

## **Interim Policy on Rapid Response**

### **Reference:**

Workforce Investment Act of 1998 (WIA); Workforce Innovation and Opportunity Act of 2014 (WIOA) Sections 3, 108, 129, 133, and 134; WIOA Notice of Proposed Rulemaking (NPRM) 20 CFR §§ 679.560, 681.500, 682.300 *et seq.*; TEGL 3-15; 29 USC § 2101 *et seq.*

### **Background:**

Rapid Response is a required activity under WIOA<sup>1</sup> to be carried out in local areas by the Nebraska Department of Labor (NDOL) in conjunction with local workforce development boards (local boards), chief elected officials (CEOs), and other stakeholders. Rapid Response involves strategies and activities necessary to (i) plan for and quickly respond to announcements of business closures and layoffs and mass job dislocation resulting from natural or other disasters; (ii) deliver services that enable dislocated workers to transition to new employment as quickly as possible; and (iii) address the needs of businesses in transition to prevent or minimize the duration of unemployment. NDOL may reserve not more than twenty-five (25) percent of the total amount allotted for Dislocated Worker Employment and Training Activities for a fiscal year for statewide Rapid Response Activities.<sup>2</sup>

### **Action:**

After a 10-day review period, this Policy will be considered final. Questions and comments should be submitted in writing to the WIOA Policy Mailbox: [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov).

Local area plans must include a description of how the local board will coordinate workforce development activities carried out in the local area with statewide Rapid Response activities.<sup>3</sup>

### **Policy:**

## **Definitions**

### **Layoff Aversion**<sup>4</sup>

“Layoff aversion” refers to strategies and activities designed to address the needs of businesses in transition and prevent or minimize the duration of unemployment resulting from layoffs, including:

- assisting employers in managing layoffs;
- early identification of businesses that may experience layoffs and (i) assessing their needs and options and (ii) delivering services to address those needs;
- engagement, partnership and relationship-building activities with community businesses to support layoff aversion efforts and transition dislocated workers to new employment as quickly as possible;

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<sup>1</sup> WIOA Section 134(a)(2); 20 CFR § 682.310(a)

<sup>2</sup> WIOA Section 133(a)(2)

<sup>3</sup> WIOA 108(b)(8); 20 CFR § 679.560(b)(7)

<sup>4</sup> 20 CFR § 682.320(b)

- funding feasibility studies to determine if a business's operations may be continued through a buyout or other means to avoid or minimize layoffs;
- developing or managing incumbent worker training programs or other worker skill-upgrading activities;
- connecting business with:
  - short-time compensation or other programs available under Unemployment Insurance programs designed to prevent layoffs or to quickly reemploy dislocated workers,
  - employer loan programs for employee skill upgrading,
  - other Federal, state and local resources to address other business needs that cannot be funded with resources provided under title I of WIOA,
  - economic development activities at the Federal, state and local levels, and
  - available state and local business retention and expansion activities;
- partnering or contracting with organizations that assess risks to businesses, proposing strategies to address those risks, implementing services, and measuring the impact of services delivered;
- analyzing the suppliers of an affected business to assess their risks and vulnerabilities from a potential closing or shift in production of a major customer;
- identifying opportunities for economic training needs in growing industry sectors or expanding businesses; and
- connecting businesses and workers with short-term, on-the-job, or customized training programs and apprenticeships before or after layoff to support rapid reemployment.

#### Rapid Response Activities<sup>5</sup>

“Rapid Response Activities” are activities carried out by NDOL, or an entity designated by NDOL, involving reemployment assistance to workers affected by business closure, layoff, or natural or other disasters resulting in worker dislocation, including:

- onsite contact with employers and worker representatives after NDOL is:
  - notified of a current or projected permanent closure or mass layoff, or
  - made aware of mass job dislocation resulting from a natural or other disaster;
- providing information about and access to employment and training activities;
- assisting with the establishment of a labor-management committee (described below);
- providing emergency assistance customized to the closure, layoff, or disaster; and
- assisting affected local communities with:
  - development of coordinated responses, and
  - obtaining access to state economic development assistance.

