup> 10 USC § 101(a)(13)(B)

## 8. deployment<sup>38</sup>

A member of the US Armed Forces is considered to be deployed 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 deployed 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
- 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.

## 9. dropout

A school *dropout* is an individual who:<sup>39</sup>

- is no longer attending any school; and
- has not received a secondary school diploma or a recognized equivalent.

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

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<sup>38</sup> 10 USC § 991(b)

<sup>39</sup> WIOA Sec. 3(54); TEGL 21-16

## 10. English language learner

*English language learner* means an individual who has limited ability in reading, writing, speaking, or comprehending the English language and:<sup>40</sup>

- whose native language is a language other than English; or
- who lives in a family or community environment where a language other than English is the dominant language.

## 11. general announcement<sup>41</sup>

The term *general announcement* means an announcement to the public by the employer or employer's representative. The *general announcement* does not need to be in written form, but it must be made to the public, not just the employees of the employer.

## 12. 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>42</sup>

## 13. individual with a disability

The phrase *individual with a disability* means an individual with a disability as defined in Section 3 of the Americans with Disabilities Act of 1990.<sup>43</sup>

## 14. laid off or layoff<sup>44</sup>

For determining eligibility as a dislocated worker, the term *laid off or layoff* means an individual's employment relationship is or will be suspended by the employer, without cause,<sup>45</sup> for more than 180 calendar days.

## 15. low-income individual

A *low-income individual* is an individual who meets one or more of the criteria listed in Table 5.

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<sup>40</sup> WIOA Secs. 3(20) and 203(7); TEGL 21-16

<sup>41</sup> This is the State's definition as permitted under 20 CFR § 680.130(b)(1).

<sup>42</sup> A youth who lives in a high-poverty area is automatically considered a low-income individual [20 CFR §§ 681.250(d) and 681.260]. The current list of Nebraska's high-poverty areas is provided in NDOL's most recent Employment and Training Notice regarding high-poverty areas. Employment and Training Notices are accessible at <https://dol.nebraska.gov/EmploymentAndTraining/LCRWP/WIOA/Notices>.

<sup>43</sup> 20 CFR § 675.300

<sup>44</sup> This is a term defined by the State.

<sup>45</sup> Cause, with or without, is a determination made by the state's unemployment compensation determinations unit regarding the circumstances surrounding a separation from employment.

**Table 5. Low-income criteria<sup>46</sup>**

Low-income Eligibility Criteria
1. The individual currently receives or is a member of a family currently receiving assistance through: <ol style="list-style-type: none"> <li>a. Supplemental Nutrition Assistance Program (SNAP);</li> <li>b. Temporary Assistance for Needy Families Program (TANF);</li> <li>c. Supplemental Security Income through the Social Security Administration (SSI); or</li> <li>d. state or local income-based public assistance.</li> </ol>
2. In the past six (6) months, the individual has received or is a member of a family that has received assistance through SNAP, the TANF program, SSI, or 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>47</sup> <ol 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> </ol>
4. The individual is a homeless individual who: <ol style="list-style-type: none"> <li>a. lacks a fixed, regular, and adequate nighttime residence and is:               <ol 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> </ol> </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 4a and 4b of this Table 5;</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> </ol>
5. The individual receives or is eligible to receive a free or reduced-price lunch under the Richard B. Russell National School Lunch Act, unless the individual is a recipient of a secondary school diploma or its recognized equivalent.
6. The individual is a foster child on behalf of whom state or local government payments are made.
7. The individual is an individual with a disability whose income meets either of the criteria listed in row 3 of this Table 5.

A youth who lives in a high-poverty area is automatically considered a low-income individual.<sup>48</sup>

**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;

<sup>46</sup> WIOA Secs. 3(36) and 181(a)(2); 38 USC § 4213

<sup>47</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. The current list of Nebraska’s high-poverty areas is provided in NDOL’s most recent Employment and Training Notice regarding high-poverty areas. Employment and Training Notices are accessible at <https://dol.nebraska.gov/EmploymentAndTraining/LCRWP/WIOA/Notices>.

<sup>48</sup> 20 CFR §§ 681.250(d) and 681.260

- 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.

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.



## 16. notice of termination or layoff from employment<sup>49</sup>

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

## 17. offender

*Offender* means an adult or juvenile who:<sup>50</sup>

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

## 18. pregnant or parenting<sup>51</sup>

A *pregnant* individual is the expectant mother only.

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

## 19. requires additional assistance

The phrase *requires additional assistance*, with regard to Youth program eligibility is defined in policy by the local board.<sup>52</sup>

## 20. school<sup>53</sup>

The term *school* is defined by state law. Nebraska State Law defines *school* 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>54</sup>

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

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<sup>49</sup> This is a term defined by the State.

<sup>50</sup> WIOA Sec. 3(38)

<sup>51</sup> TEGL 21-16

<sup>52</sup> 20 CFR §§ 681.300 and 681.310

<sup>53</sup> 20 CFR § 681.230; TEGL 21-16; Neb. Rev. Stats. §§ 79-201, 79-202, 79-319, and 79-1601

<sup>54</sup> Refer to [Section II\(a\)\(2\)](#) for additional information on high school equivalency and drop-out reengagement programs.

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

Providers of WIOA Title IC (Job Corps), Title ID (YouthBuild), and Title II (Adult Education and Family Literacy Act) programs are not considered schools for the purposes of determining school status.

## 21. service-connected

The term *service-connected* means, with respect to disability or death, that a disability was incurred or aggravated, or that death resulted from a disability incurred or aggravated, in line of duty in the active military, naval, or air service.<sup>55</sup>

## 22. temporary recall<sup>56</sup>

The term *temporary recall* 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 calendar days or less. In a *temporary recall*, the employer still intends to terminate the worker.

## 23. terminated<sup>57</sup>

For determining eligibility as a dislocated worker, *terminated* employment is a permanent situation in which the employer lays off, without cause,<sup>58</sup> and does not plan to rehire an individual. Any documented non-seasonal layoff projected to last one-hundred eighty (180) or more calendar days is a termination of employment.

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

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 one-hundred eighty (180) calendar days of the initial layoff date; or
- retirement or other voluntary separation from the workforce.

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<sup>55</sup> 38 USC § 101(16)

<sup>56</sup> This is a term defined by the State.

<sup>57</sup> This is a term defined by the State.

<sup>58</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.

#### 24. unemployed as a result of a natural disaster<sup>59</sup>

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

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

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

#### 25. unlikely to return to a previous occupation or industry

For 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 on one (1) or more of the following criteria:<sup>60</sup>

- official assessments of market demand for products or services in the occupation or industry;
- local labor market conditions for the industry or occupation;
- 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;
- impact of technology or trade on the industry or occupation.

A separating service member meets the standard of *unlikely to return to a previous industry or occupation*.<sup>61</sup>

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<sup>59</sup> This is a term defined by the State as permitted under 20 CFR § 680.130(b)(3).

<sup>60</sup> This is a term defined by the State as permitted under 20 CFR § 680.130(b)(2).

<sup>61</sup> TEGL 19-16