#### Statewide Rapid Response Activities<sup>6</sup>

“Statewide Rapid Response Activities” are activities carried out by NDOL, or an entity designated by NDOL, in local areas experiencing business closures, layoffs, or other mass job dislocation resulting from natural or other disasters. Statewide Rapid Response Activities are carried out as outlined in NDOL’s Rapid Response Manual, which is available on NDOL’s website at [dol.nebraska.gov](http://dol.nebraska.gov).

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<sup>5</sup> WIOA Section 3(51)

<sup>6</sup> WIOA Section 134(a)(2)(A)(i)(I)-(II)

## WARN Notice<sup>7</sup>

The Worker Adjustment and Retraining Notification (WARN) Act offers protection to workers, their families, and communities by requiring covered employers to provide written notice (WARN Notice) sixty (60) days in advance of covered plant closings and covered mass layoffs. This notice must be provided to either affected covered workers or their representatives (e.g., a labor union), to NDOL's Office of Employment and Training, and to the appropriate unit of local government.

Enforcement of WARN requirements is performed through the United States district courts. NDOL has no administrative or enforcement responsibility under WARN. Additional information on WARN is available on NDOL's website at [dol.nebraska.gov](http://dol.nebraska.gov).

## **Purpose of and Responsibility for Carrying Out Rapid Response<sup>8</sup>**

### Purpose

The purpose of Rapid Response is promoting economic recovery and strength by (i) identifying, planning for, and responding to layoffs and dislocations and (ii) preventing or minimizing the effect of layoffs and dislocations on workers, businesses, and communities.

### Responsibility

NDOL manages Rapid Response activities through the Rapid Response Unit. The Rapid Response Unit is responsible for the planning and delivery of services to enable dislocated workers to transition to new employment as quickly as possible in the event of a permanent closure, mass layoff, natural or other disasters, or exceptional circumstances resulting in a mass job dislocation. Nebraska's Rapid Response Program is a joint effort between NDOL, its office location staff and Virtual Service Unit staff, and Nebraska American Job Center (AJC) staff. Rapid Response activities are provided throughout the state in accordance with NDOL's Rapid Response Manual in the event of a business closure or layoff, natural or other disaster, other exceptional circumstances resulting in substantial worker dislocation, and upon receipt of WARN Notices. NDOL's Rapid Response Manual is available on NDOL's website at [dol.nebraska.gov](http://dol.nebraska.gov).

## **Required Rapid Response Activities<sup>9</sup>**

Rapid Response activities must include, but are not limited to:

- layoff aversion, as applicable;
- immediate and on-site contact with the employer, representatives of the affected workers, and the local community including assessing and planning to address the:
  - employer's layoff plans and schedule,
  - experience and assistance needs of affected workers,
  - reemployment prospects for affected workers, and
  - available resources to meet short- and long-term assistance needs of affected workers;

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<sup>7</sup> 29 USC § 2101 *et seq.*

<sup>8</sup> TEGL 3-15

<sup>9</sup> 20 CFR § 682.330; TEGL 3-15

- providing information about and access to unemployment compensation benefits and programs, such as short-time compensation, comprehensive AJC services, and employment and training activities, including information on the Trade Adjustment Assistance (TAA) Program, Pell Grants, the GI Bill, and other resources;
- delivering other necessary services and resources including workshops and classes, use of worker transition centers, and job fairs;
- partnering with local boards and CEOs ensuring coordinated response to dislocation events and access to state or local economic development assistance as needed;<sup>10</sup>
- providing emergency assistance customized to the particular layoff or disaster;
- developing systems and processes, as appropriate, for
  - identifying and gathering information for early warning of potential layoffs and opportunities for layoff aversion,
  - analyzing and acting on data and information on dislocations and other economic activity in the state, region, or local area, and
  - tracking outcome and performance data and information related to Rapid Response activities;
- developing and maintaining partnerships with Federal, other state, and local agencies and officials, employer associations, technical councils, other industry business councils, labor organizations, and other public and private organizations, as appropriate, to:
  - conduct strategic planning activities,
  - develop strategies for addressing dislocation events,
  - ensure timely access to necessary assistance, and
  - develop mechanisms for gathering and exchanging information and data relating to potential dislocations, resources available, and customization of layoff aversion or rapid response activities;
- delivering services to worker groups for which a petition for TAA has been filed;
- providing additional assistance (described below) to local areas experiencing closures, layoffs, disasters, or other dislocation events that exceed the capacity of the local area to respond with existing resources; and
- providing guidance and financial assistance, as appropriate, in establishing a labor management committee (described below).

### **Trade Adjustment Assistance (TAA)**

Rapid Response services are provided to every group of workers on whose behalf a TAA petition is filed.<sup>11</sup> Rapid Response staff will make affected workers aware of the services available after a layoff is announced, and if Rapid Response services are provided before a petition is filed, Rapid Response services will include information on the process of petitioning for certification under the TAA program. In the event that TAA petitions are no longer processed by the US Department of Labor due to expiration or termination of the TAA program, dislocated workers will continue to receive Rapid Response services as described in this Policy and Nebraska's Rapid Response Manual.

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<sup>10</sup> Coordinated response may include developing an application for a national dislocated worker grant as specified under WIOA Sections 101(38) and 134(a)(2)(A).

<sup>11</sup> 20 CFR 682.330(i)

### **Additional Assistance to Local Areas<sup>12</sup>**

Once NDOL has adequate funds reserved for statewide Rapid Response activities, NDOL may provide any remaining reserved funds to local areas experiencing layoffs, disasters, or other events leading to substantial increases in unemployment if adequate local funds are not available to assist dislocated workers. Funds provided to local areas as additional assistance must be used for provision of direct career services to the affected workers.

Local areas may request a portion of the remaining reserved funds by completing and submitting a "Request for Additional Assistance" form (attached to this Policy as Attachment A).

### **Labor-management Committees<sup>13</sup>**

A labor-management committee may be established if voluntarily agreed to by management of the affected business and the bargaining representatives of the affected workers. Leadership of an established labor-management committee is determined by the involved parties. Establishment of labor-management committees is not required by WIOA; however, if management of the business and the bargaining representatives of the workers wish to establish the committee, NDOL must provide guidance and financial support.

The labor-management committee may devise and oversee strategies addressing the reemployment needs of the affected workers. Rapid Response assistance provided to the labor-management committee may include:

- providing training and technical assistance to committee members; and
- funding operating costs of the committee enabling the committee to provide advice and assistance in carrying out Rapid Response activities and in the design and delivery WIOA-authorized services to the affected workers.

### **Community Transition Teams<sup>14</sup>**

Circumstances permitting, Rapid Response activities may include providing guidance and/or financial assistance to establish community transition teams:

- to assist the affected community in organizing support for dislocated workers; and
- in meeting the basic needs of affected families, including heat, shelter, food, clothing and other necessities and services that are beyond the resources and ability of the one-stop delivery system to provide.

### **Use of Unobligated Rapid Response Funds<sup>15</sup>**

Rapid Response funds reserved by NDOL under WIA or WIOA, and unobligated after the first program year such funds were allotted, may be used by NDOL to carry out allowable or required statewide activities under WIOA Section 134.

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<sup>12</sup> WIOA Section 134(a)(2)(i)(II); 20 CFR § 682.350

<sup>13</sup> 20 CFR § 682.330(k)

<sup>14</sup> 20 CFR § 682.340

<sup>15</sup> WIOA Section 134(a)(2)(A)(ii) and (B); 20 CFR 682.370

## Recapture of Unspent Rapid Response Funds

WIOA allows NDOL to recapture unspent WIA and WIOA Rapid Response funds at the end of the program year of obligation and utilize them for allowable statewide activities. Allowable statewide activities include:<sup>16</sup>

- developing and implementing programs and strategies including:
  - incumbent worker, training programs, and customized training,
  - sectoral and industry cluster strategies,
  - industry or sector partnerships,
  - career pathway programs,
  - microenterprise and entrepreneurial training and support programs,
  - utilization of effective business intermediaries,
  - layoff aversion strategies,
  - activities to improve connections between the one-stop delivery system in the state and all employers in the state, and
  - other services and strategies that engage employers in workforce investment activities and make the workforce development system relevant to the needs of state and local businesses
- implementing programs and practices that:
  - increase the number of individuals training for and placed in non-traditional employment, and
  - provide support for education, training, skill upgrading, and statewide networking for employees to become and maintain proficiency as workplace learning advisors;
- developing strategies for serving individuals with barriers to employment and coordinating programs and services among one-stop partners;
- developing and disseminating common intake procedures;
- developing or identifying education and training programs that:
  - respond to real-time labor market analysis,
  - utilize direct assessment and prior learning assessment to measure and provide credit for prior knowledge, skills, competencies, and experiences,
  - evaluate skills and competencies for adaptability,
  - ensure credits are portable and stackable for more skilled employment, and
  - accelerate course or credential completion;
- conducting research and demonstrations related to employment and education needs of youth, adults and dislocated workers;
- supporting financial literacy activities and the provision of career services in the one-stop delivery system in the state;<sup>17</sup>
- providing incentive grants to local areas for performance by the local areas on local performance accountability measures;
- providing technical assistance to:
  - local boards, CEOs, one-stop operators, one-stop partners, and eligible providers in local areas on the development of programs and the provision of technology to enable remote access to one-stop delivery system services;

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<sup>16</sup> 20 CFR § 682.370; WIOA Sections 129(b)(2) and 134(a)(3)

<sup>17</sup> 20 CFR §§ 678.430 and 681.500 ; WIOA Sections 129(b)(2)(C) and (D) and 134(c)(2)

- local areas implementing WIOA pay-for-performance contract strategies and conducting evaluations of those strategies;<sup>18</sup>
- activities enabling remote access to one-stop delivery system training services;
- activities that include:
  - improving coordination of workforce investment and economic development activities,
  - improving coordination of employment and training activities with child support services and activities, cooperative extension programs carried out by the Department of Agriculture, programs carried out by local areas for individuals with disabilities, adult education and literacy activities including those provided by public libraries, activities in the correction systems to assist ex-offenders in reentering the workforce and financial literacy activities, and
  - developing and disseminating workforce and labor market information;
- adopting, calculating, or commissioning for approval of an economic self-sufficiency standard for the state specifying the income needs of families, by family size, number and ages of children in the family, and geographical considerations; and
- coordinating activities with the child welfare system enabling provision of services for children and youth who are eligible for assistance under Section 477 of the Social Security Act.

**Disclaimer:**

This Policy is based on NDOL's reading of the statute along with the NPRM. This Policy is subject to change as additional Federal regulations and TEGLs are released. This Policy is not intended to be permanent and should be viewed as a placeholder until final Federal regulations are released in early 2016.

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<sup>18</sup> Technical assistance may include providing assistance with data collections, meeting data entry requirements, and identifying level of performance (see WIOA Section 134(a)(3)(A)(xiv)).

**ATTACHMENT A**

**REQUEST FOR ADDITIONAL ASSISTANCE**

Local Area Name:	
Local Area Representative Name:	
Address:	
Phone:	
Email:	

1. Describe in detail the circumstances leading to an increased rate of unemployment in your local area due to plant closings, mass layoffs, labor-force reductions, and/or natural or other disasters. This description should include past and projected dislocation events, timeframes of the events, names and locations of affected businesses, and the number of affected workers.

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2. Has the local area obligated all of its current year base and advance dislocated worker funds?

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3. Has the local area expended at least 50% and obligated at least 80% of its current year base and advance dislocated worker funds?

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4. Enter the number of new dislocated worker enrollees resulting from use of the Additional Assistance funds.

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5. Enter the amount of Additional Assistance funds requested.

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6. Provide projected the date all requested Additional Assistance funds will be expended.

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7. Attach an itemized budget detailing the planned use of the requested Additional Assistance funds.

Signature of Local Area Representative named above

date

Submit completed application with the itemized budget to:

- WIOA Policy Mailbox at [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov)