State Policy Manual

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

Version date: June 14, 2024

Message to readers

This manual is a compilation of policies in effect as of June 14, 2024. You can navigate within this manual using the bookmark pane on the left. If you experience accessibility issues with this manual or have questions or comments, please email the policy mailbox at ndol.wioa_policy@nebraska.gov.

1. Governance

1.1. State board, CEOs, local fiscal agents, and local boards

State Policy **Workforce Innovation and Opportunity Act (WIOA)**

Nebraska Department of Labor (NDOL) Division of Reemployment Services 550 South 16th Street Lincoln, NE 68508 402.471.9000 ndol.wioa_policy@nebraska.gov	Policy category Governance Effective December 13, 2023 Supersedes Workforce Development Boards and Chief Elected Officials, Change 2 (effective May 3, 2023)

State Workforce Development Board, Local Chief Elected Officials, Local Fiscal Agents, and Local Workforce Development Boards

REFERENCE

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

BACKGROUND

WIOA defines required roles and responsibilities of state workforce development boards, local chief elected officials (CEOs), local fiscal agents, and local workforce development boards.[1]

ACTION

State

This policy supersedes and cancels the State's policy titled Workforce Development Boards and Chief Elected Officials, Change 2. Questions and comments on this policy may be submitted in writing to the policy mailbox at ndol.wioa_policy@nebraska.gov.

State policies referenced in this policy are included in the State policy manual, which is accessible at https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies. *State policy manual*

[1] WIOA Secs. 101 and 107

refers to the policy manual created and maintained by the NDOL Reemployment Services Quality Control Unit.

The Nebraska Workforce Development Board

Establishment of the Nebraska Workforce Development Board (state board) must adhere to requirements established in Section I of this policy; WIOA Sec. 101; rules, regulations, and guidance that implement WIOA; as well as all other applicable Federal and State laws, rules, regulations, guidance, and policy.

In addition to requirements pertaining to establishment of the state board, the state board must also adhere to requirements concerning roles and responsibilities defined in WIOA Sec. 101; rules, regulations, and guidance that implement WIOA; as well as all other applicable Federal and State laws, rules, regulations, guidance, and policy.

CEOs, local fiscal agents, and local boards

CEOs, local fiscal agents, and local workforce development boards (local boards) must adhere to requirements established in this policy; WIOA Sec. 107; rules, regulations, and guidance that implement WIOA; as well as all other applicable Federal and State laws, rules, regulations, guidance, and policy.

POLICY

This policy establishes requirements relating to the state board, CEOs, local fiscal agents, and local boards.

This policy has two sections and three appendices.

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Section I. State board

(a) Establishment of the state board

The Governor must establish a state board and bylaws for the state board and appoint the chair of the state board, in accordance with WIOA Sec. 101(a) and 20 CFR § 679.110(a). Membership of the state board must be consistent with criteria and requirements of WIOA Sec. 101(b) and 20 CFR Part 679 Subpart A.

(b) State board functions

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

(c) Sunshine provision requirements

In addition to functions described in WIOA Sec. 101(d), 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. In addition, meetings of the state board must comply with the requirements of the Nebraska Open Meetings Act,[2] an annotated outline of which is accessible at https://ago.nebraska.gov/open-meetings.

(d) State board staff

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) and 20 CFR § 679.160. If the state board elects to hire staff, the requirements of 20 CFR § 679.160 must be met, as described below.[3]

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. Payment of salary and bonuses for the state board director and other hired staff are subject to limitations described in WIOA Sec. 194(15). Specifically, WIOA Sec. 194(15) states that none of the funds available under WIOA Title I can be used by a recipient or subrecipient of such funds to pay the salary and bonuses of an individual, either as direct costs or indirect costs, at a rate in excess of the annual rate of basic pay prescribed for Level II of the Executive Schedule under 5 USC § 5313. (Current pay caps for Executive Level II are updated annually and described at https://www.federalpay.org/ses/2023.)

[2] Neb. Rev. Stat. §§ 84-1407 through 84-1414
[3] 20 CFR § 679.160

Section II. CEOs, local fiscal agents, and local boards

(a) CEO responsibilities

CEO responsibilities are described in Table 1.

Table 1. CEOs required functions[4]

Description
1. Serve as subrecipient of Title I (adult, dislocated worker, and youth) funds or designate an alternative entity as subrecipient or fiscal agent
2. If a fiscal agent is designated, CEOs must ensure the agent has clearly defined roles and responsibilities
3. Bear financial liability for misuse of Title I grant allocated to their respective local areas, even if alternate grant subrecipients or fiscal agents have been designated, unless agreements have been reached with the Governor to bear liability
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
5. Establish bylaws for local boards
6. Select and appoint members of the local board
7. Request certification of local boards every two years, in accordance with Section II(a)(1) below
8. Request designation of local areas in collaboration with local boards
9. Approve local board selection of one-stop operators
10. Seek approval from NDOL when local boards intend to serve as one-stop-operators or provide career services
11. Seek approval from NDOL when local boards intend to directly provide training services
12. Consult with NDOL, as requested, regarding a reorganization plan developed in relation to decertification of the local board
13. Work in partnership with local boards to establish an agreement among CEOs and local boards in the statewide planning region on how the planning region will collectively negotiate and reach agreement with NDOL on levels of performance for and report on the performance accountability measures described in WIOA Sec. 116(c)
14. Work in partnership with local boards to negotiate and reach agreement on local performance indicators with local boards and NDOL
15. Work in partnership with local boards to develop and submit a comprehensive 4-year local plan for the local area to the Governor
16. Participate in statewide regional planning processes that result in a regional plan
17. At the end of the first two-year period of the statewide regional and local plans, review the plans and prepare and submit modifications to the plans
18. Approve budgets developed by local boards for the activities of the boards that are consistent with local plans and duties of local boards
19. Work in partnership with local boards to set policy for their respective one-stop delivery systems
20. Work in partnership with local boards to conduct oversight of youth workforce investment activities authorized under WIOA Sec. 129(c), adult and dislocated worker employment and training activities authorized under WIOA Secs. 134(c) and (d), and the entire one-stop delivery system in the local area

[4] WIOA Secs. 107(b)(1)-(4), 107(c)(2), 107(c)(2)(C), 107(c)(3)(C), 107(d)(10)(A), 107(g)(1); 20 CFR §§ 678.610(a)-(c), 679.250, 679.310(b), (d), (g), and (j), 679.320(a) and (g)(1)-(3), 679.350, 679.370, 679.410(a)-(c), 679.420(a), 679.510(a)(1), 679.530(b), 679.550(a), 679.580(b), and 683.710(b)(1)-(4)

Description
21. Work in partnership with local boards to 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
22. Work in partnership with local boards to ensure the appropriate use, management, and investment of funds to maximize performance outcomes under WIOA Sec. 116
23. Work in partnership with local boards to 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 reach as required under the State's policy on memorandums of understanding and funding agreements

In addition to the required functions described in Table 1, CEOs may:

- enter into agreements with local boards that describe the respective roles and responsibilities of the parties in accordance with 20 CFR § 679.310(c); and

- convey voting privileges to non-required members of local boards pursuant to 20 CFR § 679.320(i).

(1) Certification of local boards

As stated in Table 1, local boards must be certified every two years, in accordance with WIOA Sec. 107(c)(2)(A) and 20 CFR § 679.350. Certification of local boards must occur in accordance with WIOA Secs. 107(b)(1)-(4) and (c)(2) and 20 CFR § 678.800.

1. The composition of a local board must comply with the requirements of WIOA Sec. 107(b)-(c) and 20 CFR § 679.310.

2. The chair of a local board must be a representative of *business in the local area* in accordance with the requirements described in Sections II(a)(1)(A) and II(a)(2) below.

3. If a local board has established standing committees, the committees must comply with the requirements described in Section II(c)(3) below.

4. A local board must have ensured that workforce investment activities carried out in its local area enabled the local area to meet *adjusted levels of performance* during the preceding two full program years.[5]

5. A local board must have sustained fiscal integrity during the preceding two full program years.

(A) Required documentation for certification requests

NDOL requires that CEOs, or their appointed designees, must submit the following documentation to the policy mailbox (ndol.wioa_policy@nebraska.gov) when requesting biennial local board certification:

- written request from the CEO for certification of the local board;

[5] The State's performance accountability policy provides detailed information pertaining to failure to meet adjusted levels of performance.

- current membership, distribution, and standing committees rosters using the templates provided in APPENDIX II (working versions will be provided to local area administrative entity staff by email);

- board membership applications using the membership application templates provided in APPENDIX III (working versions will be provided by email); and

- signed written assurances regarding local board and standing committee composition, performance accountability, fiscal integrity, and records retention.

(B) Timelines

CEOs and local boards must submit local board certification requests and supporting documentation to the policy mailbox (ndol.wioa_policy@nebraska.gov) no later than March 1 of the applicable calendar year, as described in Table 2.

Table 2. Due dates for submission of biennial local board certification requests and supporting documentation

Certification period	Due date for submission of certification requests
Program Years 2025 and 2026	March 1, 2025
Program Years 2027 and 2028	March 1, 2027
Program Years 2029 and 2030	March 1, 2029

Due dates for submission of future two-year local board certification requests and supporting documentation will follow the same biennial due date requirement.

(2) Decertification of local boards

(A) Criteria

Pursuant to WIOA Sec. 107(c)(3), the Governor has the authority to decertify a local board at any time for any of the following reasons:

- fraud or abuse;

- failure to carry out the functions specified for the local board in 20 CFR § 679.370; or

- failure to meet adjusted levels of performance for two consecutive program years, as described in the State's performance accountability policy.

When decertifying a local board, the Governor must adhere to the requirements of 20 CFR § 638.650.

(3) CEO agreements

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 regard to misuse of Title I funds, as required 20 CFR § 683.710(b)(2).

CEOs may also establish agreements describing roles and responsibilities of CEOs and local boards in their respective local areas, as permitted under 20 CFR § 679.310(e).

(4) Delegation of authority and financial liability

Local areas having multiple units of general local government may designate a single CEO as a local area subrecipient or designate another entity to serve as subrecipient or fiscal agent pursuant to an agreement among the CEOs in the local area, pursuant to 20 CFR § 679.420(a). However, designation of a fiscal agent does not relieve the CEO of liability for misuse of grant funds, as stated in 20 CFR § 679.420(a).

(b) Fiscal agents

If CEOs designate fiscal agents, CEOs must ensure fiscal agents have clearly defined roles and responsibilities. In general, fiscal agents are responsible for the functions defined under 20 CFR § 679.420(b).

(c) Local boards

(1) Staff

WIOA Sec. 107(f) and 20 CFR § 679.400(a), local boards have the authority to hire directors and other staff to assist in carrying out the functions of local boards. If local boards elect to hire staff, the requirements of 20 CFR § 679.400(b)-(e) must be met.

(2) Standing committees

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 meet the requirements of 20 CFR § 679.360.

(3) Local board functions

Local boards must meet the requirements of 20 CFR § 679.330 and 20 CFR § 683.710(b)(3). In addition, local boards must perform the functions described in WIOA Sec. 107(d) and 20 CFR § 679.370.

(4) Sunshine provision requirements

In addition to the required functions described above, local boards must conduct business in an open manner by making available to the public information about their respective activities**.** These requirements are referred to as *sunshine provision requirements*, which are described in WIOA Sec. 107(e) and 20 CFR § 679.390. Further, meetings of local boards must comply with the requirements of the Nebraska Open Meetings Act,[6] an annotated outline of which is accessible at https://ago.nebraska.gov/open-meetings.

(5) Oversight and monitoring

Local boards, in partnership with CEOs, must provide oversight and monitoring as required under 2 CFR §§ 200.303(c), 200.303(d), 200.318(b), 200.332(d), and 200.328; 20 CFR § 679.370(i)(1)-(3); and other applicable Federal and State laws, rules, regulations, guidance, and policies.

[6] Neb. Rev. Stat. §§ 84-1407 through 84-1414

(6) Consumer choice requirements for Title IB program services

In accordance with WIOA Secs. 107(d)(10)(E) and 122, local boards must satisfy consumer choice requirements described in 20 CFR § 679.380.

(7) Waitlists for Title IB program services

As required under WIOA Secs. 129(c) and 134(b), local areas must provide Title IB youth services to eligible youth and Title IB employment and training activities to eligible adults and dislocated workers. During annual budget planning for an upcoming program year, local boards:

- ***must*** prioritize planned funding for Title IB program services for eligible adults, dislocated workers, and youth; and

- ***must not*** prioritize use of adult and dislocated worker funds for planned funding of incumbent worker training or customized training services to employers, which are non-mandatory employer services, in a manner that jeopardizes the availability of Title IB program services.

If local boards predict during a given program year that funding for the provision of program services for eligible adults, dislocated workers, and youth may become limited, local boards may establish waitlists for services. However, *prior to establishing waitlists*, local boards must establish, implement, and adhere to local area waitlist policies, processes, and procedures, *which must comply with the following conditions and requirements*.

1. Only local boards (*not their designees, including local administrative entity staff or service provider staff*) may establish waitlists for one or more of Title IB programs under the following limited circumstances:

    a. when funding is predicted to be insufficient during the remainder of the program year based on full analysis of local fiscal records for the impacted program(s); or

    b. unexpected economic conditions occurring in the local area.

2. Local boards must ensure written agreements with employers for incumbent worker and customized training services include provisions that allow local boards to modify, suspend, or terminate the agreements due to changes in funding levels for adult and dislocated worker programs.

3. Local boards must modify, suspend, or terminate written agreements with employers for incumbent worker and customized training services and deobligate those funds and restore the balance of the deobligated funds to the adult and dislocated worker programs to ensure the availability of funding and to ensure continued provision of program services for eligible adults and dislocated workers.

4. Prior to establishing waitlists for one or more of Title IB programs, local boards must take the following actions:

    a. request technical assistance from NDOL's Reemployment Services Quality Control Unit (QCU) by email to Dawn Carrillo (dawn.carrillo@nebraska.gov) and the policy

mailbox (ndol.wioa_policy@nebraska.gov) and provide the following with the request, as applicable:

i. in the event of predicted insufficient funding, provide summary and detailed:

A. documentation demonstrating local board oversight and monitoring of expenditures and obligations relating to the impacted program(s);

B. financial documentation for the impacted program(s), including documentation reflecting time charging by subrecipient staff implementing program services under the impacted program(s); and

C. descriptions of how priority of service will be ensured and implemented in accordance with the State's policy on priority of service and how the local board will frequently monitor waitlist implementation to minimize the duration of the proposed waitlist(s);

ii. in the event of unexpected economic conditions occurring in the local area, provide summary and detailed documentation describing:

A. unexpected economic conditions occurring in the local area;

B. local board actions to mitigate those conditions, including coordination with required one-stop, additional one-stop partners, and other one-stop delivery system partners; and

C. descriptions of how priority of service will be ensured and implemented in accordance with the State's policy on priority of service and how the local board will frequently monitor waitlist implementation to minimize the duration of the proposed waitlist(s);

b. participate in technical assistance provided by the QCU, which *must* include participation by a representative of the local board, preferably the chair, as well as local area administrative entity staff and leadership level service provider staff; and

c. fully implement all reasonable guidance provided by the QCU during technical assistance in order to prevent or mitigate the proposed implementation of any waitlist.

(8) 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.

(d) Mandatory disclosure, noncompliance, internal controls, and conflict of interest requirements

(1) Mandatory disclosures

CEOs, local boards and their standing committees, and local area administrative entities (collectively, non-Federal entities) must disclose to NDOL in a timely manner and in writing all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting subawards of Federal funds by NDOL, as required under 2 CFR § 200.113. Non-Federal entities

that have received the subawards are required to report certain civil, criminal, or administrative proceedings to NDOL, as required under 2 CFR § 200.113. Failure to make required disclosures can result in any of the remedies described under 2 CFR §§ 200.113 and 200.339.

(2) Noncompliance

If a non-Federal entity fails to comply with the US Constitution, Federal statutes, regulations, or the terms and conditions of a subaward, NDOL may adjust specific subaward conditions as needed based on an analysis conducted pursuant to and in accordance 2 CFR §§ 200.206, 200.208(b), and 200.211. If NDOL determines that noncompliance cannot be remedied by imposing additional conditions, NDOL may take one or more of the actions describe under 2 CFR § 200.339.

(3) Internal controls

Each local board must adhere to the requirements of 2 CFR § 200.303(a) and (e). 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 20 CFR § 679.430, as well as the conflict of interest provision described below.

(4) Conflict of interest

CEOs, local board members and their standing committee members, and local area administrative entities must disclose to NDOL in writing any potential conflicts of interest regarding NDOL subawards of Federal funds to local areas, as required under 2 CFR § 200.112 and 20 CFR § 683.200(c)(5)(i) and (iii).

Written disclosures must be submitted in a timely manner by email to the policy mailbox at ndol.wioa_policy@nebraska.gov.

DISCLAIMER

This policy is based on NDOL's reading of the applicable laws, rules, regulations, and guidance released by the Federal 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

Definitions in this appendix are provided as supplemental information that supports the provisions of the policy. 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:[7]

- 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[8] 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. contract

Contract[9] 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. This definition *does not* apply to pay-for-performance contract strategies established by local board pursuant to 20 CFR Part 683 Subpart E.

4. 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.[10] 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;

[7] WOA Sec. 3(9)
[8] WIOA Sec. 3(10)
[9] 2 CFR § 200.1
[10] 20 CFR §§ 679.110(b)(3)(ii)(C) – (D) and 679.120(b)

- 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.

For purposes of selecting representatives as members of local boards, a representative with demonstrated experience and expertise means an individual who:[11]

- 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.

5. in-demand industry sector or occupation

The term in-demand industry sector or occupation[12] 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.

6. optimum policymaking authority

For purposes of selecting representatives as members of the state board and local boards, a representative with optimum policymaking authority is an individual who can reasonably be expected to:[13]

- speak affirmatively on behalf of the entity the individual represents; and

- commit that entity to a chosen course of action.

[11] 20 CFR § 679.340(b)
[12] WIOA Sec. 3(23)
[13] 20 CFR §§ 679.120(a) and 679.340(a)

7. small business

The US Small Business Administration defines small business based on firm revenue (ranging from $1 million to over $40 million) and by employment (from 100 to over 1,500 employees). For example, according to the SBA definition: [14]

- a roofing contractor is defined as a small business if it has annual revenues of $16.5 million or less; and
- an asphalt shingle and coating material manufacturer is defined as a small business if it has fewer than 750 employees.

8. personally identifiable information (PII)

Personally identifiable information[15] (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.

9. subrecipient[16]

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.

10. sustained fiscal integrity

The term sustained fiscal integrity[17] 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

[14] US Census Bureau, "What is a Small Business?", https://www.census.gov/library/stories/2021/01/what-is-a-small-business.html#:~:text=It%20defines%20small%20business%20by,of%20%2416.5%20million%20or%20less [accessed August 17, 2023]
[15] 20 CFR §§ 679.120(a) and 679.340(a)
[16] 2 CFR § 200.1
[17] 20 CFR § 679.260(c)

- failure to comply with accepted standards of administration.

11. 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.[18]

12. workplace learning advisor[19]

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.

[18] WIOA Sec. 3(62)
[19] WIOA Sec. 3(70)

APPENDIX II. Local board roster, membership distribution, and standing committees templates

1. Board roster

Last name	First name	Board membership category (*business; workforce; education and training; government; economic and community development; or optional*)	Board role (*chair, vice chair, or general member*)	Board committee and subcommittee membership/assignments (*identify committee or subcommittee*)	Professional affiliation	Professional title	Full work address	Work phone	Work email address

2. Board membership distribution

Board members may represent 2 categories. Category means local area business, workforce, education and training, government and economic/community development, and optional. For the business category, a board member may not represent both local area business general and local area business small.

Membership category: Local area business (mandatory minimum of 51% of total membership)	# Count	% Representation	Names of applicable members
Local area business: General	0	#DIV/0!	
Local area business: Small (minimum 2)	0	#DIV/0!	
Total	0	#DIV/0!	

Membership category: Workforce (mandatory minimum of 20% of total membership)	# Count	% Representation	Names of applicable members
Workforce: Labor organization (minimum 2)	0	#DIV/0!	
Workforce: Joint labor-management *or* union-affiliated sponsor of Registered Apprenticeship program in the local area who must be a training director or member of a labor organization (minimum 1)	0	#DIV/0!	
Workforce: Community-based organization with demonstrated experience and expertise in addressing 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 (optional membership)	0	#DIV/0!	
Workforce: Organization experienced in addressing employment, training, or education needs of eligible youth, including out-of-school youth (optional membership)	0	#DIV/0!	
Workforce: At least 1 additional representative from above categories to reach the mandatory 20% threshold for workforce membership	0	#DIV/0!	
Total	0	#DIV/0!	

Membership category: Education and training	# Count	% Representation	Names of applicable members
Education and training: WIOA Title II Adult Education and Family Literacy (minimum 1)	0	#DIV/0!	
Education and training: Institution of higher education (minimum 1)	0	#DIV/0!	
Total	0	#DIV/0!	

Membership category: Government and economic/community development	# Count	% Representation	Names of applicable members
Government and economic/community development: Economic and community development entity serving the local area (minimum 1)	0	#DIV/0!	
Government and economic/community development: Wagner-Peyser Employment Service Program serving the local area (minimum 1)	0	#DIV/0!	
Government and economic/community development: WIOA Title IV vocational rehabilitation programs serving the local area (minimum 1)	0	#DIV/0!	

Membership category: Government and economic/community development	# Count	% Representation	Names of applicable members
Total	0	#DIV/0!	

Optional representation	# Count	% Representation	Names of applicable members
Entities administering education and training activities who represent local educational agencies or community-based organizations with demonstrated expertise in addressing the education or training needs for individuals with barriers to employment	0	#DIV/0!	
Governmental and economic and community development entities who represent transportation, housing, and public assistance programs	0	#DIV/0!	
Philanthropic organizations serving the local area	0	#DIV/0!	
Other appropriate individuals as determined by the CEO	0	#DIV/0!	
Total	0	#DIV/0!	

3. Standing committee rosters

Last name	First name	Board role (*identify board role or indicate non-board member*)	Committee role (*chair, vice chair, or committee category of representation*)	Professional affiliation	Professional title	Full work address	Work phone	Work email address

APPENDIX III. Local board membership application templates

Instructions for new board members

Local boards and administrative entities must use the membership applications templates in this appendix.

- Applications must be completed by potential board members.
- Applications must be signed digitally.

Instructions for current board members

- Current board members, as of the effective date of the policy, must complete applications using templates applicable to their categories of representation.
- When the employment status/affiliations of current board members change, new applications must be completed for determination of eligibility to continue serving as board members.

[remainder of page left blank intentionally]

Local board membership application for BUSINESS representatives[20]

Instructions

- Section 1 must be completed by a local board representative *prior to distribution to applicants*.
- Sections 2 through 7 must be completed by applicants.
- Applicants must submit completed and digitally signed applications to board's point of contact identified in Section 1, along with supporting documentation required in this form.
- Incomplete applications and applications lacking supporting documentation will not be accepted.

1. Local board information (all fields must be completed)

Local board name: *Greater* _____ *Workforce Development Board*
Local board point of contact (full name and email address) _____
Local workforce development area counties (i.e., service delivery area) _____
_____

2. Applicant information (each field must be completed)

Applicant name _____
Applicant job title _____
Applicant business address _____
Applicant business phone _____
Applicant business email or alternative email _____

3. Employer information (each field must be completed)

Employer name _____
Employer address _____
Employer phone (may be used to verify employment) _____
Employer email (may be used to verify employment) _____
Employer industry sector _____
Number of employees companywide _____

4. Eligibility information (each field must be completed)

Do you have *optimum policymaking authority*[21] or hiring authority for the entity named in Section 3? (*All board members must have optimum policy making authority for the entity they represent*.) ☐ Yes ☐ No

Are you owner of the entity named in Section 3? ☐ Yes ☐ No

Are you the chief executive officer for the entity named in Section 3? ☐ Yes ☐ No

Are you the chief operating officer for the entity named in Section 3? ☐ Yes ☐ No

Does the entity named in Section 3 provide employment opportunities in in-demand industry sectors or occupations in the local area counties named above in Section 1? (*The entity named in Section 3 must provide employment opportunities in in-demand industry sectors or occupations in the local area counties named in Section 1.*) ☐ Yes ☐ No

Have you been nominated for appointment to the board by a local business organization or business trade association? (*Business representatives must be nominated for appointment to the board by a local business organization or business trade association. A letter of nomination must be submitted with this application.*) ☐ Yes ☐ No

[20] 20 CFR § 679.320(b) and (f)

[21] A representative with *optimum policymaking authority* is an individual who can reasonably be expected to speak affirmatively on behalf of the entity they represent and to commit that entity to a chosen course of action [20 CFR §679.340(a)].

5. Additional information (all fields must be completed)

Please provide your job description. _____

_____

_____

_____

Please describe your interest in serving on the local board. _____

_____

_____

_____

Please provide your resume.

6. Attachments (all fields must be completed)

I am providing following required documents as part of this application.

☐ Letter of nomination
☐ My resume

7. Applicant assurance and signature

I assure the information I've provided in and with this application is accurate.

Signature _____

Local board membership application for WORKFORCE representatives[22]

Instructions

- Section 1 must be completed by a local board representative *prior to distribution to applicants*.
- Sections 2 through 7 must be completed by applicants.
- Applicants must submit completed and digitally signed applications to board's point of contact identified in Section 1, along with supporting documentation required in this form.
- Incomplete applications and applications lacking supporting documentation will not be accepted.

1. Local board information (all fields must be completed)

Local board name: *Greater* _____ *Workforce Development Board*
Local board point of contact (full name and email address) _____
Local workforce development area counties (i.e., service delivery area) _____

2. Applicant information (all fields must be completed)

Applicant name _____
Applicant job title _____
Applicant business address _____
Applicant business phone _____
Applicant business email or alternative email _____

3. Employer information (all fields must be completed)

Employer name _____
Employer address _____
Employer phone (may be used to verify employment) _____
Employer email (may be used to verify employment) _____
Employer industry sector _____
Number of employees companywide _____

4. Eligibility information (all fields must be completed)

Do you have *optimum policymaking authority*[23] or hiring authority for the entity named in Section 3? (*All board members must have optimum policy making authority for the entity they represent*.) ☐ Yes ☐ No

Do you represent a labor organization in the local area counties named in Section 1? ☐ Yes ☐ No

Do you represent a joint labor-management organization, union affiliated organization, or Registered Apprenticeship program in the local area counties named in Section 1? ☐ Yes ☐ No

If yes, are you the training director or member of the labor organization? ☐ Yes ☐ No

If you are a representative of a labor organization, joint labor-management organization, union affiliated organization, or Registered Apprenticeship program in the local area counties named in Section 1, have you been nominated for appointment to the board by a local labor federation? (*Representatives of labor organizations, joint labor-management organizations, union affiliated organizations, or Registered Apprenticeship programs must be nominated for appointment to the board by local labor federations. A letter of nomination must be provided with this application.*) ☐ Yes ☐ No

If you are not a representative of a labor organization, joint labor-management organization, union affiliated organization, or Registered Apprenticeship program in the local area counties named in Section 1, have you been nominated for appointment to the board by an organization that otherwise represents employees in those counties? (*Representatives of other organizations that represent employees must be nominated by those organizations. A letter of nomination must be submitted with this application.*) ☐ Yes ☐ No

[22] 20 CFR § 679.320(c) and (f)
[23] A representative with *optimum policymaking authority* is an individual who can reasonably be expected to speak affirmatively on behalf of the entity they represent and to commit that entity to a chosen course of action [20 CFR §679.340(a)].

Do you represent a community-based organization that has *demonstrated experience and expertise*[24] 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? (*If yes, the community-based organization named in Section 3 must 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.*) ☐ Yes ☐ No

Do you represent an organization that has *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? (*If yes, the organization named in Section 3 must 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.*) ☐ Yes ☐ No

5. Additional information (all fields must be completed)

Please provide your job description. _____

Please describe your interest in serving on the local workforce development board. _____

Please provide your resume.

6. Attachments

I am providing following required documents as part of this application.

☐ Letter of nomination
☐ My resume

7. Applicant assurance and signature

I assure the information I've provided in and with this application is accurate.

Signature _____

[24] A representative of an organization with demonstrated experience and expertise means an individual who (1) is a workplace learning advisor as defined in WIOA Sec. 3(70); (2) contributes to the field of workforce development, human resources, training and development, or a core program function; or (3) the local board recognizes for valuable contributions in education or workforce development related fields [20 CFR § 679.340(b)].

Local board membership application for GOVERNMENT, HIGHER EDUCATION, AND ECONOMIC AND COMMUNITY DEVELOPMENT representatives[25]

Instructions

- Section 1 must be completed by a local board representative *prior to distribution to applicants*.
- Sections 2 through 7 must be completed by applicants.
- Applicants must submit completed and digitally signed applications to board's point of contact identified in Section 1, along with supporting documentation required in this form.
- Incomplete applications and applications lacking supporting documentation will not be accepted.

1. Local board information (all fields must be completed)

Local board name: *Greater* _____ *Workforce Development Board*
Local board point of contact (full name and email address) _____
Local workforce development area counties (i.e., service delivery area) _____

2. Applicant information (all fields must be completed)

Applicant name _____
Applicant job title _____
Applicant business address _____
Applicant business phone _____
Applicant business email or alternative email _____

3. Employer information (all fields must be completed)

Employer name _____
Employer address _____
Employer phone (may be used to verify employment) _____
Employer email (may be used to verify employment) _____
Employer industry sector _____
Number of employees companywide _____

4. Eligibility information (all fields must be completed)

Do you have *optimum policymaking authority*[26] or hiring authority for the entity named in Section 3? (*All board members must have optimum policy making authority for the entity they represent*.) ☐ Yes ☐ No

Do you represent a provider that administers adult education and literacy activities authorized under WIOA Title II in the ? (*If there are multiple providers administering Title II adult education and literacy activities in the in the local area counties named above in Section 1, those entities must nominate the applicant. This is a mandatory eligibility criterion for Title II providers. A letter of nomination must be submitted with this application*.) ☐ Yes ☐ No

Do you represent an institution of higher education (includes community colleges) that provides workforce investment activities (education, training, etc.)? (*If there are multiple institutions of higher education that provide workforce investment activities in the local area counties named above in Section 1, those institutions must nominate the applicant. A letter of nomination must be submitted with this application.*) ☐ Yes ☐ No

Do you represent WIOA Title III Wagner-Peyser Employment Service? ☐ Yes ☐ No

Do you represent a WIOA Title IV vocational rehabilitation program (Nebraska VR or NCBVI)? ☐ Yes ☐ No

[25] 20 CFR § 679.320(d) and (f)

[26] A representative with *optimum policymaking authority* is an individual who can reasonably be expected to speak affirmatively on behalf of the entity they represent and to commit that entity to a chosen course of action [20 CFR §679.340(a)].

5. Additional information (all fields must be completed)

Please provide your job description. _____

_____

_____

_____

Please describe your interest in serving on the local workforce development board. _____

_____

_____

_____

Please provide your resume.

6. Attachments

I am providing following required documents as part of this application.

☐ Letter of nomination (if applicable, as described in Section 4)
☐ My resume

7. Applicant assurance and signature

I assure the information I've provided in and with this application is accurate.

Signature _____

Local board membership application for OTHER (optional) representatives[27]

Instructions

- Section 1 must be completed by a local board representative *prior to distribution to applicants*.
- Sections 2 through 7 must be completed by applicants.
- Applicants must submit completed and digitally signed applications to board's point of contact identified in Section 1, along with supporting documentation required in this form.
- Incomplete applications and applications lacking supporting documentation will not be accepted.

1. Local board information (all fields must be completed)

Local board name: *Greater* _____ *Workforce Development Board*
Local board point of contact (full name and email address) _____
Local workforce development area counties (i.e., service delivery area) _____

2. Applicant information (all fields must be completed)

Applicant name _____
Applicant job title _____
Applicant business address _____
Applicant business phone _____
Applicant business email or alternative email _____

3. Employer information (all fields must be completed)

Employer name _____
Employer address _____
Employer phone (may be used to verify employment) _____
Employer email (may be used to verify employment) _____
Employer industry sector _____
Number of employees companywide _____

4. Eligibility information (all fields must be completed)

Do you have *optimum policymaking authority*[28] or hiring authority for the entity named in Section 3? (*All board members must have optimum policy making authority for the entity they represent*.) ☐ Yes ☐ No
Do you represent a local educational agency or community based organization with demonstrated expertise in addressing the education or training needs of individuals with barriers to employment? ☐ Yes ☐ No
Do you represent a governmental or economic and community development entity that provides transportation, housing, or public assistance programs? ☐ Yes ☐ No
Do you represent a philanthropic organization that serves the local area counties named above in Section 1? ☐ Yes ☐ No

5. Additional information (all fields must be completed)

Please provide your job description. _____
_____
_____
_____

[27] 20 CFR § 679.320(e) and (f)
[28] A representative with *optimum policymaking authority* is an individual who can reasonably be expected to speak affirmatively on behalf of the entity they represent and to commit that entity to a chosen course of action [20 CFR §679.340(a)].

Please describe your interest in serving on the local workforce development board. _____

_____

_____

_____

Please provide your resume.

6. Attachments

I am providing following required documents as part of this application.

☐ My resume

7. Applicant assurance and signature

I assure the information I've provided in and with this application is accurate.

Signature _____

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 16th Street
Lincoln, NE 68508
402.471.9000
ndol.wioa_policy@nebraska.gov

Policy category
Governance

Effective date
May 3, 2023

Supersedes
Local Workforce Development Areas and Statewide Planning Region, Change 1 (effective June 17, 2022)

Local Workforce Development Areas and Statewide Planning Region, Change 2

REFERENCE

Federal and state laws, rules, regulations, 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.[1] 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.[2] A region comprising two or more local areas is considered a planning region, which must then be designated by the Governor.[3]

CHANGES

Under this Change 2, footnotes have been revised for clarity and links have been updated, where necessary, and points of contact for notifications have been revised.

[1] WIOA Sec. 106(b)(1)(A)
[2] WIOA Sec. 106(a)(1)
[3] WIOA Sec. 106(a)(2)(B)

ACTION

This policy supersedes and cancels the Local Workforce Development Areas and Statewide Planning Region, Change 1 policy (effective June 17, 2022).[4] Questions and comments on this policy may be submitted in writing to the policy mailbox at ndol.wioa_policy@nebraska.gov.

Local areas must comply with the requirements of this policy.

POLICY

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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(b) New local area designation 3
(c) Redesignation 3
(d) Subsequent designation 3
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Section I. Designation, redesignation, and subsequent designation of local areas

(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).

[4] The State 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:[5]

- 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.[6] If the Governor approves the request, the Nebraska Workforce Development Board must authorize use of statewide Title I funds to facilitate redesignation activities.[7] 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.[8]

Activities that may be carried out by local areas approved for redesignation may include:[9]

- 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:[10]

- performed successfully and sustained fiscal integrity;[11] and

[5] 20 CFR § 679.240(a)
[6] 20 CFR § 679.240(c)
[7] WIOA Sec. 106(b)(6); 20 CFR § 679.280(a)
[8] 20 CFR § 679.280(b)
[9] 20 CFR § 679.280(c)
[10] WIOA Sec. 106(b)(3); 20 CFR § 679.250(b)
[11] Definitions of performed successfully and sustained fiscal integrity are provided in the State's performance accountability policy, which is included in the State policy manual and accessible at https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies.

- participated in regional planning activities that resulted in *all* of the following activities:[12]
    - 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

(a) Designation and redesignation procedural requirements

(1) General procedural requirements

General procedural requirements for designation and redesignation of local areas include:[13]

- 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

[12] WIOA Sec. 106(c)(1); 20 CFR § 679.250(b)(3)
[13] 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[14]

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 by email to the policy mailbox at 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.

[14] 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 the policy mailbox at 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.[15]

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 the policy mailbox at 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.

4. NDOL will provide to the Governor for review and consideration:

    a. the submitted request and documentation; and

    b. NDOL's recommendation.

[15] 20 CFR § 679.250(b)

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.[16] The notification must be made in writing by email to the policy mailbox at 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).[17] 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).[18]

(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.[19]

(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: Director, Reemployment Services Division, Nebraska Department of Labor, 550 South 16th Street, Lincoln, NE 68508;

- with a copy sent the policy mailbox by email to 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

[16] 20 CFR § 679.250(e)
[17] 20 CFR § 679.250(d)(2)
[18] 20 CFR § 679.250(d)(1)
[19] WIOA Secs. 102(b)(2)(D)(i)(IV) and 106(b)(5); 20 CFR §§ 679.290 and 683.630

- 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[20]

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.

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 16th Street, Lincoln, NE 68508;

- by certified mail, return receipt requested to Chair, Nebraska Workforce Development Board, Attention: Director, Reemployment Services Division, Nebraska Department of Labor, 550 South 16th Street, Lincoln, NE 68508;

- with a copy sent the policy mailbox by email to 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.

[20] 20 CFR § 683.640

Section III. Statewide planning region

(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.[21]

[21] The State policy manual is accessible at https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies.

DISCLAIMER

This policy is based on NDOL's reading of the applicable laws, rules, regulations, and guidance released by the Federal 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

Definitions in this appendix are provided as supplemental information that supports the provisions of the policy. 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:[22]

- 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.[23]

3. In-demand industry sector or occupation

The term in-demand industry sector or occupation means:[24]

- 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.

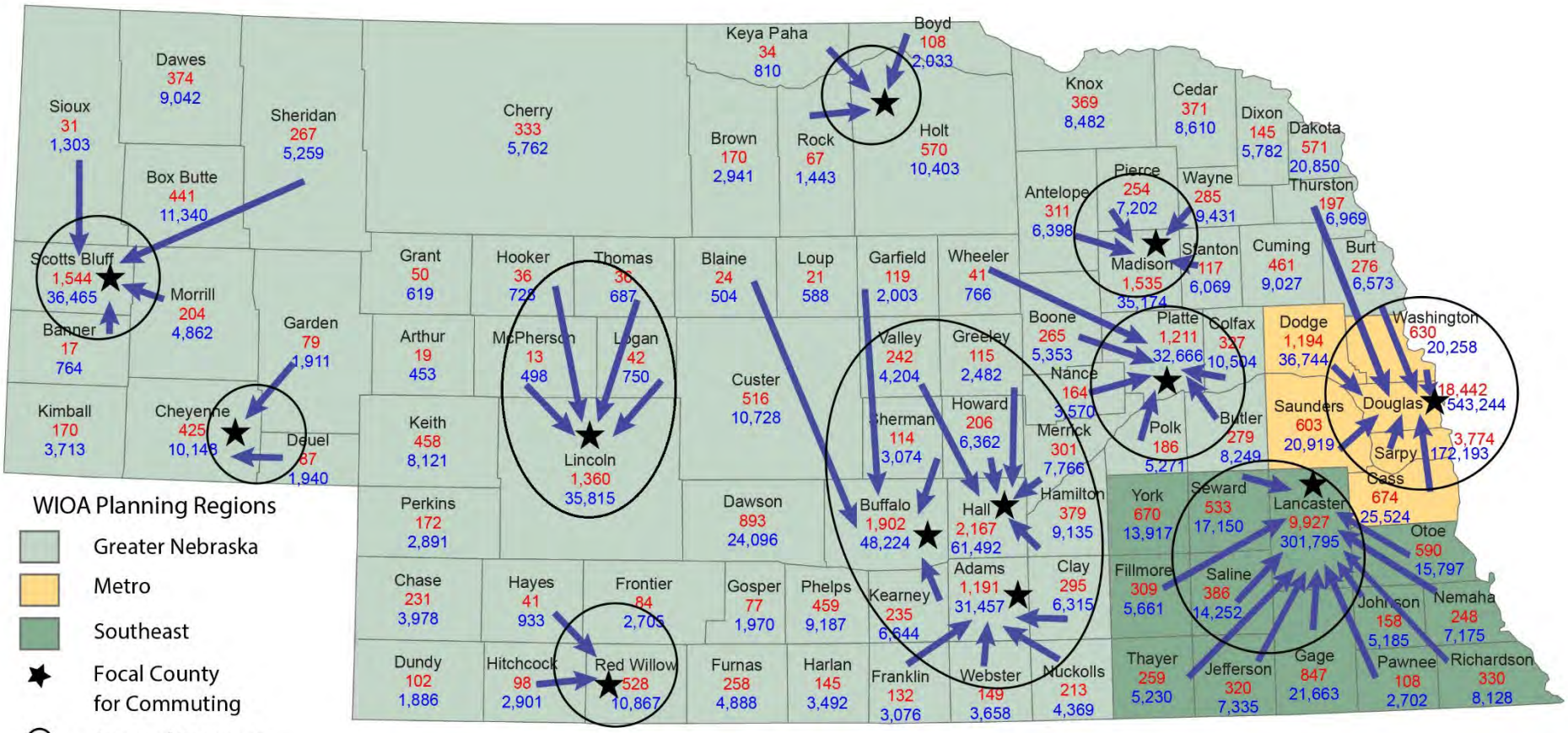
[22] WOA Sec. 3(9)
[23] 20 CFR § 675.300
[24] WIOA Sec. 3(23)

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.[25]

[25] WIOA Sec. 3(62)

APPENDIX II. 2016 commuting patterns map



Sources: Commuting Patterns from Local Employment Dynamics (LED); Worksites from Quarterly Census of Employment and Wages First Quarter 2015; Population from U.S. Census Bureau, Population Estimates Program, 2014 Population Estimates

Worksite: The number of worksites per county is determined by each physical location of a business operating in a specific county. When a business has multiple locations, all physical locations where employees perform work are counted separately.

Population: The calculated number of people living in an area as of a specified point in time, July 1st. The estimated population is calculated using a component of change model that incorporates information on natural increase (births, deaths) and net migration (net domestic migration, net international migration) that has occurred in an area since the latest decennial census.

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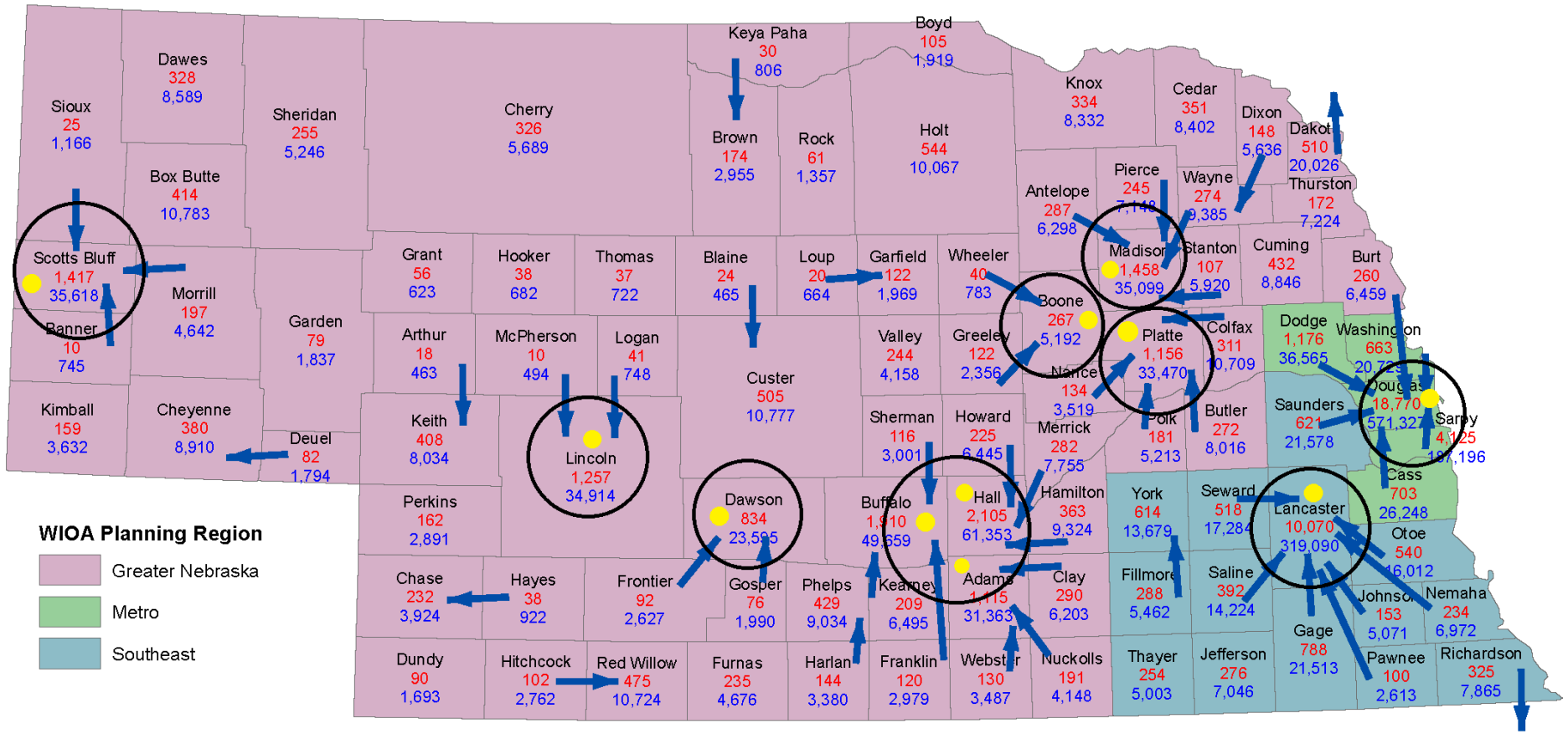
APPENDIX III. 2022 commuting patterns map



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 16th Street
Lincoln, NE 68508
402.471.9000
ndol.wioa_policy@nebraska.gov

Policy category
Governance

Effective
February 12, 2024

Supersedes
Regional and Local Plans, Change 8
(effective December 11, 2023)

Regional and Local Plans, Change 9

REFERENCE

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

BACKGROUND

Local boards and local chief elected officials (CEOs)[1] must collectively submit and obtain approval for four-year plans for the statewide planning region *and* mandatory two-year modifications of regional plans.[2] In addition, local boards and CEOs must submit and obtain approval for four-year plans for their respective local areas *and* mandatory two-year modifications of those local plans.[3]

CHANGES

Regional and Local Plans, Change 8, s superseded and cancelled by this Change 9.

- This *Change 9* includes additional revisions based on discussion during technical assistance to local areas regarding Change 8.

[1] CEO also refers to a chief elected officials board.
[2] WIOA Secs. 106(c)(1)(A) and 108(a)
[3] Ibid.

- The *Changes* section in Change 8 included incomplete cross references to items 3.a., 17, 20, and 22 that did not indicate that those items appear in APPENDIX II(b). This Change 9 corrects the incomplete cross references, as described below.
  - Item 3.a. in subsection (b) of APPENDIX II defines new local plan content requirements concerning local one-stop operator competitive selection processes.
  - Item 17 in subsection (b) of APPENDIX II defines new local plan content requirements concerning competitive processes for issuing subawards.
  - Item 20 in subsection (b) of APPENDIX II includes revised local plan content requirements concerning use of individual training accounts in lieu of ITAs.
  - Item 22 in subsection (b) of APPENDIX II includes revised local plan content requirements concerning priority of service.

- This *Change 9* includes additional revisions based on discussion during technical assistance provided to local areas regarding Change 8.
  - Item 17 in subsection (b) of APPENDIX II has been revised to refer to only *subawards*, rather than *subawards* and *contracts*.
    - Item 17 now refers to *subrecipients* in relation to *subawards* (not contracts) as well as applicable provisions of 2 CFR §§ 200.331 and 200.332 pertaining to subawards.
      - *Subaward* is defined in 2 CFR § 200.1 and refers to specifically to "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. It 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."
      - *Contract* is defined in 2 CFR § 200.1 and refers specifically to "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."

- Item 20.b. in subsection (b) of APPENDIX II has been revised for clarity, referring now to agreements with non-ETPL training providers as *subawards*.

- Item 22 in subsection (b) of APPENDIX II has been revised to clarify the sequence of direction provided by local boards based on NDOL guidance *and* how that direction is then provided by the local board to the local one-stop operator concerning priority of service.

ACTION

State

This policy supersedes and cancels NDOL's policy titled Regional and Local Plans, Change 8. Questions and comments regarding this policy may be submitted in writing to the policy mailbox at ndol.wioa_policy@nebraska.gov.

State policies referenced in this policy are included in the State policy manual, which is accessible at https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies. *State policy manual* refers to the policy manual created and maintained by the NDOL Reemployment Services Quality Control Unit.

Local boards and CEOs

Local boards must:[4]

- collectively participate in regional planning activities for Nebraska's single statewide planning region, in partnership with local CEOs in the statewide planning region, that results in preparation of single four-year regional plans and mandatory two-year modifications of the plans;

- participate in local planning activities, in partnership with local CEOs, that result in the preparation of four-year plans for their local areas and mandatory two-year modifications of the plans;

- ensure that regional and local plans and mandatory two-year modifications of the plans:

    - support the vision, goals, and strategies defined in current state plan and mandatory two-year modification of the state plan; and

    - comply with the requirements of this policy, as well as Federal laws, rules, regulations, and subregulatory guidance;

- use NDOL templates for regional and local plans, as stated in Section II, when preparing four-year plans and subsequent mandatory two-year modifications of the plans based on the content in APPENDIX II (templates provided separately to local administrative entities by email); and

- submit regional and local plans and mandatory two-year modifications of the plans according to the requirements, procedures, and timelines established in this policy.

[4] WIOA Secs. 106(c)(1)(A) and 108(a); 20 CFR § 679.510 and 679.550

POLICY

This policy establishes the following requirements for regional and local plans and mandatory two-year modification of plans regarding:

- planning activities, content, and public comment requirements;
- submission procedures and timelines; and
- state-level review and approval processes.

This policy includes five sections and three appendices.

Section I. Purposes of regional and local plans 4
Section II. Requirements 5
Section III. Submission timelines and procedures 7
Section IV. State-level review and approval processes 7
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Section I. Purposes of regional and local plans

Regional and local plans serve as four-year action plans for:

- supporting the vision, goals, and strategies defined in state plans and mandatory two-year modifications of state plans;[5]
- developing, aligning, and integrating regional and local service delivery strategies;[6]
- directing investments in economic, education, and workforce training programs focusing on providing relevant education and training activities and services that ensure individuals, including youth and individuals with barriers to employment, have the skills to compete in Nebraska's job market and ensure that employers have a ready supply of skilled workers;[7]
- applying job-driven strategies within the statewide one-stop delivery system, as well as local one-stop delivery systems;[8]

[5] 20 CFR § 679.500(a)
[6] Ibid.
[7] 20 CFR § 679.500(a)(1)
[8] 20 CFR § 679.500(a)(2)

- enabling economic, education, and workforce partners to build a skilled workforce through innovation in and alignment of employment, training, and education programs;[9] and

- coordinating resources among local areas within the statewide planning region.[10]

Section II. Requirements

Local boards and local administrative entities must use NDOL templates for regional and local plans when preparing four-year plans and subsequent mandatory modifications of the plans based on the content in APPENDIX II (templates provided separately to local administrative entities by email).

(a) Four-year regional and local plans

(1) Regional plans

All local areas were assigned to a single statewide planning region on October 15, 2020, as described in APPENDIX I. All local boards, in collaboration with all local CEOs in the statewide planning region, are collectively responsible for conducting regional planning activities that result in preparation, submission, and approval of single four-year regional plans.[11]

(2) Local plans

Local boards, in collaboration with their local CEOs, are responsible for conducting local planning activities that result in preparation, submission, and approval of four-year local plans for their local areas.[12]

(b) Two-year modifications of regional and local plans

(1) Regional plans

Prior to the end of the first two-year periods of four-year regional plans, all local boards in the statewide planning region in collaboration with all local CEOs must review current regional plans and prepare, submit, and obtain approval for mandatory two-year modifications of the plans that reflect changes in:[13]

- labor market and economic conditions in the statewide planning region; and

- other factors affecting implementation of local plans, which are part of and incorporated into regional plans,[14] including but not limited to changes in financing available to support Title IB programs and partner provided WIOA services in the statewide planning region.

[9] 20 CFR § 679.500(a)(3)
[10] 20 CFR § 679.500(a)(4)
[11] 20 CFR § 679.510
[12] 20 CFR § 679.550
[13] 20 CFR § 679.530(b)
[14] 20 CFR §§ 679.510(a)(2)(ii) and 679.540(a)

(2) Local plans

Prior to the end of the first two-year period of four-year local plans, local boards in collaboration with local CEOs must review current local plans and prepare, submit, and obtain approval for mandatory two-year modifications that reflect changes in:[15]

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

(c) Requirements for regional and local plan content

Regional and local plans must address required plan elements defined in APPENDIX II, including public comment requirements described in subsection (1) below.

(1) Public comment requirements for regional and local plans

Local boards must provide an opportunity for public comment on the development of regional and local plans and mandatory two-year modifications of plans *before* submission of the plans and their modifications. To provide adequate opportunity for public comment, local boards must:

- make information about and copies of plans and mandatory two-year modifications of plans available to the public through electronic and other means, including public hearings and local news media;[16]
- provide an opportunity for comment by members of the public, including representatives of business, education, and labor organizations;[17]
- provide no more than a 30-day period for comments on plans and mandatory two-year modifications of plans *before* submission to NDOL, beginning on the date on which the plans and modifications are made available to the public;[18]
- include in the plans any comments that represent disagreement with the plans or mandatory two-year modifications of the plans[19] or indicate that disagreeing public comments were not received, if that is the case; and

[15] 20 CFR § 679.580(b)
[16] 20 CFR §§ 679.510(b)(1) and (5)
[17] 20 CFR § 679.510(b)(2)
[18] 20 CFR § 679.510(b)(3)
[19] 20 CFR § 679.510(b)(4)

- ensure that all public meetings are conducted in compliance with 20 CFR § 679.390 and the Nebraska Open Meetings Act.[20]

Section III. Submission timelines and procedures

Regional and local plans and mandatory two-year modifications of plans must be submitted by March 1 of the applicable calendar year. For example:

- regional and local plans for PY25 – PY28 must be submitted by March 1, 2025; and
- mandatory two-year modifications of regional and local plans for PY27 – PY28 must be submitted by March 1, 2027.

In addition, regional and local plans and mandatory two-year modifications of plans must be submitted *in Word format* to the policy mailbox at ndol.wioa_policy@nebraska.gov, along with documentation that the submitter is authorized to submit the plans on behalf of all local boards and CEOs in the statewide planning region (regional plan) and local boards and CEOs (local plans). *Plans submitted in PDF will not be accepted.*

Submission requirements and timelines described above apply to the PY25 – PY28 regional and local plan cycle, *as well as all future regional and local plans and mandatory two-year modifications of the plans*. In other words, regional and local plans and modifications of those plans must be submitted every other year to the policy mailbox (ndol.wioa_policy@nebraska.gov) by March 1.

Section IV. State-level review and approval processes

On behalf of the Governor, NDOL reviews submitted regional and local plans and mandatory two-year modifications of plans. The plans are considered approved 90 days after NDOL's receipt of the plans according to the submission procedures and timelines established Section III above, *unless* NDOL notifies local areas in writing that:[21]

- 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;
- plans or mandatory two-year plan modifications of plans do not comply with applicable provisions of WIOA and its implementing rules, regulations, guidance, and applicable State policies, including required consultation and public comment requirements and nondiscrimination requirements of WIOA Sec. 188 and 29 CFR Part 38; or

[20] Neb. Rev. Stat. §§ 84-1407 through 84-1414 (aka Nebraska Open Meetings Act). An outline of the Nebraska Open Meetings Act is accessible at https://ago.nebraska.gov/open-meetings#:~:text=Laws%20LB%20821%2C%20%C2%A7%2034,commitment%20to%20openness%20in%20government.

[21] 20 CFR §§ 679.520 and 679.570

- plans or mandatory two-year plan modifications of plans do not align with the current state plan or state plan modification, including alignment of core programs to support the vision, goals, and strategies defined in the current state plan or state plan modification, in accordance with WIOA Sec. 102(b)(1)(E) and 20 CFR § 676.105.

In the event that regional and local plans and mandatory two-year modifications of the plans are not submitted by March 1 of applicable calendar years, 90-day review periods will begin on the dates that regional and local plans and mandatory two-year modifications of the plans are *received* in the policy mailbox.

It is important to understand that late submission of local plans and mandatory local plan modifications impacts availability of Title IB program funds for disbursement by NDOL to local areas. As stated in NDOL's program funding policy, program funds are available for disbursement *on the latter of*:[22]

- 30 days after *funds are made available to the State*; or
- 7 days after *date of approval by the Governor of local plans or mandatory plan modifications*.

Section V. Technical assistance

NDOL will provide technical assistance and labor market data to assist with development of regional and local plans, mandatory two-year plan modifications, and service delivery efforts.[23]

- For technical assistance with labor market data during development of regional and local plans and mandatory two-year plan modifications, local boards and administrative entities can submit data requests to lmi_ne@nebraska.gov.
- For technical assistance with all other aspects of development of regional and local plans and mandatory two-year plan modifications and service delivery efforts, local boards and administrative entities can submit requests to the policy mailbox at ndol.wioa_policy@nebraska.gov.

DISCLAIMER

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

[22] WIOA Sec. 182(e); 20 CFR § 683.120(a)(2)(iii)
[23] 20 CFR § 679.510(c)

APPENDIX I. Letter of designation: Statewide planning region and local area assignment to the planning region

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

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,

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

An Equal Opportunity Employer

APPENDIX II. Required regional and local plan elements

(a) Regional plan elements[24]

1. Provide regional analyses for the factors listed below[25] for each economic development district identified in APPENDIX III:

    a. economic conditions, including existing and emerging in-demand industry sectors and occupations,[26] based on regional labor market data for each district;[27]

    b. employment needs of employers in existing and emerging in-demand industry sectors and occupations based on regional labor market data for each district;[28]

    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;[29]

    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;[30]

    e. workforce development activities in each district, including education and training activities, which *must* include descriptions of:

        i. strengths and weaknesses of workforce development activities; and

        ii. capacity to provide the workforce development activities to address the education and skill needs of the workforce in each district, including

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[24] 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.
[25] 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.
[26] 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.
[27] 20 CFR § 679.560(a)(1)(i)
[28] 20 CFR § 679.560(a)(1)(ii)
[29] 20 CFR § 679.560(a)(2)
[30] 20 CFR § 679.560(a)(3)

individuals with barriers to employment, and the employment needs of employers.[31]

2. Describe service strategies established among local boards for 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 among local boards in the statewide planning region, including the pooling of funds for administrative costs, as appropriate.[32]

4. Describe the development and implementation of sector initiatives among local boards for in-demand industry sectors or occupations in the statewide planning region.[33]

5. Describe how local boards coordinate transportation and other supportive services in the statewide planning region.[34]

6. Describe how local boards in the statewide planning region coordinate services with economic development services and providers in each district.[35]

7. Describe agreements established among local boards that addresses how local boards in the statewide planning region will:[36]

    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 processes 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 mandatory two-year modification of the plan prior to submission of the plan or mandatory two-year modification 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;[37]

    b. include an opportunity for comment by members of the public, including representatives of businesses, education, and labor organizations.[38]

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[31] 20 CFR § 679.560(a)(4)
[32] 20 CFR § 679.510(a)(1)(v)
[33] 20 CFR § 679.510(a)(1)(iii)
[34] 20 CFR § 679.510(a)(1)(vi)
[35] 20 CFR § 679.510(a)(1)(vii)
[36] 20 CFR § 679.510(a)(1)(viii)
[37] 20 CFR §§ 679.510(b)(1) and (5)
[38] 20 CFR § 679.510(b)(2)

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 or modification is made available to the public;[39]

d. submit to NDOL any comments that represent disagreement with the plan or mandatory two-year modification[40] 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 20 CFR § 679.390 and the Nebraska Open Meetings Act.[41]

(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 vision, goals, and strategies defined in the current state plan or state plan modification for the following factors:[42]

    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 of the regional plan elements, describe the local board's strategy to:

    a. work with entities that carry out core programs and other 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 of local plan elements.[43]

3. Describe the workforce development system in the local area, including:

    a. processes for selection of a one-stop operators pursuant to WIOA Secs. 107(d)(1) and 121(d)(2)(A), 20 CFR § 678.605(a), TEGL 15-16, and requirements established under NDOL's policy on one-stop operator competitive selection, including Federal and State requirements regarding:

        i. designation or certification and termination of one-stop operator eligibility;

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[39] 20 CFR § 679.510(b)(3)
[40] 20 CFR § 679.510(b)(4)
[41] Neb. Rev. Stat. §§ 84-1407 through 84-1414 (aka Nebraska Open Meetings Act). An outline of the Nebraska Open Meetings Act is accessible at https://ago.nebraska.gov/open-meetings#:~:text=Laws%20LB%20821%2C%20%C2%A7%2034,commitment%20to%20openness%20in%20government.
[42] 20 CFR § 679.560(a)(5)
[43] 20 CFR § 679.560(a)(6)

ii. required responsibilities of one-stop operators;

iii. additional responsibilities of one-stop operators; and

iv. prohibited functions of one-stop operators;

b. partners and programs included in the local workforce development system;[44] and

c. how the local board will work with the entities carrying out core programs and other required 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.).[45]

4. Describe the local one-stop delivery system, including:

a. how the local board will ensure continuous improvement of providers in the local one-stop delivery system and ensure that the providers will meet the employment needs of local job seekers, workers, and employers;[46]

b. how the local board will facilitate access to services provided through the local one-stop delivery system through the use of technology and other means, including access in remote areas within the one-stop delivery system;[47]

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;[48] and

d. programmatic and service roles and resource contributions of the one-stop partners.[49]

5. Describe how the local board will work with entities carrying out core programs to:[50]

a. expand access to employment, training, education, and supportive services for eligible individuals, particularly eligible individuals with barriers to employment;

b. facilitate development of career pathways, in accordance with the goals and strategies defined in the current state plan and state plan modification; and

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[44] 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.
[45] 20 CFR § 679.560(b)(1)(ii)
[46] 20 CFR § 679.560(b)(5)(i)
[47] 20 CFR § 679.560(b)(5)(ii)
[48] 20 CFR § 679.560(b)(5)(iii)
[49] 20 CFR § 679.560(b)(5)(iv). Resource contributions *does not* refer to financial contributions pursuant to MOUs and funding agreements.
[50] 20 CFR § 679.560(b)(2)

c. facilitate co-enrollment in core programs; and

d. improve access to activities leading to recognized postsecondary credentials, especially credentials that are industry-recognized certificates or certifications, portable, and stackable.

6. Describe the strategies and services that will be used in the local area:[51]

   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 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.[52]

8. Describe and assess the type and availability of adult and dislocated worker employment and training activities in the local area.[53]

9. Describe how the local board will coordinate workforce investment activities carried out in the local one-stop delivery system with statewide Rapid Response activities.[54]

10. Describe and assess the type and availability of youth workforce investment activities in the local area including activities for youth with disabilities, which *must* include identification of successful models of such activities.[55]

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.[56]

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[51] 20 CFR § 679.560(b)(3)(i)-(v)
[52] 20 CFR § 679.560(b)(4)
[53] 20 CFR § 679.560(b)(6)
[54] 20 CFR § 679.560(b)(7)
[55] 20 CFR § 679.560(b)(8)
[56] 20 CFR § 679.560(b)(9)

12. Describe how the local board will coordinate Title IB workforce investment activities with the provision of transportation and other appropriate supportive services in the local area.[57]

13. Describe plans, assurances, and strategies for maximizing coordination, improving service delivery, and avoiding duplication of Title III Wagner-Peyser services and other services provided through the local one-stop delivery system.[58]

14. Describe how the local board will coordinate Title IB workforce investment activities with adult education and literacy activities provided under Title II. This description must include how the local board will carry out review of local adult education service provider applications, consistent with WIOA Secs. 107(d)(11)(A) and (B)(i) and 232.[59]

15. Provide copies of executed cooperative agreements, as attachments to the local plan, defining how all local one-stop delivery system partners will carry out requirements for integration of and access to the entire set of services that must be provided through the local one-stop delivery system.[60] 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:[61]

    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 direct benefit or use by the Federal government *or* pass-through entity; 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.

16. Identify the entity responsible for the disbursal of grant funds described in WIOA Sec. 107(d)(12)(B)(i), as determined by NDOL or the local CEO, as applicable.[62]

17. Describe competitive processes that will be used to award local subawards for WIOA Title I activities to subrecipients in accordance with 20 CFR § 679.560(b)(15) and 2 CFR §§ 200.331 and 200.332; including:

    a. subawards awarded by the local board to one or more subrecipients that are responsible for implementing Title IB adult, dislocated workers, and youth program activities;

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[57] 20 CFR § 679.560(b)(10)
[58] 20 CFR § 679.560(b)(11)
[59] 20 CFR § 679.560(b)(12)
[60] 20 CFR § 679.560(b)(13)
[61] 20 CFR § 675.300. The term cooperative agreement does not include cooperative research and development agreements, as defined in 15 USC § 3710a; agreements that provide only direct United States Government cash assistance to an individual; subsidies; loans; loan guarantees; or insurance [31 USC §§ 6302-6305].
[62] 20 CFR § 679.560(b)(14)

b. subawards awarded by local board Title IB subrecipients to *other* entities for implementation of some or all Title IB adult, dislocated workers, and youth program activities, on behalf of the local board; and

c. contracts to purchase property or services needed to carry out WIOA Title I programs (refer to NDOL's policy on procurement for definitions of contracts and contractors).

18. Describe current local levels of performance negotiated with NDOL that are or will be used by the local board to measure the performance of:

    a. local Title IB programs; and

    b. the local fiscal agent, local Title IB service providers, and local one-stop delivery system.[63]

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.[64]

20. Describe how training services for Title IB program participants will be provided through the use of individual training accounts (ITAs).[65] Also, describe the following:

    a. processes and procedures to be used for procurement and selection non-ETPL training providers for training services in lieu of ITAs,[66] which must:

        i. comply with the requirements of 20 CFR §§ 680.320, 680.340, and 680.530; and

        ii. adhere to the requirements of the Uniform Guidance pertaining to subawards and subrecipients[67] and all other applicable Federal laws, rules, regulations, guidance, and applicable State policies.

    b. how the use of subawards to non-ETPL training providers for training services will be coordinated with local area use of ITAs; and

    c. how the local board will ensure informed customer choice in the selection of training programs regardless of how the training services are provided (ITAs and/or procured non-ETPL training services).

21. Describe how local area one-stop center or centers are 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.[68]

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[63] 20 CFR § 679.560(b)(16)
[64] 20 CFR § 679.560(b)(17)
[65] 20 CFR § 679.560(b)(18)
[66] 20 CFR § 680.310(c)
[67] Refer to 2 CFR Subpart D for Federal procurement standards and 2 CFR § 200.322.
[68] 20 CFR § 679.560(b)(20)

22. Describe how direction given by NDOL to the local board is then given by the local board to the one-stop operator and the local board's Title IB subrecipients ensures that, in accordance with NDOL's policy on priority of service and 20 CFR § 680.650:

    a. priority for adult career and training services is given to recipients of public assistance, other low-income individuals, and individuals who are basic skills deficient;[69]

    b. priority for dislocated worker career and training services is given to dislocated workers who are Veterans and military spouses;

    c. priority for youth program services is given to low-income youth; and

    d. Veterans receive priority of service in all USDOL-funded training services, which includes training services provided through Title IB programs.

23. Describe the processes followed by the local board to provide opportunities for public comment on the proposed local plan or local plan modification prior to submission of the plan to NDOL. To provide adequate opportunities for public comment, the local board 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;[70]

    b. include opportunities for comment by members of the public, including representatives of businesses, education, and labor organizations.[71]

    c. provide no more than a 30-day period for comments before submission to NDOL, beginning on the date on which the plan or plan modification is made available to the public;[72]

    d. ensure that all public meetings are held in compliance with 20 CFR § 679.390 and the Nebraska Open Meetings Act;[73] and

    e. submit to NDOL any comments that represent disagreement with the plan or plan modification[74] *or* indicate that disagreeing public comments were not received if that is the case.

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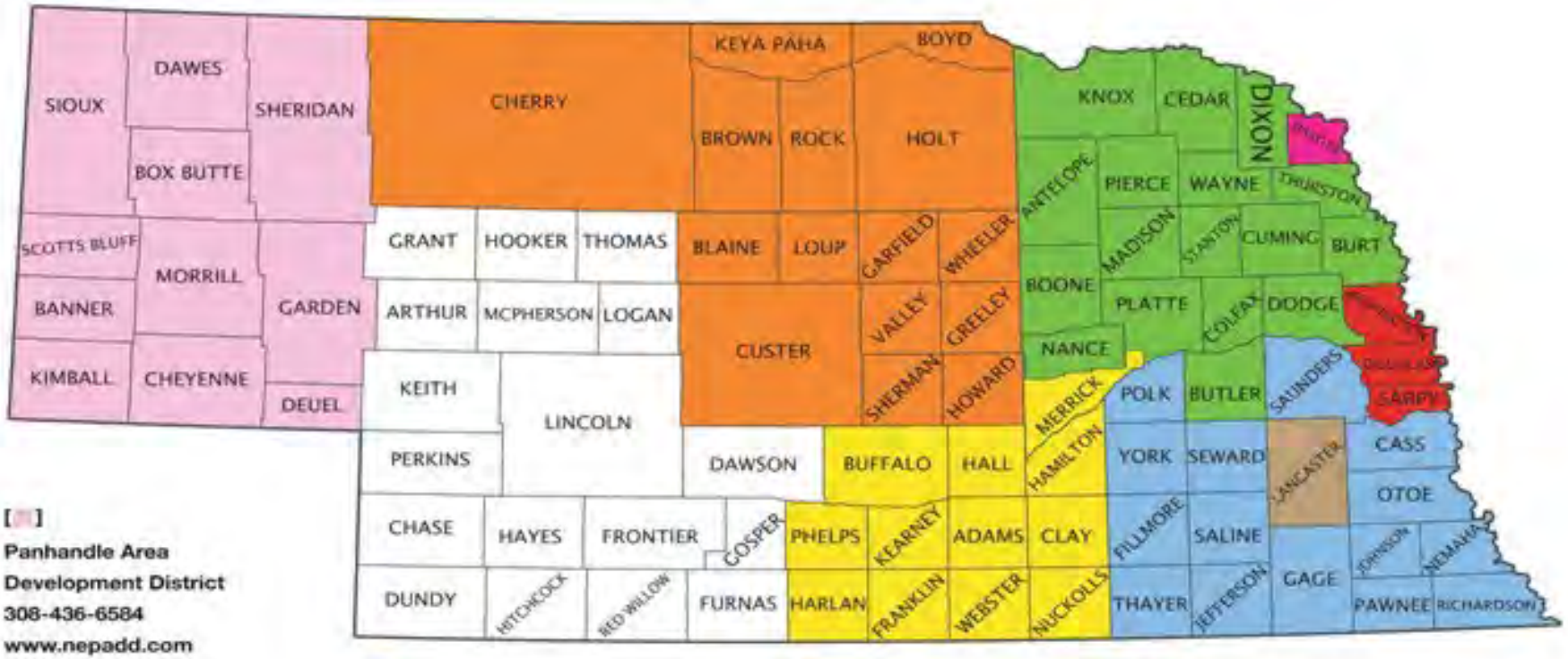
[69] 20 CFR § 679.560(b)(21)
[70] 20 CFR §§ 679.510(b)(1) and (5)
[71] 20 CFR § 679.510(b)(2)
[72] 20 CFR § 679.510(b)(3)
[73] Neb. Rev. Stat. §§ 84-1407 through 84-1414 (aka Nebraska Open Meetings Act). An outline of the Nebraska Open Meetings Act is accessible at https://ago.nebraska.gov/open-meetings#:~:text=Laws%20LB%20821%2C%20%C2%A7%2034,commitment%20to%20openness%20in%20government.
[74] 20 CFR § 679.510(b)(4)

APPENDIX III. Nebraska's economic development districts



Panhandle Area Development District
308-436-6584
www.nepadd.com

West Central Nebraska Development District
308-284-6077
www.wcndd.org

South Central Economic Development District
308-995-3190
www.scedd.us

Southeast Nebraska Development District
402-475-2560

Metropolitan Area Planning Agency
402-444-6866
www.mapacog.org

Central Nebraska Econommic Development District
402-925-2373
www.cnedd.org

Northeast Nebraska Economic Development District
402-379-1150
www.nenedd.org

Siouxland Interstate Metro. Planning Council
712-279-6286
www.simpco.org

Lancaster county
402-447-7447
www.lancaster.ne.gov

State Policy **Workforce Innovation and Opportunity Act (WIOA)**

Nebraska Department of Labor (NDOL)
Division of Reemployment Services
550 South 16th Street
Lincoln, NE 68508
402.471.9000
ndol.wioa_policy@nebraska.gov

Policy category
Governance

Effective
May 3, 2023

Supersedes
Memorandums of Understanding and Funding Agreements, Change 2 (effective August 1, 2022)

Memorandums of Understanding and Funding Agreements, Change 3

REFERENCE

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

BACKGROUND

Local boards and chief elected officials (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

Under this Change 3, footnotes have been revised for clarity and links have been updated, where necessary.

ACTION

This policy supersedes and cancels the State's policy titled Memorandums of Understanding and Funding Agreements, Change 2 (effective August 1, 2022). Questions and comments on this policy may be submitted in writing to the Policy mailbox at ndol.wioa_policy@nebraska.gov.

Each local board, in partnership with the CEO:[1]

- 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

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.

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[1] WIOA Sec. 121(c)(1) – (2)

Section I. MOUs

(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.[2] 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.[3] 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.[4] All individuals participating in the development and amendment of MOUs and funding agreements must negotiate in good faith to reach agreement.[5] In addition, each local board must document its negotiation of MOUs and funding agreements, including amendments, and efforts made to reach consensus.[6]

(b) Required elements of an MOU[7]

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);[8]

3. methods for referring individuals by the one-stop operator to one-stop partners for appropriate services and activities;

[2] 20 CFR § 678.500(a); TEGLs 16-16 and 16-16 Change 1
[3] 20 CFR § 678.500(a); TEGL 17-16
[4] 20 CFR § 678.510(a); TEGL 16-16
[5] Ibid.
[6] 20 CFR § 678.510(c)(1)
[7] WIOA Sec. 121(c)(2)(A); 20 CFR § 678.500(b) – (e); TEGL 16-16. A Sample MOU and Infrastructure Costs Toolkit is accessible at https://ion.workforcegps.org/resources/2017/03/23/13/30/Sample_MOU_Infrastructure_Costs_Toolkit.
[8] A One-stop Operating Budget Training Series is accessible 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:[9]

- 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.

[9] 20 CFR § 678.715(b)

(2) Required elements of a funding agreement

A funding agreement must include provisions describing the:[10]

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[11] 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.[12]

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.

[10] 20 CFR § 678.755; TEGL 17-16
[11] Uniform Guidance refers to 2 CFR Parts 200 and 2900
[12] 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[13] 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.[14]

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[15] 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.

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

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[13] 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.

[14] 20 CFR § 678.760

[15] SCSEP participant community service hours can be considered as an in-kind contribution for purposes of SCSEP contribution towards additional costs [TEGL 16-16 Change 1].

(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.[16] 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:[17]

- 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.[18]

It is important to note the following points.

- *The state funding mechanism provides funding for infrastructure costs only*.[19] 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,[20] 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.

[16] 20 CFR §§ 678.725 and 678.730(a)
[17] 20 CFR § 678.730(c)
[18] 20 CFR § 678.730(c)(2)
[19] TEGL 17-16
[20] 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.[21]

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[22]

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.

[21] TEGL 17-16
[22] 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[23]

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.

[23] 20 CFR §§ 678.736 and 678.737

5.1. Determining maximum statewide contributions

Formula for calculations: *ma = sc x 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* x *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
n1	1,500
n2	10,000
s	0.15

5.4. Determining contribution amount

Example calculation:

Partner	Statewide cap (*sc*)	Local area cap (*lc*)	Proportionate share (*s*)	Proportionate share (*s* x *ff*)	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

(a) Notification requirements

Each local board must notify NDOL of the outcomes of its MOU and funding agreement negotiations[24] 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.

[24] TEGL 17-16

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

- John O'Keefe, Director, Reemployment Services, at john.o'keefe@nebraska.gov;
- Policy mailbox at 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.

(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:

- John O'Keefe, Director, Reemployment Services, at john.o'keefe@nebraska.gov; and
- Policy mailbox at ndol.wioa_policy@nebraska.gov.

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

(c) Notifications when consensus is not reached[25]

(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

[25] 20 CFR § 678.510(c)

Responsible party – event	Deadline
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 board and the entity responsible for administering the applicable required one-stop partner programs	No later than July 1
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[26]

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).[27] 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	No later than July 1

[26] 20 CFR § 678.510(c)
[27] TEGL 17-16

Responsible party – event	Deadline
consensus within 30 days of additional technical assistance, the state funding mechanism takes effect for the local area for the applicable program year	
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 programmatic contributions to infrastructure funding based on proportionate use of the one-stop center and relative benefit received	No later than 15 days after notification of required contribution amounts
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[28]

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:[29]

- 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 .

[28] 20 CFR § 678.750
[29] 20 CFR § 678.735(a) – (b)

(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.

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;
- John O'Keefe, Director, Reemployment Services, at john.o'keefe@nebraska.gov; and
- the Policy mailbox at 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

This policy is based on NDOL's reading of the applicable laws, rules, regulations, and guidance released by the Federal 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

Definitions in this appendix are provided as supplemental information that supports the provisions of the policy. 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:[30]

- 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. infrastructure costs and additional costs[31]

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

[30] WOA Sec. 3(9)
[31] 20 CFR § 678.760

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.

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	▪ Salary, benefits, and other expenses associated with staffing board functions ▪ Board meeting costs ▪ Audit costs of incorporated boards ▪ Errors and omissions insurance for board directors and officers ▪ Non-technology costs associated with marketing services to employers and other customers ▪ Non-technology costs of strategic data gathering and analysis projects intended to isolate area workforce needs, priorities, and issues
Costs to promote integration and streamlining of services	▪ Joint staff training, including staff of comprehensive one-stop centers ▪ Customer satisfaction measurement ▪ Business services ▪ Receptionist at the one-stop center ▪ Resource room materials and staffing costs at the one-stop center
Shared services and operating costs for required one-stop partners	▪ Delivery of career services ▪ Shared services ▪ Shared operating costs ▪ Any allowable non-technology cost item (e.g., initial intake or needs assessments)

3. one-stop center[32]

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[33]

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[34]

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.

c. specialized center[35]

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.

4. one-stop delivery system[36]

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.

5. program year

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

[32] WIOA Secs. 3(40) and 121(e)(2)
[33] 20 CFR § 678.305
[34] 20 CFR § 678.310
[35] 20 CFR § 678.300(d)(3)
[36] 20 CFR § 678.300

6. required one-stop partners and additional one-stop partners

Table 7. Required one-stop partners and their authorizing legislation[37]

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 et seq.
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
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.[38] This list is not exhaustive.

[37] 20 CFR § 678.400
[38] 20 CFR § 678.410

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

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[39]

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 21st Center (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 *under Jobs Plus Initiative grants*	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 *et seq*.)	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

[39] 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)[40]	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: • 0.75% year 1 (Program Year 2017) • 1.00% year 2 (Program Year 2018) • 1.25% year 3 (Program Year 2019) • 1.50% year 4 (Program Year 2020 and subsequent Program Years)
15. Nebraska Vocational Rehabilitation Program (WIOA Title IV)[41]	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: • 0.75% year 1 (Program Year 2017) • 1.00% year 2 (Program Year 2018) • 1.25% year 3 (Program Year 2019) • 1.50% year 4 (Program Year 2020 and subsequent Program Years)
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

[40] The preamble discussion in the Joint Final Rule pertaining to 20 CFR § 678.738 states that when there are two VR agencies (general and blind). The combined contribution from the programs cannot be required to exceed the cap based on the total VR allotment to the state.
[41] Ibid.

2. One-stop Delivery System

2.1. Local One-stop Delivery Systems and One-Stop Centers

NEBRASKA
Good Life. Great Connections.
DEPARTMENT OF LABOR

americanjobcenter network

State Policy **Workforce Innovation and Opportunity Act (WIOA)**

Nebraska Department of Labor (NDOL) Division of Reemployment Services 550 South 16th Street Lincoln, NE 68508 402.471.9000 ndol.wioa_policy@nebraska.gov	Policy category One-stop Delivery System Effective December 11, 2023 Supersedes None

Local One-stop Delivery Systems and One-stop Centers

REFERENCE

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

BACKGROUND

Local one-stop delivery systems bring together workforce development, educational, and other human resource services in a seamless customer-focused service delivery network that enhances access to program services and improves long-term employment outcomes for individuals receiving assistance from through one-stop delivery systems.[1] One-stop delivery system partners administer separately funded programs as a set of integrated streamlined services to customers.[2] WIOA Title I assigns responsibilities to ensure the establishment and maintenance of local one-stop delivery systems that enhance the range and quality of education and workforce development services accessible by job seekers, workers, and employers.[3]

ACTION

State

Questions and comments on this policy *may* be submitted in writing to the policy mailbox at ndol.wioa_policy@nebraska.gov.

State policies referenced in this policy are included in the State policy manual, which is accessible at https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies. *State policy manual*

[1] 20 CFR § 678.300(a)
[2] Ibid.
[3] 20 CFR § 679.300(b)

refers to the policy manual created and maintained by the NDOL Reemployment Services Quality Control Unit.

Local boards and local administrative entities

Local boards and local administrative entities *must* ensure their respective local one-stop delivery systems and one-stop centers, including comprehensive American Job Centers, affiliated sites, and specialized centers, comply with the requirements of this policy, as well as all applicable Federal laws, rules, regulations, and guidance.

POLICY

This policy defines requirements concerning the establishment and maintenance of local one-stop delivery systems and one-stop centers, including comprehensive American Job Centers, affiliated sites, and specialized centers. This policy has two sections.

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Section I. Local one-stop delivery systems

(a) Structure and design

Local one-stop delivery systems:[4]

- *must* include at least one physical comprehensive one-stop center, meaning a comprehensive American Job Center (AJC); and
- *may* have additional arrangements to supplement AJCs, which *may* include:
    - affiliated sites where one or more one-stop partners make programs, services, and activities available;

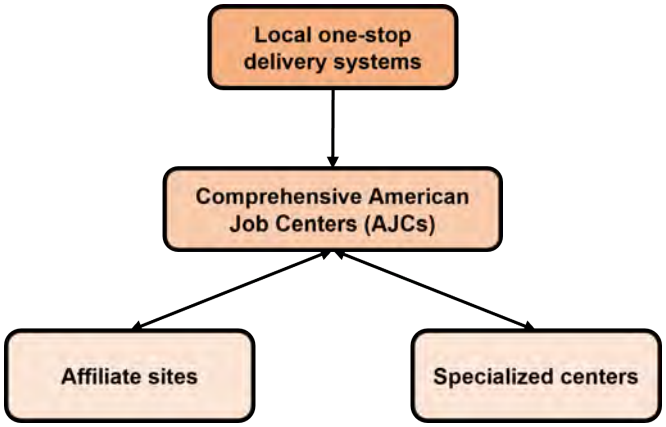
[4] WIOA Sec. 121(e)(1)-(2); 20 CFR § 678.300(c)-(d)

- a network of one-stop partners, through which each partner provides one or more of the programs, services, and activities that are linked, either physically or technologically, to affiliated sites that assure customers are provided information on the availability of career services, as well as other program services and activities, regardless of where customers initially enter local one-stop delivery systems; or

- specialized centers that address specific needs, including those of dislocated workers, youth, or key industry sectors or clusters in local one-stop delivery systems.

Diagram 1 generally illustrates the structure of local one-stop delivery systems that include AJCs, affiliate sites, and specialized centers.

Diagram 1. Structure of local one-stop delivery systems



Design of local one-stop delivery systems *must* be described in memorandums of understanding (MOUs) executed between local boards and required one-stop partners which *must* include funding agreements, as described in 20 CFR § 678.500,[5] as well as the State's policy on MOUs and funding agreements.

(1) Comprehensive American Job Centers (AJCs)

AJCs are physical locations where job seekers, workers, and employers can access programs, services, and activities from all required one-stop partners.[6] AJCs *must* provide access to:

- basic and individualized career services (Sections II(b) and II(c));
- meaningful assistance with Unemployment Insurance claims (Section II(b)(1));
- training services (Section II(d));
- youth workforce investment activities (Section II(e));

[5] WIOA Secs. 121(c)(1)-(2) and 121(h); 20 CFR § 678.300(f)
[6] 20 CFR § 678.305(a)-(b)

- business services (Section II(f));
- programs and activities carried out by required one-stop partners, including the Title III Wagner-Peyser Employment Service program;[7] and
- workforce and labor market information for job seekers, workers, and employers.

AJCs *must* be physically and programmatically accessible to individuals with disabilities, as described in 29 CFR Part 38, the implementing regulations of WIOA Sec. 188.

(2) Affiliate sites

Affiliate sites are one-stop centers that make available one or more one-stop partner programs, services, and activities, subject to the following requirements and limitations.[8]

- Affiliate sites *do not* need to provide access to every required one-stop partner program.
- The frequency of the physical presence of program staff at affiliate sites is determined at the local level. Affiliate sites are one-stop delivery system access points *in addition to AJCs*.
- If used by local areas as part of local one-stop delivery system strategies, affiliate sites *must* be implemented in a manner that supplement and enhance customer access to services provided through AJCs *but not in lieu of access to AJC services*.
- Wagner-Peyser Employment Service locations cannot act as stand-alone affiliate sites.[9]
    - If Wagner-Peyser services are provided at affiliated sites, there *must* be at least one or more *other partners* located at the sites with a presence of combined staff at the sites more than 50 percent of the time the site is open. The presence of staff representing the Jobs for Veterans State Grant program (Local Veterans Employment Representatives and Disabled Veterans Outreach Program Specialists) or Unemployment Insurance program *does not count toward the mandatory 50-percent presence requirement*.[10]
- Affiliate sites *must* be physically and programmatically accessible to individuals with disabilities, as described in 29 CFR Part 38, the implementing regulations of WIOA Sec. 188.

(3) Specialized centers

Specialized centers are one-stop centers that address specific needs, including those of dislocated workers, youth, or key industry sectors or clusters.[11] As described above in Section I(a)(2) and 20 CFR § 678.315 regarding affiliate sites, a specialized center *must* include programs other programs in addition to Wagner-Peyser Act Employment Service, Jobs for Veterans State

[7] WIOA Sec. 121(e)(2)(C)
[8] 20 CFR § 678.310
[9] 20 CFR § 678.315(a)
[10] 20 CFR § 678.315(b)
[11] 20 CFR § 678.300(d)(3)

Grant, and Unemployment Insurance programs.[12] Specialized centers *must* be physically and programmatically accessible to individuals with disabilities, as described in 29 CFR Part 38, the implementing regulations of WIOA Sec. 188.

(4) Networks of one-stop partners and specialized centers

Any network of one-stop partners or specialized centers, as described in 20 CFR § 678.300(d)(3), *must* be connected to AJCs and any appropriate affiliate one-stop centers by having processes in place to make referrals to and within the network.[13]

(b) Access

Local one-stop delivery system customers *must* have access to AJC programs, services, and activities provided by required one-stop partners during regular business days.[14] Local boards *may* establish service hours at other times outside of or other than regular business days to accommodate the schedules of individuals who work during regular business days.[15]

Access to each required one-stop partner program and its services means:[16]

- having at least one program staff member physically present at the one-stop center;
- having at least one staff member from a different partner program physically present at the one-stop center who is appropriately trained to provide information to customers about the programs, services, and activities available through AJC partner programs; or
- direct linkage through technology to program staff who provide meaningful information or services and direct connection at the AJC *within a reasonable time*, either by phone or through real-time web-based communications with program staff who can provide program information or services to customers and *cannot* exclusively be the provision of phone numbers; website addresses; or general information, pamphlets, or materials.

Access to each required one-stop partner program and its services includes physical and programmatic accessibility for individuals with disabilities, as described in 29 CFR Part 38, the implementing regulations of WIOA Sec. 188.[17]

(c) Required and additional one-stop partners

Refer to 20 CFR §§ 678.400 and 678.410 and the State's policy on MOUs and funding agreements for lists of required one-stop partners and additional one-stop partners.

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[12] 20 CFR § 678.320
[13] Ibid.
[14] 20 CFR § 678.305(c)
[15] Hours of AJC access are evaluated for effectiveness during annual one-stop delivery system assessment and triennial one-stop center certification processes, as described under 20 CFR § 678.800(b) and the State's policy on one-stop delivery system assessment and one-stop center certification.
[16] 20 CFR § 678.305(d)
[17] Ibid.

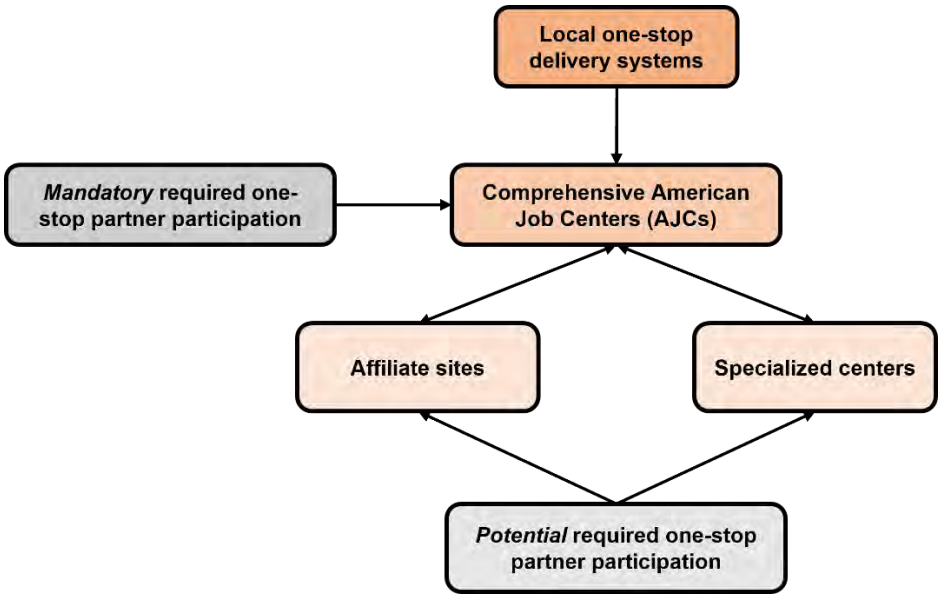
(d) Required one-stop partner participation in local one-stop delivery systems[18]

Required one-stop partner programs *must* provide access to their programs and services through local AJCs and any applicable affiliated sites or specialized centers, either onsite or through direct linkage, as described above in Section I(b). The provision of programs and services through direct linkage *must* improve the efficiency, coordination, and quality of one-stop partner services. As stated above in Section I(b), direct linkage *must* comply with the nondiscrimination and equal opportunity provisions of WIOA Sec. 188 and its implementing regulations at 29 CFR Part 38.

If required one-stop partners *elect* to participate in affiliate sites, direct linkage *must* not replace access to services at AJCs or serve as a substitute to making services available at affiliated sites if the partner is participating in affiliate sites.

Diagram 2 illustrates mandatory and potential participation by required one-stop partners in local one-stop delivery systems. *Note that required one-stop partners are not obligated to participate in affiliate sites or specialized centers*.

Diagram 2. Mandatory and potential required one-stop partner participation in local one-stop delivery systems



(e) Required one-stop partner roles and responsibilities in AJCs

Required one-stop partners *must*:[19]

1. provide access to their respective programs or activities through local AJCs, *in addition to any other locations where they elect to provide services*;

[18] WIOA Sec. 121(b)(1)(A)-(B); 20 CFR § 678.300(e)
[19] 20 CFR § 678.420

2. use a portion of funds made available to their programs, to the extent consistent with Federal law authorizing their respective programs and in compliance with Federal cost principles defined in 2 CFR Parts 200 and 2900, as applicable, regarding:

    a. provision of career services;

    b. working collaboratively with the State, in addition to local boards, to establish and maintain local one-stop delivery systems, including jointly funding AJC infrastructure costs through partner contributions based upon:

        i. reasonable cost allocation methodologies by which infrastructure costs are charged to each respective partner based on proportionate use and relative benefit received;

        ii. Federal cost principles; and

        iii. any local administrative cost requirements established under applicable Federal laws authorizing the partner programs;[20]

3. enter into MOUs with local boards, which *must* include funding agreements, relating to the operation of AJCs, in accordance with 20 CFR § 678.500(b);

4. participate in the operation of AJCs, consistent with the terms the MOUs and funding agreements, requirements of partner program authorizing laws, rules, regulations, and Federal cost principles, and all other applicable legal requirements; and

5. provide representation on the state board and local boards, when required or as requested,[21] and participate in board committees as needed.

Section II. Required local one-stop delivery system services

(a) Overview

Local one-stop delivery systems provide services to customers based on individual needs, including seamless delivery of multiple services to individual customers. Basic career services *must* be delivered collectively by required one-stop partners through AJCs (subject to legislative authorization, requirements, and limitations for each partner program) and are listed in 20 CFR § 678.430 and in Table 1.[22]

(b) Basic career services for job seekers, workers, and employers

Basic career services, including meaningful assistance with unemployment insurance (UI) claims, *must* be universally available and accessible to all individuals and employers seeking services, as applicable.[23] In other words, anyone *may* receive one or more basic career services based on

[20] Refer to 20 CFR § 678.700 for additional information.
[21] Refer to the State's policy on workforce development boards and chief elected officials regarding state and local board membership requirements.
[22] WIOA Sec. 134(c)(2); 20 CFR § 678.425
[23] 20 CFR § 678.430; TEGL 19-16

individual needs, even if they are not participating in a program offered by AJC partner programs. Table 1 lists basic career services that *must* be universally accessible to everyone, including employers when applicable.

Table 1. Basic career services[24]

Service description
1. Determination of eligibility 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 individuals, and provision of information on: a. in-demand industry sectors and occupations; and b. nontraditional employment
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: a. job vacancy listings in labor market areas; b. information on job skills necessary to obtain the vacant jobs listed; and c. information relating to local in-demand occupations and the earnings, skill requirements, and opportunities for advancement for those jobs
7. Provision of performance information and program cost information for 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 local areas are performing on local performance accountability measures, as well as any additional performance information relating to one-stop delivery systems
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: a. child care; b. child support; c. medical or child health assistance available through the state's Medicaid program and Children's Health Insurance Program; d. benefits under Supplemental Nutrition Assistance Program (SNAP); e. assistance through the earned income tax credit; and f. assistance available under the State's TANF program and other supportive services and transportation provided through TANF
10. Provision of information and *meaningful assistance* to individuals seeking assistance in filing a claim for unemployment compensation (*see Section II(b)(1) below*)
11. Assistance with establishing eligibility for programs of financial aid assistance for training and education programs not authorized under the Workforce Innovation and Opportunity Act of 2014

(1) Meaningful assistance

Local boards and local administrative entities *must* ensure the availability of meaningful assistance to anyone seeking assistance with UI claims. There is no Federal mandate that

[24] 20 CFR § 678.430(a)

meaningful assistance *must* be provided strictly by UI state merit staff. To clarify, *meaningful assistance* is provided:[25]

- by staff on-site who are well-trained on unemployment compensation claims filing and the rights and responsibilities of claimants; or
- through direct linkage to UI staff by phone or other technology as long as the assistance is provided by trained and available staff *and within a reasonable timeframe*.

Costs associated with providing *meaningful assistance* may be paid for by UI, Title I adult programs, Title I dislocated worker programs, Title III Wagner-Peyser Employment Service, or some combination of these funding sources.[26]

(c) Individualized career services for job seekers and workers

Local boards and local administrative entities *must* ensure the availability of individualized career services for eligible individuals through AJCs, if determined appropriate in order for individuals to obtain or retain employment.[27] Availability of individualized career services required under local Title I adult and dislocated worker programs for eligible individuals are described in detail in the State's adult and dislocated worker policy.

Types of career services available through other required one-stop partner programs, which are not described in this policy, are based on the authorizing legislation and implementing rules and regulations for those programs.

(d) Training services for job seekers and workers

Local boards and local administrative entities *must* ensure the availability of training services for eligible individuals through AJCs, if determined to be appropriate in order for individuals to obtain or retain employment.[28]

Availability of training services required under local Title I adult and dislocated worker programs for eligible individuals are described in detail in the State's adult and dislocated worker policy.

Types of training services available through other required one-stop partner programs, which are not described in this policy, are based on the authorizing legislation and implementing rules and regulations for those programs.

(e) Youth workforce investment activities

Local boards and local administrative entities *must* ensure the availability of youth workforce investment activities authorized under WIOA Title I through AJCs.[29] Title I youth program services for eligible individuals are described in detail in the State's youth program policy.

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[25] 20 CFR § 678.430(a)(10)(i)
[26] 20 CFR § 678.430(a)(10)(ii); TEGL 19-16
[27] 20 CFR § 678.430(b)
[28] Ibid.
[29] WIOA Sec. 121(b)(1)(B)(i)

Types of youth services available through other required one-stop partner programs, which are not described in this policy, are based on the authorizing legislation and implementing rules and regulations for those programs.

(f) Career services for employers (business services)

(1) Required business services

Local boards and local administrative entities *must* ensure the availability of business services through AJCs,[30] specifically:[31]

- appropriate recruitment and other business services on behalf of employers, including information and referrals to specialized business services other than those traditionally offered through local one-stop delivery systems; and

- provision of workforce and labor market employment statistics information, including the provision of accurate information relating to local, regional, and national labor market areas, including:

    - job vacancy listings in labor market areas;

    - information on job skills necessary to obtain the vacant jobs listed; and

    - information relating to local occupations in demand and the earnings, skill requirements, and opportunities for advancement for those jobs.

- establishment and development of relationships and networks with large and small employers and their intermediaries; and

- development, convening, or implementation of industry or sector partnerships.[32]

No fees may be charged for the services described above.[33]

(2) Optional business services

Local areas *may* also make available other business services for employers including:[34]

a. customized business services for employers, employer associations, or other such organizations, which are tailored for specific employers, and *may* include:

    i. customized screening and referral of qualified participants in training services to employers;

    ii. customized services on employment-related issues for employers, employer associations, or other such organizations;

[30] WIOA Secs. 134(c)(2)(A)(iv)(I)-(II) and 134(c)(2)(A)(vi)
[31] WIOA Secs. 134(c)(2)(A)(iv)(I)-(II) and 134(c)(2)(A)(vi); 20 CFR § 678.435(a)
[32] 20 CFR § 678.435(a)
[33] 20 CFR § 678.440(a)
[34] 20 CFR § 678.435(b)

iii. customized recruitment events and related services for employers, employer associations, or other such organizations, including targeted job fairs;

iv. human resource consultation services, including but not limited to assistance with:

1. writing/reviewing job descriptions and employee handbooks;

2. developing performance evaluation and personnel policies;

3. creating orientation sessions for new workers;

4. honing job interview techniques for efficiency and compliance; and

5. analyzing employee turnover;

v. incumbent worker training and customized training services in accordance with 20 CFR 680 Subpart F.

Local areas *may* also provide other business services and strategies that meet the workforce investment needs of local area employers, in accordance with partner program statutory requirements and consistent with Federal cost principles.[35] These business services *may* be provided through effective business intermediaries working in conjunction with local boards or through use of economic development, philanthropic, and other public and private resources in a manner determined appropriate by local boards *and in cooperation with the State*.[36] Allowable activities, consistent with partner programs' authorized activities, include, but are not limited to:[37]

a. developing and implementing industry sector strategies (including strategies involving industry partnerships, regional skills alliances, industry skill panels, and industry sector skills partnerships);

b. customized assistance with the development of Registered Apprenticeship program through referrals to the NDOL Registered Apprenticeship Program Unit;

c. developing and delivering innovative workforce investment services and strategies for local area employers, which *may* include career pathways, skills upgrading, and skill standards development and certification for recognized postsecondary credentials or other employer use, through coordination with NDOL and other effective initiatives for meeting workforce investment needs of local area employers and workers;

d. providing assistance to local area employers with managing reductions in force in coordination with Rapid Response activities and with strategies for the aversion of layoffs (according to the requirements established in the NDOL Rapid Response Manual[38] and in coordination with the NDOL Rapid Response Unit), which *may* include strategies such as early identification of firms at risk of layoffs, use of feasibility studies to assess the

[35] 20 CFR § 678.435(c)
[36] Ibid.
[37] 20 CFR § 678.435(c)(1)(6)
[38] The Rapid Response Manual is accessible at https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/ManualsPlansReports.

needs of and options for at-risk firms, and the delivery of employment and training activities to address risk factors;

e. marketing of business services to appropriate local area employers, including small and mid-sized employers; and

f. assisting employers with accessing local, State, and Federal tax credits.

(A) Fees for optional business services

There is no requirement that fees be charged for the services described directly above;[39] however, fees may be charged.[40] As stated previously, the services described above may be provided through effective business intermediaries working in conjunction with local boards and may be provided on a fee-for-service basis or through the leveraging of economic development, philanthropic, and other public and private resources in a manner determined appropriate by the local.[41] Local boards *may* examine the services provided by these entities compared with the assets and resources available within local one-stop delivery systems and through partners to determine an appropriate cost structure for services, if any.

Any fees earned through the provision of business services described in Section II(f)(2) are considered program income and *must* be expended by the applicable partner program in accordance with its applicable authorizing legislation and implementing regulations for the partner's program, as well as Federal cost principles identified in 2 CFR Parts 200 and 2900, as applicable.[42]

DISCLAIMER

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

[39] 20 CFR § 678.440(a)
[40] 20 CFR § 678.440(c)
[41] Ibid.
[42] 20 CFR § 678.440(d)

2.2. One-stop Delivery System Assessment and One-Stop Center Certification

NEBRASKA
Good Life. Great Connections.
DEPARTMENT OF LABOR

americanjobcenter network

State Policy **Workforce Innovation and Opportunity Act (WIOA)**

Nebraska Department of Labor (NDOL) Division of Reemployment Services 550 South 16th Street Lincoln, NE 68508 402.471.9000 ndol.wioa_policy@nebraska.gov	Policy category One-stop Delivery System Effective December 11, 2023 Supersedes None

Local One-stop Delivery Systems and One-stop Centers

REFERENCE

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

BACKGROUND

Local one-stop delivery systems bring together workforce development, educational, and other human resource services in a seamless customer-focused service delivery network that enhances access to program services and improves long-term employment outcomes for individuals receiving assistance from through one-stop delivery systems.[1] One-stop delivery system partners administer separately funded programs as a set of integrated streamlined services to customers.[2] WIOA Title I assigns responsibilities to ensure the establishment and maintenance of local one-stop delivery systems that enhance the range and quality of education and workforce development services accessible by job seekers, workers, and employers.[3]

ACTION

State

Questions and comments on this policy *may* be submitted in writing to the policy mailbox at ndol.wioa_policy@nebraska.gov.

State policies referenced in this policy are included in the State policy manual, which is accessible at https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies. *State policy manual*

[1] 20 CFR § 678.300(a)
[2] Ibid.
[3] 20 CFR § 679.300(b)

refers to the policy manual created and maintained by the NDOL Reemployment Services Quality Control Unit.

Local boards and local administrative entities

Local boards and local administrative entities *must* ensure their respective local one-stop delivery systems and one-stop centers, including comprehensive American Job Centers, affiliated sites, and specialized centers, comply with the requirements of this policy, as well as all applicable Federal laws, rules, regulations, and guidance.

POLICY

This policy defines requirements concerning the establishment and maintenance of local one-stop delivery systems and one-stop centers, including comprehensive American Job Centers, affiliated sites, and specialized centers. This policy has two sections.

Section I. Local one-stop delivery systems 2
(a) Structure and design 2
(b) Access 5
(c) Required and additional one-stop partners 5
(d) Required one-stop partner participation in local one-stop delivery systems 6
(e) Required one-stop partner roles and responsibilities in AJCs 6
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(a) Overview 7
(b) Basic career services for job seekers and workers 7
(c) Individualized career services for job seekers and workers 9
(d) Training services for job seekers and workers 9
(e) Youth workforce investment activities 9
(f) Career services for employers (business services) 10

Section I. Local one-stop delivery systems

(a) Structure and design

Local one-stop delivery systems:[4]

- *must* include at least one physical comprehensive one-stop center, meaning a comprehensive American Job Center (AJC); and
- *may* have additional arrangements to supplement AJCs, which *may* include:
    - affiliated sites where one or more one-stop partners make programs, services, and activities available;

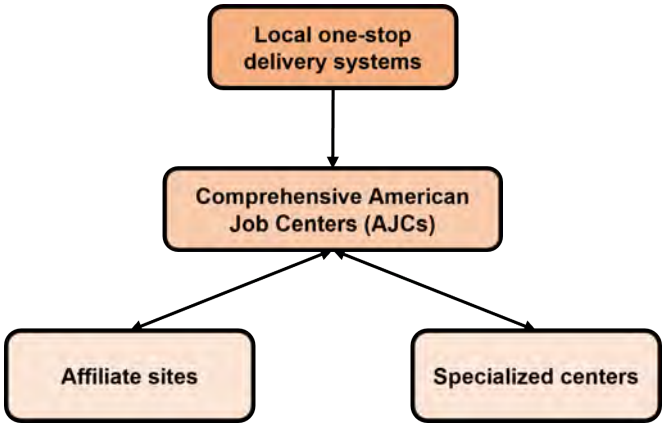
[4] WIOA Sec. 121(e)(1)-(2); 20 CFR § 678.300(c)-(d)

- a network of one-stop partners, through which each partner provides one or more of the programs, services, and activities that are linked, either physically or technologically, to affiliated sites that assure customers are provided information on the availability of career services, as well as other program services and activities, regardless of where customers initially enter local one-stop delivery systems; or

- specialized centers that address specific needs, including those of dislocated workers, youth, or key industry sectors or clusters in local one-stop delivery systems.

Diagram 1 generally illustrates the structure of local one-stop delivery systems that include AJCs, affiliate sites, and specialized centers.

Diagram 1. Structure of local one-stop delivery systems



Design of local one-stop delivery systems *must* be described in memorandums of understanding (MOUs) executed between local boards and required one-stop partners which *must* include funding agreements, as described in 20 CFR § 678.500,[5] as well as the State's policy on MOUs and funding agreements.

(1) Comprehensive American Job Centers (AJCs)

AJCs are physical locations where job seekers, workers, and employers can access programs, services, and activities from all required one-stop partners.[6] AJCs *must* provide access to:

- basic and individualized career services (Sections II(b) and II(c));
- meaningful assistance with Unemployment Insurance claims (Section II(b)(1));
- training services (Section II(d));
- youth workforce investment activities (Section II(e));

[5] WIOA Secs. 121(c)(1)-(2) and 121(h); 20 CFR § 678.300(f)
[6] 20 CFR § 678.305(a)-(b)

- business services (Section II(f));
- programs and activities carried out by required one-stop partners, including the Title III Wagner-Peyser Employment Service program;[7] and
- workforce and labor market information for job seekers, workers, and employers.

AJCs *must* be physically and programmatically accessible to individuals with disabilities, as described in 29 CFR Part 38, the implementing regulations of WIOA Sec. 188.

(2) Affiliate sites

Affiliate sites are one-stop centers that make available one or more one-stop partner programs, services, and activities, subject to the following requirements and limitations.[8]

- Affiliate sites *do not* need to provide access to every required one-stop partner program.
- The frequency of the physical presence of program staff at affiliate sites is determined at the local level. Affiliate sites are one-stop delivery system access points *in addition to AJCs*.
- If used by local areas as part of local one-stop delivery system strategies, affiliate sites *must* be implemented in a manner that supplement and enhance customer access to services provided through AJCs *but not in lieu of access to AJC services*.
- Wagner-Peyser Employment Service locations cannot act as stand-alone affiliate sites.[9]
    - If Wagner-Peyser services are provided at affiliated sites, there *must* be at least one or more *other partners* located at the sites with a presence of combined staff at the sites more than 50 percent of the time the site is open. The presence of staff representing the Jobs for Veterans State Grant program (Local Veterans Employment Representatives and Disabled Veterans Outreach Program Specialists) or Unemployment Insurance program *does not count toward the mandatory 50-percent presence requirement*.[10]
- Affiliate sites *must* be physically and programmatically accessible to individuals with disabilities, as described in 29 CFR Part 38, the implementing regulations of WIOA Sec. 188.

(3) Specialized centers

Specialized centers are one-stop centers that address specific needs, including those of dislocated workers, youth, or key industry sectors or clusters.[11] As described above in Section I(a)(2) and 20 CFR § 678.315 regarding affiliate sites, a specialized center *must* include programs other programs in addition to Wagner-Peyser Act Employment Service, Jobs for Veterans State

[7] WIOA Sec. 121(e)(2)(C)
[8] 20 CFR § 678.310
[9] 20 CFR § 678.315(a)
[10] 20 CFR § 678.315(b)
[11] 20 CFR § 678.300(d)(3)

Grant, and Unemployment Insurance programs.[12] Specialized centers *must* be physically and programmatically accessible to individuals with disabilities, as described in 29 CFR Part 38, the implementing regulations of WIOA Sec. 188

(4) Networks of one-stop partners and specialized centers

Any network of one-stop partners or specialized centers, as described in 20 CFR § 678.300(d)(3), *must* be connected to AJCs and any appropriate affiliate one-stop centers by having processes in place to make referrals to and within the network.[13]

(b) Access

Local one-stop delivery system customers *must* have access to AJC programs, services, and activities provided by required one-stop partners during regular business days.[14] Local boards *may* establish service hours at other times outside of or other than regular business days to accommodate the schedules of individuals who work during regular business days.[15]

Access to each required one-stop partner program and its services means:[16]

- having at least one program staff member physically present at the one-stop center;
- having at least one staff member from a different partner program physically present at the one-stop center who is appropriately trained to provide information to customers about the programs, services, and activities available through AJC partner programs; or
- direct linkage through technology to program staff who provide meaningful information or services and direct connection at the AJC *within a reasonable time*, either by phone or through real-time web-based communications with program staff who can provide program information or services to customers and *cannot* exclusively be the provision of phone numbers; website addresses; or general information, pamphlets, or materials.

Access to each required one-stop partner program and its services also includes physical and programmatic accessibility for individuals with disabilities, as described in 29 CFR Part 38, the implementing regulations of WIOA Sec. 188.[17]

(c) Required and additional one-stop partners

Refer to 20 CFR §§ 678.400 and 678.410 and the State's policy on MOUs and funding agreements for lists of required one-stop partners and additional one-stop partners.

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[12] 20 CFR § 678.320
[13] Ibid.
[14] 20 CFR § 678.305(c)
[15] Hours of AJC access are evaluated for effectiveness during annual one-stop delivery system assessment and triennial one-stop center certification processes, as described under 20 CFR § 678.800(b) and the State's policy on one-stop delivery system assessment and one-stop center certification.
[16] 20 CFR § 678.305(d)
[17] Ibid.

(d) Required one-stop partner participation in local one-stop delivery systems[18]

Required one-stop partner programs *must* provide access to their programs and services through local AJCs and any applicable affiliated sites or specialized centers, either onsite or through direct linkage, as described above in Section I(b). The provision of programs and services through direct linkage *must* improve the efficiency, coordination, and quality of one-stop partner services. As stated above in Section I(b), direct linkage *must* comply with the nondiscrimination and equal opportunity provisions of WIOA Sec. 188 and its implementing regulations at 29 CFR Part 38.

If required one-stop partners *elect* to participate in affiliate sites, direct linkage *must* not replace access to services at AJCs or serve as a substitute to making services available at affiliated sites if the partner is participating in affiliate sites.

Diagram 2 illustrates mandatory and potential participation by required one-stop partners in local one-stop delivery systems. *Note that required one-stop partners are not obligated to participate in affiliate sites or specialized centers*.

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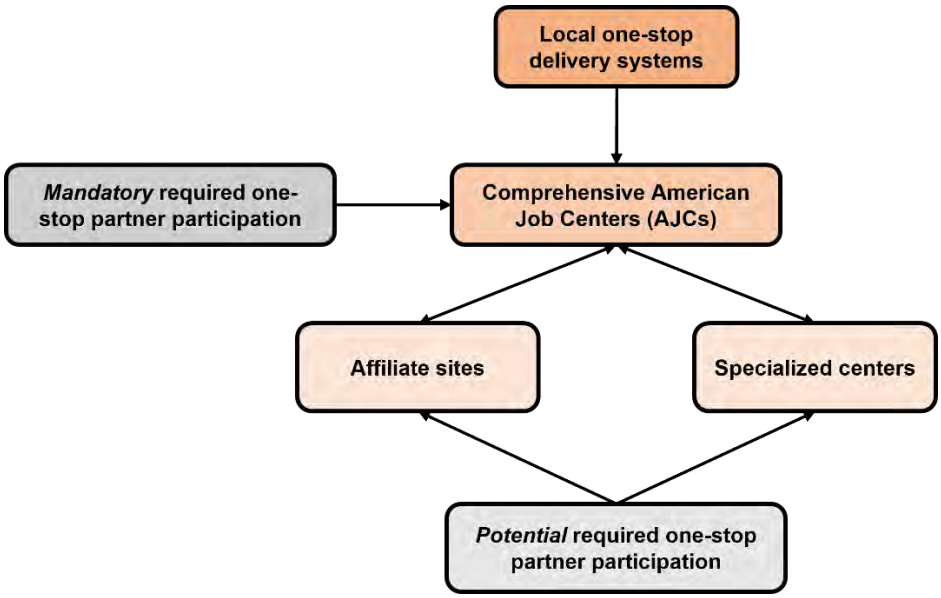

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Required one-stop partners *must*:[19]

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[18] WIOA Sec. 121(b)(1)(A)-(B); 20 CFR § 678.300(e)
[19] 20 CFR § 678.420

2. use a portion of funds made available to their programs, to the extent consistent with Federal law authorizing their respective programs and in compliance with Federal cost principles defined in 2 CFR Parts 200 and 2900, as applicable, regarding:

    a. provision of career services;

    b. working collaboratively with the State, in addition to local boards, to establish and maintain local one-stop delivery systems, including jointly funding AJC infrastructure costs through partner contributions based upon:

        i. reasonable cost allocation methodologies by which infrastructure costs are charged to each respective partner based on proportionate use and relative benefit received;

        ii. Federal cost principles; and

        iii. any local administrative cost requirements established under applicable Federal laws authorizing the partner programs;[20]

3. enter into MOUs with local boards, which *must* include funding agreements, relating to the operation of AJCs, in accordance with 20 CFR § 678.500(b);

4. participate in the operation of AJCs, consistent with the terms the MOUs and funding agreements, requirements of partner program authorizing laws, rules, regulations, and Federal cost principles, and all other applicable legal requirements; and

5. provide representation on the state board and local boards, when required or as requested,[21] and participate in board committees as needed.

Section II. Required local one-stop delivery system services

(a) Overview

Local one-stop delivery systems provide services to customers based on individual needs, including seamless delivery of multiple services to individual customers. Basic career services *must* be delivered collectively by required one-stop partners through AJCs (subject to legislative authorization, requirements, and limitations for each partner program) and are listed in 20 CFR § 678.430 and in Table 1.[22]

(b) Basic career services for job seekers, workers, and employers

Basic career services, including meaningful assistance with unemployment insurance (UI) claims, *must* be universally available and accessible to all individuals and employers seeking services, as applicable.[23] In other words, anyone *may* receive one or more basic career services based on

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[23] 20 CFR § 678.430; TEGL 19-16

individual needs, even if they are not participating in a program offered by AJC partner programs. Table 1 lists basic career services that *must* be universally accessible to everyone, including employers when applicable.

Table 1. Basic career services[24]

Service description
1. Determination of eligibility 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 individuals, and provision of information on: a. in-demand industry sectors and occupations; and b. nontraditional employment
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: a. job vacancy listings in labor market areas; b. information on job skills necessary to obtain the vacant jobs listed; and c. information relating to local in-demand occupations and the earnings, skill requirements, and opportunities for advancement for those jobs
7. Provision of performance information and program cost information for 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 local areas are performing on local performance accountability measures, as well as any additional performance information relating to one-stop delivery systems
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: a. child care; b. child support; c. medical or child health assistance available through the state's Medicaid program and Children's Health Insurance Program; d. benefits under Supplemental Nutrition Assistance Program (SNAP); e. assistance through the earned income tax credit; and f. assistance available under the State's TANF program and other supportive services and transportation provided through TANF
10. Provision of information and *meaningful assistance* to individuals seeking assistance in filing a claim for unemployment compensation (*see Section II(b)(1) below*)
11. Assistance with establishing eligibility for programs of financial aid assistance for training and education programs not authorized under the Workforce Innovation and Opportunity Act of 2014

(1) Meaningful assistance

Local boards and local administrative entities *must* ensure the availability of meaningful assistance to anyone seeking assistance with UI claims. There is no Federal mandate that

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meaningful assistance *must* be provided strictly by UI state merit staff. To clarify, *meaningful assistance* is provided:[25]

- by staff on-site who are well-trained on unemployment compensation claims filing and the rights and responsibilities of claimants; or
- through direct linkage to UI staff by phone or other technology as long as the assistance is provided by trained and available staff *and within a reasonable timeframe*.

Costs associated with providing *meaningful assistance* may be paid for by UI, Title I adult programs, Title I dislocated worker programs, Title III Wagner-Peyser Employment Service, or some combination of these funding sources.[26]

(c) Individualized career services for job seekers and workers

Local boards and local administrative entities *must* ensure the availability of individualized career services for eligible individuals through AJCs, if determined appropriate in order for individuals to obtain or retain employment.[27] Availability of individualized career services required under local Title I adult and dislocated worker programs for eligible individuals are described in detail in the State's adult and dislocated worker policy.

Types of career services available through other required one-stop partner programs, which are not described in this policy, are based on the authorizing legislation and implementing rules and regulations for those programs.

(d) Training services for job seekers and workers

Local boards and local administrative entities *must* ensure the availability of training services for eligible individuals through AJCs, if determined to be appropriate in order for individuals to obtain or retain employment.[28]

Availability of training services required under local Title I adult and dislocated worker programs for eligible individuals are described in detail in the State's adult and dislocated worker policy.

Types of training services available through other required one-stop partner programs, which are not described in this policy, are based on the authorizing legislation and implementing rules and regulations for those programs,.

(e) Youth workforce investment activities

Local boards and local administrative entities *must* ensure the availability of youth workforce investment activities authorized under WIOA Title I through AJCs.[29] Title I youth program services for eligible individuals are described in detail in the State's youth program policy.

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[25] 20 CFR § 678.430(a)(10)(i)
[26] 20 CFR § 678.430(a)(10)(ii); TEGL 19-16
[27] 20 CFR § 678.430(b)
[28] Ibid.
[29] WIOA Sec. 121(b)(1)(B)(i)

Types of youth services available through other required one-stop partner programs, which are not described in this policy, are based on the authorizing legislation and implementing rules and regulations for those programs.

(f) Career services for employers (business services)

(1) Required business services

Local boards and local administrative entities *must* ensure the availability of business services through AJCs,[30] specifically:[31]

- appropriate recruitment and other business services on behalf of employers, including information and referrals to specialized business services other than those traditionally offered through local one-stop delivery systems; and

- provision of workforce and labor market employment statistics information, including the provision of accurate information relating to local, regional, and national labor market areas, including:

    - job vacancy listings in labor market areas;

    - information on job skills necessary to obtain the vacant jobs listed; and

    - information relating to local occupations in demand and the earnings, skill requirements, and opportunities for advancement for those jobs.

- establishment and development of relationships and networks with large and small employers and their intermediaries; and

- development, convening, or implementation of industry or sector partnerships.[32]

No fees may be charged for the services described above.[33]

(2) Optional business services

Local areas *may* also make available other business services for employers including:[34]

a. customized business services for employers, employer associations, or other such organizations, which are tailored for specific employers, and *may* include:

    i. customized screening and referral of qualified participants in training services to employers;

    ii. customized services on employment-related issues for employers, employer associations, or other such organizations;

[30] WIOA Secs. 134(c)(2)(A)(iv)(I)-(II) and 134(c)(2)(A)(vi)
[31] WIOA Secs. 134(c)(2)(A)(iv)(I)-(II) and 134(c)(2)(A)(vi); 20 CFR § 678.435(a)
[32] 20 CFR § 678.435(a)
[33] 20 CFR § 678.440(a)
[34] 20 CFR § 678.435(b)

iii. customized recruitment events and related services for employers, employer associations, or other such organizations, including targeted job fairs;

iv. human resource consultation services, including but not limited to assistance with:

1. writing/reviewing job descriptions and employee handbooks;

2. developing performance evaluation and personnel policies;

3. creating orientation sessions for new workers;

4. honing job interview techniques for efficiency and compliance; and

5. analyzing employee turnover;

v. incumbent worker training and customized training services in accordance with 20 CFR 680 Subpart F.

Local areas *may* also provide other business services and strategies that meet the workforce investment needs of local area employers, in accordance with partner program statutory requirements and consistent with Federal cost principles.[35] These business services *may* be provided through effective business intermediaries working in conjunction with local boards or through use of economic development, philanthropic, and other public and private resources in a manner determined appropriate by local boards *and in cooperation with the State*.[36] Allowable activities, consistent with partner programs' authorized activities, include, but are not limited to:[37]

a. developing and implementing industry sector strategies (including strategies involving industry partnerships, regional skills alliances, industry skill panels, and industry sector skills partnerships);

b. customized assistance with the development of Registered Apprenticeship program through referrals to the NDOL Registered Apprenticeship Program Unit;

c. developing and delivering innovative workforce investment services and strategies for local area employers, which *may* include career pathways, skills upgrading, and skill standards development and certification for recognized postsecondary credentials or other employer use, through coordination with NDOL and other effective initiatives for meeting workforce investment needs of local area employers and workers;

d. providing assistance to local area employers with managing reductions in force in coordination with Rapid Response activities and with strategies for the aversion of layoffs (according to the requirements established in the NDOL Rapid Response Manual[38] and in coordination with the NDOL Rapid Response Unit), which *may* include strategies such as early identification of firms at risk of layoffs, use of feasibility studies to assess the

[35] 20 CFR § 678.435(c)
[36] Ibid.
[37] 20 CFR § 678.435(c)(1)(6)
[38] The Rapid Response Manual is accessible at https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/ManualsPlansReports.

needs of and options for at-risk firms, and the delivery of employment and training activities to address risk factors;

e. marketing of business services to appropriate local area employers, including small and mid-sized employers; and

f. assisting employers with accessing local, State, and Federal tax credits.

(A) Fees for optional business services

There is no requirement that fees be charged for the services described directly above;[39] however, fees may be charged.[40] As stated previously, the services described above may be provided through effective business intermediaries working in conjunction with local boards and may be provided on a fee-for-service basis or through the leveraging of economic development, philanthropic, and other public and private resources in a manner determined appropriate by the local.[41] Local boards *may* examine the services provided by these entities compared with the assets and resources available within local one-stop delivery systems and through partners to determine an appropriate cost structure for services, if any.

Any fees earned through the provision of business services described in Section II(f)(2) are considered program income and *must* be expended by the applicable partner program in accordance with its applicable authorizing legislation and implementing regulations for the partner's program, as well as Federal cost principles identified in 2 CFR Parts 200 and 2900, as applicable.[42]

DISCLAIMER

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

[39] 20 CFR § 678.440(a)
[40] 20 CFR § 678.440(c)
[41] Ibid.
[42] 20 CFR § 678.440(d)

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State Policy **Workforce Innovation and Opportunity Act (WIOA)**

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Policy category
One-stop Delivery System

Effective
May 3, 2023

Supersedes
One-stop Delivery System Assessment and One-stop Center Certification, Change 3 (effective February 15, 2023)

One-stop Delivery System Assessment and One-stop Center Certification, Change 4

REFERENCE

Federal and state laws, rules, regulations, 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.[1] 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.[2]

CHANGES

Under this Change 4, footnotes have been revised for clarity and links have been updated where necessary.

[1] 20 CFR § 678.300(b)
[2] 20 CFR § 678.800(a)

ACTION

This policy supersedes and cancels the State's policy titled One-stop Delivery System Assessment and One-stop Center Certification, Change 3 (effective February 14, 2023). Questions and comments on this policy may be submitted in writing to the policy mailbox at ndol.wioa_policy@nebraska.gov.

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,[3] as well as the requirements established in the State's policy on security and the one-stop delivery system.[4] 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.[5] 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.).[6]

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.[7] 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 policy on security and the one-stop delivery system, 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.).[8]

POLICY

This policy establishes requirements regarding assessment of local one-stop delivery systems and certification of one-stop centers and has three sections and two appendices.

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[3] WIOA Sec. 121(g)(1) and (4); 20 CFR § 678.800(d)
[4] The State's policy on security and the one-stop delivery system is included in the State policy manual, which is accessible at https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies.
[5] 20 CFR § 678.800(d); TEGL 16-16
[6] 20 CFR §§ 678.800 and 679.370(p); TEGL 16-16
[7] 20 CFR § 679.370(p)
[8] 20 CFR §§ 678.800 and 679.370(p); TEGL 16-16

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Section I. Criteria requirements

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[9] and the requirements established in the State's *Security and the One-stop Delivery System* policy. 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.[10] 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.[11]

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 requirements of this policy[12] 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:[13]

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.

[9] WIOA Sec. 121(g)(1) and (4); 20 CFR § 678.800(d)
[10] 20 CFR § 678.800(d); TEGL 16-16
[11] WIOA Secs. 121(g)(1) and 121(h)(1)(A)(i). The State's policy on memorandums of understanding and funding agreements is included in the State policy manual, which is accessible at https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies.
[12] 20 CFR § 679.370(p)
[13] 20 CFR § 678.800(b)

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, .[14]

(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:[15]

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;

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;[16]

8. use the common identifier (*American Job Center* or *a proud partner of the American Job Center network*) on all:[17]

    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

[14] 20 CFR § 678.800(b)
[15] 20 CFR §§ 678.800(b)(1) – (6) and 678.900
[16] 29 CFR § 38.9(b)
[17] 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)].

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.[18]

(c) Continuous Improvement

The local board's assessment of continuous improvement of the local one-stop delivery system and one-stop centers:[19]

- 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;[20] 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.

(d) Local criteria[21]

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

(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;

[18] 20 CFR §§ 678.800(e) and 679.370(p)
[19] 20 CFR § 678.800(c)
[20] The State's performance accountability policy provides information on performance indicators and is included in the State policy manual, which is accessible at https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies.
[21] 20 CFR § 678.800(d); TEGL 16-16

- require use of the assessment and certification forms provided as APPENDIX II.A. and APPENDIX II.C., in accordance 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 and 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 D.II. and D.III. 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 Federal agencies. Documentation resulting from assessments and certification is subject to the record retention requirements described in the State's policy on records management.[22]

(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

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

[22] The State policy manual is accessible at https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies. .

- *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

This policy is based on NDOL's reading of the applicable laws, rules, regulations, and guidance released by the Federal 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

Definitions in this appendix are provided as supplemental information that supports the provisions of the policy. 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:[23]

- 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)[24]

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)[25]

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[26]

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.

[23] 20 CFR § 678.305.(d)(1) – (3)
[24] 20 CFR § 678.310(a)
[25] 20 CFR § 678.305(a)
[26] 20 CFR § 678.305(d)(3)(i) – (ii)

5. specialized center[27]

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.

[27] 20 CFR § 678.300(d)(3); TEGL 16-16

APPENDIX II. One-stop center assessment and certification forms

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).[28] 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.

[28] 20 CFR § 678.800(b) and (d)

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

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:[29]

- 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.).

[29] 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,[30] 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

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

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	

5. Chair signature (must be digital)

Digital signature of Chair	

[30] 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

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)

☐ 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)

D. Form: One-stop partner program triennial assessment

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 boar[31]d has established a memorandum of understanding, including a funding agreement.[32]

[31] This form is available upon written request to ndol.wioa_policy@nebraska.gov.

[32] Refer to the State's policy on memorandums of understanding and funding agreements policy for additional information. The policy is included in the State 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.

Name	Title and business affiliation	Role on or affiliation with the local board	Role in assessment and certification processes

I. Effectiveness criteria

Requirement	Minimum certification criteria	Indicator demonstrating requirement is met	Criteria met yes or no	Comments/planned corrective actions
1. Governance	• A governance agreement among all local area CEOs is in place. • A written agreement between the CEO and the local board is in place. • All MOUs, including funding agreements, between the local board and required and additional one-stop partners are fully executed.	• The governance agreement among all local area CEOs reflects: o processes for appointment of local board members and describes their roles; o designation of a grant recipient and fiscal agent regarding funding allocated to the local area by the State; o processes for collaboration during regional and local planning activities; and o other governance functions. • 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. • All MOUs must comply with requirements established in the State's current *Memorandums of Understanding and Funding Agreements* policy.		
2. Governance	• 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. • If the one-stop operator is participating in assessment procedures *and* 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. • 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.	• The local board has documentation demonstrating that one-stop operator procurement and selection: o complied with Federal rules, regulation, and guidance and State policies on One-Stop Operator Selection and Procurement; o 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 o 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.		

Requirement	Minimum certification criteria	Indicator demonstrating requirement is met	Criteria met yes or no	Comments/planned corrective actions
		• Local board policies and procedures identify one-stop operator roles and responsibilities, including: o requirements for coordination of service delivery by one-stop partner programs and service providers; o requirements regarding disclosure of potential conflicts of interest arising from the one-stop operator's relationship with particular services providers; o requirements regarding compliance with Federal rules, regulations, and procurement policies relating to the calculation and use of profits; and o additional roles and responsibilities established by the local board for the one-stop operator; and o prohibitions against: ▪ 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; ▪ convening system stakeholders to assist in the development of the local plan; ▪ preparation and submission of local plans; ▪ self-oversight; ▪ managing or significantly participating in the competitive selection process for a one-stop operator; ▪ selecting or terminating a one-stop operator, career services providers, and youth providers; ▪ negotiating local performance accountability measures; and ▪ developing and submitting budgets for activities of the local board.		

Requirement	Minimum certification criteria	Indicator demonstrating requirement is met	Criteria met yes or no	Comments/planned corrective actions
		• 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. • The written continuity-of-service plan that will be initiated if an AJC is not certified is documented and available for review.		
3. Responsiveness to needs of jobseekers, workers, and program participants	One-stop partners, in coordination with the one-stop operator, have identified specific methods for: • coordinating one-stop partner program services that meet the needs of jobseekers, workers, and program participants; and • reporting the performance of their respective programs to the local board regarding service delivery for jobseekers, workers, and program participants.	• 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. • Each one-stop partner has identified and documented goals for serving jobseekers, workers, and program participants. • 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.		
4. Responsiveness to needs of employers	One-stop partners, in coordination with the one-stop operator, have identified specific methods for: • responding to economic and labor force needs within the one-stop delivery system; • matching employers with skilled workers; and • reporting performance of their respective programs to the local board regarding service delivery for employers.	• One-stop partner policies and procedures for service delivery for employers identify standards and processes for coordination of services and referrals. • Each one-stop partner has identified and documented goals for serving employers. • 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.		
5. Operational coordination	• Resource room teams consist of representatives from one-stop center partner programs. • Resource room materials are accurate current materials describing all one-stop partner	• Regarding resource room teams: o Rosters of resource room teams include representatives from one-stop center partner programs.		

Requirement	Minimum certification criteria	Indicator demonstrating requirement is met	Criteria met yes or no	Comments/planned corrective actions
	program services are readily available to customers. • 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. • Business services teams include representatives from all core partner[33] programs to avoid duplication of effort, minimize employer fatigue, and encourage collaboration.	o Job descriptions for resource team staff reflect cross-program functions and responsibilities. • Resource room materials are: o accurate, current, and regularly updated; o include a date or other method for determining the materials are current; and o readily available. • 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: o information on the websites is current; and o resource room materials include a date or other method for determining the materials are current. • Rosters of business services teams include representatives from all one-stop delivery system and one-stop center partner programs. • A record of business services team meetings reflect participation by representatives of all core partner programs.		
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.	• Regular business hours are clearly visible on the exterior and interior of one-stop centers. • Directions for arranging for services outside of regular business hours are clearly stated and widely available to the public, including persons with disabilities. • Local board meeting minutes reflect discussions and decisions regarding regular business hours and the availability of services outside of regular business hours.		

[33] 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.	• One-stop delivery system and one-stop center staff training covers the following topics: o obligation to inform one-stop delivery system customers that auxiliary aids and accommodations are available; o instructions for using TDD/TTY and other adaptive technologies; o reasonable modifications to avoid discrimination and meet individual needs, such as allowing an individual with a cognitive disability extra time to complete forms; and o effective strategies for communicating with persons with disabilities. • 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.	• One-stop delivery system and one-stop center staff members demonstrate they: o inform one-stop delivery system customers of the availability of auxiliary aids and accommodations; o know how to use the adaptive technologies and are aware of available resources; o are familiar with the modification of procedures to avoid discrimination; and o utilize effective strategies for communicating with persons with disabilities. • Corrective action plans are developed if partners or customers identify barriers to participation in services.		
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.	• Customer feedback data is provided to the local board, and documentation on the data is readily available. • Minutes of local board meetings reflect the provision and review of customer-feedback reports.		
9. Branding: The common identifier (*American Job Center* or *a proud partner of the American Job Center network*) is used, as required under WIOA Sec. 121(e)(4) and 20	All products, programs, activities, services, electronic resources, facilities, and all related property and new materials include the common identifier.	• 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.		

Requirement	Minimum certification criteria	Indicator demonstrating requirement is met	Criteria met yes or no	Comments/planned corrective actions
CFR § 678.900, at 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.	• 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.		
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	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).[34]		

[34] 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
individuals with disabilities.				
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.	▪ One-stop delivery system and one-stop center staff: o provide reasonable accommodations for persons with disabilities; o administer programs in the most appropriate integrated setting; o communicate with persons with disabilities as effectively as with others. ▪ One-stop delivery system and one-stop center partners reasonably modify policies, practices, and procedures to avoid discrimination and to meet individual needs.	▪ One-stop delivery system and one-stop center staff demonstrate: o availability of auxiliary aids and accommodations, including assistive technology devices and services; o they inform customers of the availability of auxiliary aids and accommodations, including assistive technology devices and services; o how to use the adaptive technologies and are aware of available resources; o familiarity with modification of procedures to avoid discrimination; and o use of effective strategies for communicating with persons with disabilities. ▪ 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		
3. Location: Locations of one-stop centers are accessible by public transportation, driving, or walking.	▪ Customers who use public transportation can access one-stop centers within a reasonable walking distance. ▪ Adequate parking is available and accessible for customers who drive to one-stop centers. ▪ Locations of one-stop centers are identifiable in high-traffic areas.	▪ One-stop centers have dedicated parking lots suitable for the anticipated number of customers. ▪ One-stop center parking lots have spaces closest to the door that are dedicated to and marked for persons with disabilities. ▪ One-stop center signage is easily visible on the exterior and in the interior of the facility. ▪ Meeting minutes demonstrate the local board has considered whether the locations of one-stop centers are within reasonable walking distance from public transportation stops.		
4. Signage and logos: The common identifier (*American Job Center* or *a proud*	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
partner of the American Job Center network) are used on 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).	For the 3 full program years preceding the triennial certification process, documentation for annual assessments of physical accessibility of all one-stop centers is readily available and includes results of the assessments.		
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.	• 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. • 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.		
2. Youth program services: Youth	All youth program services, including supportive and follow-up services, are available and	• The local board's MOUs with one-stop partners demonstrate that all youth program		

Minimum requirement	Minimum certification criteria	Indicator demonstrating requirement is met	Criteria met yes or no	Comments/planned corrective actions
program 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 § 681.460.	accessible throughout the one-stop delivery system and at all one-stop centers for all eligible individuals, including individuals with disabilities.	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. • 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.		
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.	• 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. • 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. • 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.	• 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. • 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.		
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.	• The local board has implemented one or more policies regarding accommodations for individuals with disabilities and individuals regarding with language barriers. • Assistive technology devices or other auxiliary aids are readily available throughout the one-stop delivery system and at all one-stop centers. • The local board has implemented one or more policies regarding accommodations for individuals with language barriers.		

Minimum requirement	Minimum certification criteria	Indicator demonstrating requirement is met	Criteria met yes or no	Comments/planned corrective actions
		• Bilingual resources, including on-demand translation services, are available and accessible throughout the one-stop delivery system and at all one-stop centers.		
5. Annual assessment of programmatic accessibility: The local board has annually assessed the programmatic accessibility of all one-stop centers.	Since Program Year 2017, the local board has annually assessed the programmatic 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 programmatic accessibility of all one-stop 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.	• The local board requires periodic performance reports from one-stop partners regarding negotiated levels of performance for the primary indicators of performance. • One-stop partners and the one-stop operator use periodic performance reports to identify specific goals and tactics for improving performance.	• 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. • Local board meeting minutes demonstrate decision making regarding strategic improvements to achieve negotiated levels of performance for the primary indicators of performance.		

Minimum requirement	Minimum certification criteria	Indicator demonstrating requirement is met	Criteria met yes or no	Comments/planned corrective actions
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 continuously improve service delivery and operations throughout the one-stop delivery system and at all one-stop centers.	• Customer satisfaction surveys are provided to jobseekers, workers, and employers and ask for input on the following topics: o the way in which customers access the services; o overall satisfaction with services provided; o satisfaction level regarding the courteousness, knowledge, and responsiveness of staff; o timeliness of services provided; o accessibility and availability of program services; o physical accessibility of the one-stop delivery system and one-stop centers; and o ideas for improvement. • Results of customer satisfaction surveys are reported to the local board. • The local board has a systematic process for identifying customer complaints and developing appropriate responses and corrective actions.	• Customer satisfaction survey data indicates regular collection by the local board. • Customer satisfaction survey data can be disaggregated by service, program, and category of customer, including customers with disabilities. • Customer satisfaction survey data can be disaggregated to determine whether individuals with disabilities are prevented or inhibited from participating in each program and service. • Local board meeting minutes reflect that customer satisfaction data was considered in decision-making regarding continuous improvement. • The local board has established a mechanism for customers to provide feedback outside of the routine customer feedback survey. • Receipt of customer complaints is dated, tracked, and provided the local board. • Corrective action plans addressing customer complaints are documented with plans for implementation. • Note: Any disaggregation of data must comply with all Federal, state, and local laws, regulations, and policies regarding protection of personal identifiable information (PII).		
3. Internal and external evaluation of operations: The local board's internal procedures and systems monitor operational effectiveness and identify opportunities for improvement.	• 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. • 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.	• 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. • The local board has established policies and procedures regarding external evaluation systems and identification and tracking of operational efficiency and effectiveness of the		

Minimum requirement	Minimum certification criteria	Indicator demonstrating requirement is met	Criteria met yes or no	Comments/planned corrective actions
		one-stop delivery system and all one-stop centers. • 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.		
4. Professional development for staff: The local board ensures that continual professional development for staff is available throughout the one-stop delivery system and at all one-stop centers.	• 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. • 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. • 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. • One-stop delivery system and one-stop center staff demonstrate motivation to advance professional skills.	• 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. • 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. • 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. • 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. • A method for skills-gap analysis for one-stop delivery system and at all one-stop centers staff is documented and available. • Goals and opportunities for one-stop delivery system and one-stop center staff skills development are documented. • Training documentation verifies that one-stop delivery system and one-stop center staff participated in professional development opportunities.		

Minimum requirement	Minimum certification criteria	Indicator demonstrating requirement is met	Criteria met yes or no	Comments/planned corrective actions
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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2.3. One-stop Operator Competitive Selection

NEBRASKA
Good Life. Great Connections.
DEPARTMENT OF LABOR

americanjobcenter network

State Policy **Workforce Innovation and Opportunity Act (WIOA)**

Nebraska Department of Labor (NDOL)
Division of Reemployment Services
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Lincoln, NE 68508
402.471.9000
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Policy category
One-stop Delivery System

Effective
May 3, 2023

Supersedes
One-stop Operator Competitive Selection
(effective June 6, 2017)

One-stop Operator Competitive Selection, Change 1

REFERENCE

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

BACKGROUND

Each local workforce development boards (local board) must:[1]

- 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.

CHANGES

Under this Change 1, footnotes have been revised for clarity and links have been updated where necessary.

[1] 20 CFR § 678.605(a); TEGL 15-16

ACTION

This policy supersedes and cancels the State's policy titled One-stop Operator Competitive Selection (effective June 6, 2017). Questions and comments on this policy may be submitted in writing to the policy mailbox at ndol.wioa_policy@nebraska.gov.

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.

POLICY

This policy:

- establishes the minimum requirements for competitive selection of one-stop operators by local boards;
- identifies essential elements of contracts with selected one-stop operators; and
- identifies basic requirements for monitoring of one-stop operators.

This policy is organized in seven Sections.

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Section II. Eligible entities....3
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(b) Competitive selection of one-stop operators by NDOL....4
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(c) Additional mechanisms to provide for a full and open competition....13
Section V. Essential contract elements....14
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Section VII. Timelines....15

Section I. Competitive selection requirement

Local boards must use competitive processes 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, including 2 CFR Part 2900 (referred to in this policy collectively as Uniform Guidance).[2] Competitive selection of one-stop operators must comply with the timelines established in 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

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.[3] Entities selected and serving as one-stop operators are subrecipients[4] of a Federal award and thus are required to follow Uniform Guidance. Entities eligible for selection as one-stop operators, 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”);
- 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;

[2] WIOA Sec. 121(d)(2)(A); 20 CFR § 678.605 (a); TEGL 15-16
[3] 20 CFR § 678.600(a) and (c); TEGL 15-16
[4] 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].

- 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[5]

While the entities listed above are eligible to serve as one-stop operators, an entity's eligibility to be a 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.[6] In addition, the local board must meet mandatory competition requirements described in this policy, WIOA and its implementing rules, and Uniform Guidance.

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.[7] If a local board is selected as the one-stop operator through sole-source procurement, the local board must establish sufficient conflict of interest policies and procedures and these policies must be approved by the Governor.[8]

(b) Competitive selection of one-stop operators by NDOL

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 Uniform Guidance.[9]

[5] 20 CFR § 678.615(a); TEGL 15-16
[6] 20 CFR § 678.615(a)
[7] 20 CFR § 678.610(d)
[8] Ibid.
[9] 2 CFR § 200.317; 20 CFR § 678.605(b); TEGL 15-16

(c) for-profit entities

For-profit entities that are subrecipients of a Federal award as one-stop operators must adhere to Uniform Guidance requirements:[10]

- concerning earning and negotiating a fair and reasonable profit;
- that profit is reasonable and fair and that the entity conducting the competition negotiate profit separately from costs;[11]
- negotiation with for-profit entities entitled to earn profit must separate amounts intended to pay for costs from amounts intended to pay for profit;
- that contract price equals costs plus profit;
- that profit be based on the contractor efforts and risks in achieving a performance result that typically aligns with the performance measures outlined in the local board's local plan;
- concerning conditions to consider in quantifying the opportunity to earn profit as referenced at 48 CFR 15.404-4.
- allowing caps on the maximum profit potential that could be earned per performance results within the approved budget; and
- that 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.

(d) Other entities

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 Uniform Guidance, when acting as one-stop operators.[12]

Section III. One-stop operator responsibilities and prohibited functions

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.[13]

[10] TEGL 15-16
[11] 2 CFR § 200.323(b)
[12] WIOA Sec. 121(d)(4)(C); 20 CFR § 678.605(c); TEGL 15-16
[13] 20 CFR § 678.620; TEGL 15-16

(a) Required responsibilities

At a minimum, the local board must ensure that, in carrying out this role, the one-stop operator must:[14]

- 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

The local board may establish additional roles for the one-stop operator, including the following:[15]

- 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.

(c) Prohibited functions

The one-stop operator must not perform the following functions:[16]

- 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;

[14] 20 CFR § 678.620(a); TEGL 15-16
[15] 20 CFR § 678.620(a); TEGL 15-16
[16] 20 CFR § 678.620(b)(1); TEGL 15-16

- 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.[17]

Section IV. Uniform Guidance and procurement standards

As the subrecipient of Federal funds, the one-stop operator must follow Uniform Guidance.

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.[18]

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 based on local procurement policies that are consistent with the procurement standards of Uniform Guidance.

(a) General procurement requirements

Under WIOA and consistent with Uniform Guidance, general procurement requirements include the requirements described below in subsections (i) through (viii).[19]

(i) Written policies and procedures

Written general and one-stop operator specific procurement policies and procedures must be consistent with 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.[20] 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

[17] 20 CFR §§ 678.620(b)(2) and 678.625
[18] The use of an MOU to document the agreement between a local board and a one-stop operator is different from 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].
[19] TEGL 15-16
[20] 20 CFR § 678.605(d)

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);[21] and

b. competitive proposals, such as a request for proposals (RFP).[22]

In addition, where certain criteria are met, a one-stop operator may be selected by noncompetitive proposals (sole source).[23]

(iii) Full and open competition

All procurement transactions must be conducted using full and open competition.[24] 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 established under 48 CFR § 2.1 require a procurement process by means other than a small 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 under Uniform Guidance.

c. Situations considered to be restrictive of competition include, but are not limited to:[25]

    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;

[21] 2 CFR § 200.320(c)
[22] 2 CFR § 200.320(d)
[23] 2 CFR § 200.320(f).
[24] 2 CFR § 200.319(a)
[25] Ibid.

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,[26] 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 employ any of the parties indicated has a financial or other interest or a tangible personal benefit from a firm considered for a contract.[27]

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.[28]

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.[29]

[26] 2 CFR §§ 200.318 and 200.319
[27] 2 CFR § 200.318(c)(1)
[28] WIOA Sec.121(d)(4)(A)
[29] 20 CFR §§ 678.610(c) and 679.430

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.[30]

(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[31] 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.

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.[32] 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.[33] Uniform Guidance requires that past performance be an evaluation factor when it is time to re-procure the one-stop operator.[34]

(vi) Sole-source procurement (noncompetitive proposals)

Uniform Guidance identifies procurement by noncompetitive proposals as permissible in certain circumstances discussed below. The Department interprets references to "noncompetitive

[30] 2 CFR § 200.319(a)
[31] WIOA Secs. 101(g) and 107(e)
[32] 2 CFR § 200.318(h)
[33] 2 CFR § 200.213
[34] 2 CFR § 300.318(h)

proposals" in Uniform Guidance at 2 CFR 200.320(f) to be read as sole source procurement for purposes of competitively selecting a one-stop operator.[35]

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 Uniform Guidance.

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.[36]

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.

(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.[37] Local boards must also maintain records sufficient to detail the history of procurement.[38] 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 under Uniform Guidance, are typically three years from the date of submission of the final expenditures report.

[35] 20 CFR § 678.605(c)
[36] 2 CFR § 200.320(f)
[37] 20 CFR § 678.605(d)
[38] 2 CFR § 200.318(i)

Entities that make a sole source selection must prepare and maintain written documentation of the entire process of making a sole source selection.[39] 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[40] and competitive proposals.[41]

(b) Avoiding conflicts of interest

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, Uniform Guidance, and conflict of interest policies of both the State and the organization or entity performing multiple functions.[42]

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[43]

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.[44]

  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

[39] 20 CFR § 678.610(b)
[40] 2 CFR § 200.320(c)
[41] 2 CFR § 200.320(d)
[42] WIOA Sec. 121(d)(4)(A) and (C); TEGL 15-16
[43] WIOA Sec. 107(h)
[44] 20 CFR § 678.615(b)

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.[45] Additional 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.

[45] WIOA Sec. 107(e); 20 CFR § 679.390

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.[46] 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 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

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:[47]

- *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,

[46] 20 CFR 678.605(d)
[47] TEGL 15-16

agreement, or MOU must identify that one-stop operators are subrecipients of Federal funds.

Section VI. Monitoring of one-stop operators

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;
- performance reporting requirements; and
- terms and conditions of the contract or agreement governing the one-stop operator.

Monitoring includes an attestation by the monitoring entity that it has examined compliance with the requirements of WIOA, Uniform Guidance, and terms and condition of agreements with one-stop operators.

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[48]

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 operators through the competitive selection process cannot be waived.

Each local board must conduct a competitive process for one-stop operator selection no less frequently than once every four 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 years.

[48] 20 CFR § 678.635(a); TEGL 15-16

DISCLAIMER

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

2.4. Priority of Service

NEBRASKA
Good Life. Great Connections.
DEPARTMENT OF LABOR

americanjobcenter network

State Policy **Workforce Innovation and Opportunity Act (WIOA)**

Nebraska Department of Labor (NDOL)
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Policy category
One-stop Delivery System

Effective
May 14, 2024

Supersedes
Priority of Service, Change 2
(effective May 3, 2023)

Priority of Service, Change 3

WIOA Title IB Adult, Dislocated Worker, and Youth Programs (Title I)
WIOA Title III Wagner-Peyser Employment Service (Wagner-Peyser)
Jobs for Veterans State Grant program (JVSG)
National Dislocated Worker Grant programs (NDWG)
Senior Community Service Employment Program (SCSEP)
Trade Adjustment Assistance program (TAA)

REFERENCE

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

BACKGROUND

Federal laws, rules, regulations, and guidance require that certain individuals receive priority of service under Title I, Wagner-Peyser, JVSG, NDWG, SCSEP, and TAA.

CHANGES

The following material changes are implemented under this policy.

- Section I(a), general definitions relating to priority of service, has been removed to eliminate confusion in relation to definitions in program-specific sections. Applicable definitions remain in program-specific sections.

- Sections II(b)(1), (2), and (3) concerning Title I adult priority of service have been revised for clarity.

- Section II(c) now includes clarifying language relating to the definition of *military spouse* in the context of dislocated worker priority of service.

- Section II(d) now includes clarifying provisions relating to *covered persons*, *Veterans*, and *eligible spouses* in the context of youth priority of service.

- Section VI(a)(1) now includes clarifying language relating to the definition of *military spouse* in the context of SCSEP priority of service.

ACTION

This policy supersedes and cancels Priority of Service, Change 2. Questions and comments on this policy may be submitted in writing to the policy mailbox at ndol.wioa_policy@nebraska.gov.

NDOL policies referenced within this policy are included in the State policy manual, which is accessible at https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies. *State policy manual* refers to the policy manual created and maintained by the NDOL Reemployment Services State Policy Unit.

(a) Title I programs

Each local board must establish new or review and update existing policies and procedures concerning implementation, oversight, and monitoring of priority of service for Title I, as required under Sections II, and VIII(a).

(b) NDOL-administered programs

NDOL Administrators of Wagner-Peyser, JVSG, NDWG, SCSEP, and TAA must establish procedures concerning implementation, oversight, and monitoring of priority of service for their respective programs, as required under Sections III through VIII, as applicable.

POLICY

This policy establishes priority of service requirements for Title I, Wagner-Peyser, JVSG, NWDG, SCSEP, and TAA.

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Section I. Priority of service

(a) What is priority of service?

20 CFR Part 1010 contains 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 covered persons must be given priority over non-covered persons concerning 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 receive access to the service or resource instead of or before non-covered persons.

(b) Which programs are covered?

Priority of service applies to every qualified job training program funded in whole or in part by Federal funds, and includes any program or service:[1]

- 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 (Wagner-Peyser), through one-stop centers, through demonstration or other temporary programs, by workforce development programs targeted to specific groups, and 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.

(c) How must recipients and subrecipients implement priority of service?

Agreement to implement priority of service is a condition for receipt of all Federally funded job training program funds, as described in 20 CFR Part 1010 and applicable USDOL guidance and this policy.[2] All recipients are required to ensure that priority of service is applied by their subrecipients.[3] All program activities must be administered in compliance with Federal priority of service requirements,[4] including program activities obtained through requests for proposals, solicitations for grant awards, subgrants, contracts, subcontracts, memorandums of understanding, or other service provision agreements *that are issued or executed by operators of qualified job training programs*. **Priority of service requirements cannot be waived**.[5]

(d) Which processes must be implemented to identify covered persons?[6]

Recipients and subrecipients of Federal funding for qualified job training programs must implement processes for identifying covered persons in order to provide them with timely and useful information on priority of service at the point of entry,[7] whether in person or virtually. Processes for identifying covered persons at the point of entry must be designed to:

- permit individuals to make their covered person status known;

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[1] 20 CFR § 1010.210
[2] 20 CFR § 1010.220(a)
[3] 20 CFR § 1010.220(b)
[4] Ibid.
[5] 20 CFR § 1010.250
[6] 20 CFR § 1010.330
[7] *Point of entry* means an individual's entry into Nebraska's one-stop delivery system and may include reception a one-stop center, application processes for specific programs, or through any other methods by which covered persons express an interest in receiving services, whether in person or virtually [20 CFR § 1010.330].

- permit qualified job training programs specified in 20 CFR § 1010.330(a)(2)[8] to initiate data collection for covered entrants;
- allow covered persons to take full advantage of priority of service; and
- make covered persons aware of:
    - their entitlement to priority of service;
    - the full array of employment, training, and placement services available through priority of service; and
    - any applicable eligibility requirements for those programs and services.

Processes for identifying covered persons are not required to include verification of status of an individual as a Veteran or eligible spouse at the point of entry *unless* individuals immediately undergo eligibility determination for and enrollment in programs.

(e) How is priority of service to be applied?

Recipients and subrecipients of for qualified job training programs must implement processes, in accordance with 20 CFR § 1010.300, for identifying covered persons at the point of entry, whether in person or virtually, so covered persons can be notified of eligibility for priority of service.[9] Because qualified job training programs may offer various types of services (staff-assisted, self-service, and informational), recipients and subrecipients also must ensure that priority of service is implemented throughout the full array of services provided to covered persons by qualified job training programs. 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, covered persons must meet the statutory eligibility requirements applicable to specific qualified job training programs from which services are sought. For qualified job training programs that also have discretionary or statutory priorities or preferences pursuant to Federal statute or regulation, recipients and subrecipients must provide priority of service while applying other priorities, as described below in paragraphs 2 and 3.

1. *Universal access programs*[10] deliver services to the public as a whole and do not target specific groups. Universal access programs are required to provide priority of service to covered persons.

[8] 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. However, 20 CFR § 1010.330(a)(2) is still in effect in relation to WIOA.
[9] 20 CFR § 1010.310
[10] Wagner-Peyser is a universal access program.

2. *Discretionary targeting programs*[11] focus on particular groups or make efforts to provide a certain level of service to favored groups but do not specifically mandate that favored groups be served before other eligible individuals. Priority of service applies whether these provisions are found in Federal statute or regulation. Covered persons must receive highest priority for the program or service and non-covered persons within the discretionary targeting group receive priority over non-covered persons that fall outside the discretionary targeting group.

3. *Statutory targeting programs*[12] are programs derived from Federal statutory mandates that require priority or preference for particular groups of individuals *or* require spending a certain portion of program funds on particular groups of persons receiving services. These are mandatory priorities and recipients and subrecipients must determine individuals' covered person status and apply priority of service as follows.

    a. Covered persons who meet programmatic 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 programmatic mandatory priorities, including program eligibility or spending requirements or limitations, must receive priority for programs or services over covered persons that fall outside programmatic mandatory priorities or spending requirements or limitations.

    c. Covered persons outside the programmatic mandatory priority or spending requirements or limitations must receive priority for programs or services over non-covered persons that fall outside programmatic mandatory priorities or spending requirements or limitations.

(f) What are the responsibilities of recipients and subrecipients pertaining to collection, maintenance, and reporting of data pertaining to covered and non-covered persons?[13]

All recipients and subrecipients of Federal funds for qualified job training programs must collect, maintain, and report data relating to the provision of priority of service, in formats as the Secretary of Labor may require and as described below. NDOL tracks implementation of priority of service in NEworks for Title I and NDOL-administered programs (excluding SCSEP[14]) and reports priority-of-serve data to USDOL.

1. Recipients and subrecipients of funding for qualified job training programs must collect, maintain, and report individual record data for:

    a. covered entrants from the point of entry;

    b. covered persons and non-covered persons who receive services, including individual record data for qualified job training programs that require establishment

[11] NDWG may be a discretionary targeting program, depending on the conditions of the grant award.
[12] Title I, JVSG, SCSEP, and TAA are statutory targeting programs. NDWG may also be a statutory targeting program, depending on the conditions of the applicable grant award.
[13] 20 CFR § 1010.320
[14] SCSEP currently uses a separate management information system.

and submission of individual records for persons receiving services, which must include, but are not limited to:

i. covered person and non-covered person status for all individuals receiving services;

ii. types of services provided to covered persons and non-covered persons;

iii. dates that services were received by covered persons and non-covered persons; and

iv. employment outcomes experienced by covered persons and non-covered persons receiving services.

2. Recipients and subrecipients must apply the definitions set forth in 20 CFR § 1010.110 to distinguish:

   a. covered persons from non-covered persons receiving services; and

   b. Veterans from eligible spouses within the covered persons group.

All information must be collected, maintained, and managed in a manner that ensures confidentiality and protection of all PII.[15]

Section II. Title I programs

(a) Definitions specific to Title I

The following definitions are specific to Title I programs concerning priority of service.

(1) Active duty

Active duty means full-time duty in the active military service of the United States.[16] 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.[17]

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

Active military, naval, air, or space service includes:[18]

- active duty;

[15] 20 CFR § 1010.330(d)
[16] 10 USC § 101(d)(1)
[17] Ibid.
[18] 38 USC § 101(24); 38 CFR § 17.31

- 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.[19]

(3) Basic skills deficient

An individual who is basic skills deficient is:[20]

- a youth who has English reading or writing skills or computing skills at or below the 8th 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.

(4) Covered entrant

Covered entrant means covered persons at the point of entry and includes two subgroups: Veterans and eligible spouses.[21]

(5) Covered person

Covered person means a Veteran or eligible spouse.[22]

(6) Eligible spouse

Eligible spouse, as defined in 38 USC § 4215(a), means the spouse of any of the following:[23]

- any Veteran who died of a service-connected disability;

[19] 20 CFR § 1010.110
[20] WIOA Sec. 3(5)
[21] 20 CFR § 1010.330(a)(3)
[22] 20 CFR § 1010.110
[23] Ibid.

- 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.

An eligible spouse whose eligibility for priority of service 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 eligibility (e.g., if a Veteran with a total service-connected disability were to receive a revised disability rating at a lower level).[24] Similarly, an eligible spouse whose eligibility for priority of service is derived from *a living Veteran or military service member* the eligible spouse's eligibility would be lost upon divorce from the Veteran or military service member.[25]

(7) Low-income individual

A low-income individual is one who meets one or more of the criteria described in Table 1.[26]

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: a. Supplemental Nutrition Assistance Program; b. Temporary Assistance for Needy Families Program; c. Supplemental Security Income through the Social Security Administration; 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. Supplemental Nutrition Assistance Program; b. Temporary Assistance for Needy Families Program; c. Supplemental Security Income through the Social Security Administration; 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:[27] a. the current Federally established poverty line; or b. 70 percent of the Federally established lower living standard income level (LLSIL).

[24] TEGL 07-09
[25] Ibid.
[26] WIOA Sec. 3(36)
[27] LLSIL means an income level determined annually by the Secretary of Labor based on the most recent lower living family budget issued by the Secretary. NDOL's current notice on income guidelines provides information on the current LLSIL, which is accessible at https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Notices.

Low-income criteria
4. The individual is a homeless individual who:[28] 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 alternative adequate accommodations; iii. living in an emergency or transitional shelter; or iv. 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 in circumstances described in Sections 4.a. and 4.b. 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 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.

(8) Military spouse

For purposes of dislocated worker program priority of service, military spouse means:[29]

- 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.

Policy clarifications provided in Sections II(c)(1) and II(c)(2) below also apply.[30]

(9) Non-covered person

Non-covered person means any individual who does not meet the definition of Veteran or eligible spouse.[31]

(10) Qualified job training program

Qualified job training program means any program or service for workforce preparation, development, or delivery that is Federally funded, in whole or in part.[32]

[28] 42 USC § 12473(6); 42 USC § 11434a(2)
[29] TEGL 22-04
[30] Ibid.
[31] 20 CFR § 1010.110
[32] Ibid.

(11) Separating military service member

Separating military service member means an individual that has been or will be discharged under honorable conditions, either voluntarily or involuntarily.[33]

(12) Service-connected disability

Service-connected disability 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.[34]

(13) Veteran[35]

Veteran 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 (commonly referred to "weekend" or "annual" training).

(b) Title I adult priority of service

(1) Implementation requirement

Title I adult programs must prioritize delivery of *individualized career services and training services* to Veterans, eligible spouses, and certain non-covered persons.[36]

(2) 75-percent requirement

Local boards must ensure that **at least 75 percent** of adult participants receiving individualized career and training services in Title I adult programs are from at least one of the three 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 eligible spouses as they relate to adult program priority of service requirements.[37] **Any local Title I adult program that fails to meet the 75-percent requirement described above is subject to mandatory technical assistance**.

(3) Order of priority

Priority of service for individualized career services and training services under Title I adult programs must be implemented in the following order:[38]

1. Veterans and eligible spouses who are:

    a. recipients of public assistance;

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[33] TEGL 22-04
[34] 38 CFR § 3.1
[35] 20 CFR § 1010.110; 38 USC § 101(2)
[36] WIOA Sec. 134(c)(3)(E); 20 CFR Part 1010; 20 CFR § 680.600(a); 38 USC § 4215
[37] TEGL 07-20
[38] WIOA Sec. 134(c)(3)(E); 20 CFR §§ 680.600 and 680.650; TEGLs 10-09, 19-16, and 07-20; VPL 07-09

   b. low-income individuals; or

   c. basic-skills deficient;

2. non-covered persons who are:

   a. recipients of public assistance;

   b. low-income individuals; or

   c. basic-skills deficient

3. Veterans and eligible spouses who are not:

   a. recipients of public assistance;

   b. low-income individuals; or

   c. basic-skills deficient

4. priority populations established by the local board, consistent with subsection (3) below;

5. non-covered persons who are not:

   a. recipients of public assistance;

   b. low-income individuals; or

   c. basic-skills deficient.

(4) 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 qualified job training programs, any amounts received as military pay or allowances by persons who served on active duty and certain other specified benefits described below must be disregarded for Veterans and eligible spouses for whom those amounts would normally be otherwise applied when making eligibility determinations. This exclusion applies when determining status as a low-income individual for eligibility purposes. This exclusion specifically applies when income is used as a factor when Title I adult programs provide priority of service for low-income individuals.[39] Regardless of this exclusion, Veterans and eligible spouses must still meet adult program eligibility criteria to receive priority services under the program.

[39] 20 CFR §§ 680.600 and 680.650

(i) Determining low-income individual status

When determining status as low-income individuals for Veterans and eligible spouses, the following income and benefits must be disregarded:[40]

- 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 10 USC Chapter 106, Educational Assistance for Members of the Selected Reserve.

(5) Local priority populations[41]

Local boards may establish policies and processes that give priority to other individuals eligible to receive Title I individualized career services and training services, provided that the policies and processes are consistent with priority of service requirements 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, 20 CFR § 683.230, and this policy. Priority of service for locally established priority populations *does not* override statutory priorities for Title I adult, Veteran, and eligible spouse priority populations.

(c) Title I dislocated worker priority of service requirements

(1) Implementation requirement

Title I dislocated worker programs must prioritize delivery of *basic* and *individualized* career services and *training* services to dislocated worker program participants who are Veterans and military spouses.[42]

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[40] 38 USC § 4213; TEGL 19-16
[41] TEGL 19-16
[42] 20 CFR Part 1010; 38 USC § 4215

(2) Order of priority

Individuals who meet dislocated worker program eligibility criteria defined in NDOL's program eligibility policy *and* are Veterans or military spouses must be given priority over dislocated workers who are not Veterans or military spouses.[43]

- Military spouses are individuals who are married to active duty service members, including National Guard or Reserve personnel on active duty.

- Surviving spouses of active duty service members who lost their lives while on active duty service in Afghanistan, Iraq or other combat-related areas are military spouses.[44]

(3) Policy clarification on separating military service members

A basic requirement to qualify as a Title I dislocated worker is that a 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, meets *termination* criterion for the dislocated worker program.[45] The separating military service member must also satisfy other criteria for dislocated worker program eligibility, including the *unlikely to return to a previous industry or occupation* criterion. Additionally, under the priority of service provisions of the Jobs for Veterans Act, separating military service members who upon discharge meet eligibility criteria for dislocated worker programs are afforded priority over individuals who are not Veterans.

(6) Policy clarification on military spouses

(i) Cessation of employment[46]

When military spouses are unable to continue employment relationships because of their military service members' permanent change of military station *or* military spouses lose employment as a result of military service members' discharge from the military, that cessation of employment meets the *termination* criterion for the dislocated worker program.

Military spouse cessation of employment due to their military service members' permanent change of military station or discharge also meets the *unlikely to return to a previous industry or occupation* criterion. This criterion recognizes the breadth of job types and considers whether the individual is likely to return to either their prior industry or (not and) occupation. In other words, 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 jobs or occupations as a result of military service member transfers do not position military spouses for immediate return to previous industries or occupations, particularly at the same level for one or more of following reasons.

1. Military spouses are generally not resuming employment with the same employer.

[43] TEGL 22-04
[44] TEGL 22-04
[45] TEGL 22-04
[46] TEGLs 22-04 and 22-04 Change 1

2. Even if a military spouse resumes employment with the same employer, that 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.

3. 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.

4. 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.

5. Skills of military spouses may be obsolete or inadequate compared to advancing competency needs of the current workforce and economy.

6. Industries in which military spouses have prior work experience may be in decline in regions to which they may relocate.

7. There may be an excess in the number of workers with similar skill sets and experience to that of military spouses who are seeking limited employment opportunities in regions to which they have relocated.

Based upon the totality of these circumstances, it is reasonable to conclude that in the vast majority of cases, military spouses impacted by military service members' duty reassignment or discharge meet the *unlikely to return to a previous industry or occupation* criterion and may, therefore, be served as dislocated workers. **Military spouses who meet eligibility criteria for Title I dislocated worker programs must receive priority over non-covered persons**.

(ii) Displaced homemakers[47]

Military spouses may qualify to be served as dislocated workers if they meet definitional requirements for displaced homemaker.[48]

If surviving spouses of Veterans or military service members qualify generally as dislocated workers or as a displaced homemakers, they may be served under dislocated worker programs. If surviving spouses do not meet those requirements, they may be served under Title I adult programs. Under either program, surviving spouses of Veterans must receive priority of service over non-covered persons if they qualify for priority as eligible spouses.

(d) Title I youth priority of service

(1) Implementation requirement

Title I youth programs must prioritize delivery of youth program elements to Veterans, eligible spouses, and certain non-covered persons.[49]

[47] TEGL 22-04. The State's policy on program eligibility includes information on displaced homemakers and the dislocated worker program and is included in the State policy manual.
[48] Refer to the State' program eligibility policy for clarification on displaced homemaker eligibility requirements.
[49] WIOA Sec. 134(c)(3)(E); 20 CFR Part 1010; 20 CFR § 680.600(a); 38 USC § 4215

(2) Order of priority

As stated in NDOL's Title I program eligibility policy, all youth program participants must meet certain program eligibility requirements. There are priority of service requirements that apply to youth programs. The youth program eligibility criterion that applies equally to in-school youth (ISY) and out-of-school youth (OSY) is that they must be low-income individuals.[50] There is, however, an exception to this rule.

1. 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,[51] subject to the additional assistance limitation for ISY.[52]

2. 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.[53]

Section III. Wagner-Peyser

(a) Definitions specific to Wagner-Peyser

The following definitions are specific to Wagner-Peyser concerning priority of service.

(1) Active duty

Active duty means full-time duty in the active military service of the United States.[54] 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, as defined in 38 USC § 4215(a), means the spouse of any of the following:[55]

- 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:

[50] 20 CFR §§ 680.110(c), 681.210(a) – (b); and 681.220(a) – (c)
[51] 20 CFR § 681.250(c); TEGL 21-16. Refer to the State's program eligibility policy for information on calculations for the low-income exception.
[52] The State's policy on program eligibility provides information on the ISY additional assistance limitation and is included in the State policy manual.
[53] 20 CFR § 681.310(b)
[54] 10 USC § 101(d)(1)
[55] 20 CFR § 1010.110

  - 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.

An eligible spouse whose eligibility for priority of service 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 eligibility (e.g., if a Veteran with a total service-connected disability were to receive a revised disability rating at a lower level).[56] Similarly, an eligible spouse whose eligibility for priority of service is derived from *a living Veteran or military service member* the eligible spouse's eligibility would be lost upon divorce from the Veteran or military service member.[57]

(3) Non-covered person

Non-covered person means any individual who does not meet the definition of Veteran or eligible spouse.[58]

(4) Service-connected disability

Service-connected disability 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.[59]

(5) Veteran

Veteran 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).[60]

(b) Implementation requirement

Wagner-Peyser must prioritize delivery of career services to Veterans and eligible spouses over non-covered persons.[61]

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[56] TEGL 07-09
[57] Ibid.
[58] 20 CFR § 1010.110
[59] 38 CFR § 3.1
[60] 20 CFR § 1010.110; 38 USC § 101(2)
[61] TEGL 10-09; VPL 07-09

Section IV. JVSG

(a) Definitions

The following definitions are specific to JVSG concerning priority of service.

(1) Active duty

Active duty means full-time duty in the active military service of the United States.[62] 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.[63]

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

Active military, naval, air, or space service includes:[64]

- 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, which is often referred to as “weekend” or “annual” training.[65]

(3) Covered person

Covered person means an eligible Veteran or eligible spouse.[66]

[62] 10 USC § 101(d)(1)
[63] Ibid.
[64] 38 USC § 101(24); 38 CFR § 17.31
[65] 20 CFR § 1010.110
[66] VPL 07-09

(4) Disabled Veteran

Disabled Veteran means:[67]

- 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.

(5) Eligible spouse

Eligible spouse, as defined in 38 USC § 4215(a), means the spouse of any of the following:[68]

- 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 of service, 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.

An eligible spouse whose eligibility for priority of service 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 eligibility (e.g., if a Veteran with a total service-connected disability were to receive a revised disability rating at a lower level).[69] Similarly, an eligible spouse whose eligibility for priority of service is derived from *a living Veteran or military service member* the eligible spouse's eligibility would be lost upon divorce from the Veteran or military service member.[70]

(6) Veteran

Veteran 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,

[67] 38 USC § 4211(3)
[68] 20 CFR § 1010.110
[69] TEGL 07-09
[70] Ibid.

as specified in 38 USC § 101(2).[71] Active military, naval, air, or space service includes full-time duty in the National Guard or a Reserve component, other than full-time duty for training purposes. Active services does not include:[72]

- 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.

(7) Homeless

For purposes of JVSG, an individual is homeless when they meet one or more of the criteria described in Table 2.[73]

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: 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.

[71] 20 CFR § 1010.110; 38 USC § 101(2)
[72] VPL 07-09
[73] 42 USC 11302(a); VPL 03-14 Change 2

Homeless criteria
7. Any individual or family who: 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; b. has no other safe residence; and c. lacks the resources to obtain other safe permanent housing.

(8) Low-income individual

A low-income individual is one who meets one or more of the criteria described in Table 3.[74]

Table 3. 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: a. Supplemental Nutrition Assistance Program; b. Temporary Assistance for Needy Families Program; c. Supplemental Security Income through the Social Security Administration; 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. Supplemental Nutrition Assistance Program; b. Temporary Assistance for Needy Families Program; c. Supplemental Security Income through the Social Security Administration; 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:[75] 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: [76] 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 alternative adequate accommodations; iii. living in an emergency or transitional shelter; or iv. 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 in circumstances described in Sections 4.a. and 4.b. 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 school diploma or its recognized equivalent.
6. The individual is a foster child on behalf of whom state or local government payments are made.

[74] WIOA Sec. 3(36)
[75] 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.
[76] 42 USC § 12473(6); 42 USC § 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.

(9) Offender

Offender means an adult or juvenile who:[77]

- 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.

(10) Service-connected disability

Service-connected disability 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.[78]

(11) 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:[79]

- 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).

[77] WIOA Sec. 3(38)
[78] 38 CFR § 3.1
[79] TEGL 19-13; VPLs 03-14, 03-14 Change 1, and 03-14 Change 2

(12) Special disabled Veteran

Special disabled Veteran means 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:[80]

- 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) Implementation requirement

As described under VPL 07-09 and TEGL 10-09, priority of service must be provided to covered persons. This 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:[81]
    - 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 forth in 38 USC Chapter 42.
- 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 a significant barrier to employment (SBE), as defined in VPL 03-14 and VPL 03-14 Change 2.
- Under JVSG, maximum emphasis in meeting the employment needs of Veterans must be placed on assisting economically or educationally disadvantaged Veterans.

(c) Excluded income and benefits when determining low-income individual status for Veterans and eligible spouses

When past income is an eligibility determinant for 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 described below must be disregarded for Veterans and eligible spouses for whom those amounts would normally be applied when making eligibility determinations.. This exclusion applies when determining status as a low-income individual for eligibility purposes.

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[80] 38 USC § 4211(1)
[81] VPL 07-10

When determining low-income individual status for Veterans and eligible spouses, the following forms of income and benefits must be disregarded:[82]

- any amounts received as military pay or allowances by any person while serving on active duty;
- any amounts received by transitioning service members (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 10 USC Chapter 106, Educational Assistance for Members of the Selected Reserve.

Section V. NDWG

(a) Definitions

The following definitions are specific to NDWG concerning priority of service.

(1) Covered person

Covered person means a Veteran or eligible spouse.[83]

(2) Eligible spouse

Eligible spouse, as defined in 38 USC § 4215(a), means the spouse of any of the following:[84]

- any Veteran who died of a service-connected disability;

[82] 38 USC § 4213; TEGL 19-16
[83] 20 CFR § 1010.110
[84] 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.

An eligible spouse whose eligibility for priority of service 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 eligibility (e.g., if a Veteran with a total service-connected disability were to receive a revised disability rating at a lower level).[85] Similarly, an eligible spouse whose eligibility for priority of service is derived from *a living Veteran or military service member* the eligible spouse's eligibility would be lost upon divorce from the Veteran or military service member.[86]

(3) Veteran

Veteran 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).[87]

(b) Implementation requirement

NDWG programs are qualified job training programs. For that reason, priority of service must be implemented under NDWG for covered persons who meet eligibility requirements described in WIOA Sec. 170 (b)(1)(A) and the conditions of the NDWG grant award, which are described in the project manual applicable to the NDWG.

[85] TEGL 07-09
[86] Ibid.
[87] 20 CFR § 1010.110; 38 USC § 101(2)

Section VI. SCSEP

(a) Definitions

The following definitions are specific to SCSEP concerning priority of service.

(1) Eligible spouse

Eligible spouse, as defined in 38 USC § 4215(a), means the spouse of any of the following:[88]

- 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.

Eligible spouses whose eligibility for priority of service is derived from *living Veterans or military service members* would lose eligibility if the Veteran or military service member were to lose the status that is the basis for eligibility (e.g., if a Veteran with a total service-connected disability were to receive a revised disability rating at a lower level).[89] Similarly, eligible spouses whose eligibility for priority of service is derived from *living Veterans or military service members,* eligible spouses' eligibility would be lost upon divorce from the Veterans or military service members.[90]

(2) Homeless

An individual is homeless when they meet one or more of the criteria described in Table 4.[91]

Table 4. Criteria for determining an individual is homeless[92]

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;

[88] 20 CFR § 1010.110
[89] TEGL 07-09
[90] Ibid.
[91] 42 USC 11302(a)
[92] WIOA Sec. 3(36)

Homeless criteria
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 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).[93]

(b) Implementation requirement

When selecting eligible individuals for participation in SCSEP, SCSEP staff must give priority to individuals with one or more of the following characteristics:[94]

- are 65 years of age or older;
- have a disability;
- have limited English proficiency;
- have low literacy skills;

[93] 20 CFR § 1010.110; 38 USC § 101(2)
[94] TEGL 17-20

- 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 WIOA;
- 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.

For the priority groups listed above, SCSEP staff must apply priority of service in the following order:[95]

1. persons who qualify as Veterans or eligible spouses and who meet at least one of the other priority characteristics listed above; then
2. persons who qualify as a Veteran or eligible spouse who do not meet any of the other priority characteristics listed above; then
3. persons who do not qualify as a Veteran or eligible spouse but who meet at least one of the other priority characteristics listed above.

Section VII. TAA

(a) Definitions

The following definitions are specific to TAA concerning priority of service.

(1) Eligible spouse

Eligible spouse, as defined in 38 USC § 4215(a), means the spouse of any of the following:[96]

- 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

[95] 20 CFR § 641.520
[96] 20 CFR § 1010.110

- 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.

An eligible spouse whose eligibility for priority of service 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 eligibility (e.g., if a Veteran with a total service-connected disability were to receive a revised disability rating at a lower level).[97] Similarly, an eligible spouse whose eligibility for priority of service is derived from *a living Veteran or military service member* the eligible spouse's eligibility would be lost upon divorce from the Veteran or military service member.[98]

(2) Veteran

Veteran 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).[99]

(b) TAA priority of service requirements

TAA must give priority for approval and funding of TAA Program benefits to a trade-affected workers meeting the definition Veteran or eligible spouse, as 38 USC § 4215(a), including training benefits when approval of training criteria are met.[100]

Section VIII. Priority of service oversight and monitoring requirements

(a) Title I programs

(1) Oversight

Local boards must ensure:

- local administrative entities and local Title I programs and staff comply with the requirements of this policy;

- compliant implementation of priority of service policies and procedures at all one-stop centers in their local areas;

- all local priority of service policies and procedures are readily available to and easily accessible to and by the general public and Title I program participants, including those

[97] TEGL 07-09
[98] Ibid.
[99] 20 CFR § 1010.110; 38 USC § 101(2)
[100] 20 CFR § 618.848

who are covered entrants, Veterans, and eligible spouses, by (1) publishing them on local area websites in machine readable format and (2) making printed versions available at all one-stop centers in its respective local area; and

- signage is prominently displayed in each one-stop center announcing the availability of priority of service for covered persons.

(2) Monitoring

Local boards must establish new or update existing policies and procedures concerning monitoring of implementation of priority of service. Local policies and procedures must, at a minimum, comply with the requirements of this policy and clearly define actions that must be taken:

- during monitoring of implementation of the requirements of this local policy and priority of service policies and procedures, which must include review of randomly sampled[101] participant records in NEworks and source documentation in NEworks;

- when submitting priority of service monitoring reports to local boards, subject to limitations necessary to protect PII; and

- when developing and implementing corrective actions as necessary to ensure priority of service for covered entrants and covered persons (Veterans and eligible spouses) under Title I programs.

(b) NDOL-administered programs

(1) Oversight

NDOL Administrators must ensure:

1. program staff comply with the requirements of this policy;

2. compliant implementation of priority of service policies and procedures at all one-stop centers in the local areas in which the programs operate;

3. all priority of service policies and procedures for their respective programs are readily available to and easily accessible to and by the general public and program participants, including those who are covered entrants, Veterans, and eligible spouses, by (1) publishing them on local area websites in machine readable format and (2) making printed versions available at all one-stop centers in its respective local area; and

4. signage is prominently displayed in each one-stop center announcing the availability of priority of service for covered persons.

[101] To obtain sets of randomly sampled case files, contact the NEworks Help Desk at ndol.neworkshelp@nebraska.gov. Criteria for record sampling is included in the State's policy on records management.

(2) Monitoring

NDOL Administrators must establish new or update existing procedures concerning monitoring of implementation of priority of service for their 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:

- during monitoring of implementation of the requirements of program-specific procedures, which must include review of randomly sampled[102] participant records in NEworks and source documentation in NEworks;

- when submitting priority of service monitoring reports to the NDOL Reemployment Services Director, 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 respective programs.

DISCLAIMER

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

[102] To obtain sets of randomly sampled case files, contact the NEworks Help Desk at ndol.neworkshelp@nebraska.gov. Criteria for record sampling is included in the State's policy on records management.

2.5. Security and the One-stop Delivery System

State Policy **Workforce Innovation and Opportunity Act (WIOA)**

Nebraska Department of Labor (NDOL)
Division of Reemployment Services
550 South 16th Street
Lincoln, NE 68508
402.471.9000
ndol.wioa_policy@nebraska.gov

Policy category
One-stop Delivery System

Effective
May 2, 2024

Supersedes
Security and the One-stop Delivery System, Change 1 (effective May 3, 2023)

Security and the One-stop Delivery System, Change 2

REFERENCE

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

BACKGROUND

Security issues degrade physical and programmatic accessibility within one-stop delivery systems, the overall effectiveness of the systems, and the ability of one-stop partner programs to provide meaningful services.

CHANGES

- The Action section has been restated to clarify local board responsibilities under this policy.
- References to “physical security” have been revised to say “security”, because one-stop delivery system security involves more than physical security.
- Section I(b) has been revised to clarify risk mitigation consultation requirements.
- Section I(c) has been modified to clarify requirements concerning risk mitigation measures.

- Section I(d) now includes a subsection on required response and recovery actions.

- Section I now includes subsection (e), which states NDOL will provide technical assistance when security incidents call for state-level guidance.

- Section II(b) has been revised to clarify the scope of state-level monitoring concerning requirements established under this policy.

- APPENDIX II (example security incident report form) has been deleted to eliminate the need for changes to policy whenever the security incident report form is updated. As stated in Section I(d)(2), NDOL provides the current form to local area administrative entities by email.

ACTION

State

This policy supersedes and cancels the policy titled *Security and the One-stop Delivery System, Change 1* (effective May 3, 2023). Questions and comments on this policy may be submitted in writing to the policy mailbox at ndol.wioa_policy@nebraska.gov.

State policies referenced in this policy are included in the State policy manual, which is accessible at https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies. *State policy manual* refers to the policy manual created and maintained by the NDOL Reemployment Services Quality Control Unit.

Local boards

Local boards *must* have established safety committees that are responsible for developing and implementing local security policies and processes[1] and procedures[2] that comply with the requirements of this policy, including but not limited to:

1. processes and procedures for security incident documentation, notifications, and response and recovery activities;

2. mandatory annual training requirements for local area administrative entity, one-stop operator, and one-stop partner program staff concerning policies, processes, and procedures;

3. mandatory annual surveys of local area administrative entity, one-stop operator, and one-stop partner program staff to determine satisfaction with implementation of policies, processes, and procedures and the effectiveness of mandatory training, which *must* provide an opportunity for staff to provide input and suggestions;

4. mandatory annual review and updating of policies, processes, and procedures based on assessed effectiveness, including feedback provided through mandatory annual surveys

[1] A process is a series of tasks and activities that produce an outcome.
[2] A procedure is a set of instructions for completing a single task or activity within a process.

of local area administrative entity, one-stop operator, and one-stop partner program staff; and

5. regular monitoring to determine compliance with policies, processes, and procedures among local area administrative entity, one-stop operator, and one-stop partner program staff.

In addition, local boards *must* require that safety committees:

- regularly update local boards during public meetings regarding new and unresolved security incidents; and
- work with local boards, local area administrative entity, one-stop operator, and one-stop partner programs concerning procurement of security assets and creation and maintenance of incident and incident resolution logs.

POLICY

This policy:

- establishes a framework for design and implementation of security policies, processes, and procedures that sufficiently mitigate the risk of security incidents throughout local one-stop delivery systems;
- describes requirements for incorporation of security measures into annual physical and programmatic accessibility assessments and triennial one-stop center certifications;
- provides operational guidance to local boards, safety committees, and administrative entities regarding development and implementation of security measures and evaluation of the effectiveness of such measures;
- standardizes requirements for incident response and resolution procedures that promote physical and programmatic accessibility throughout the statewide one-stop delivery system; and
- defines standard protocols through which security incidents and resolution of security incidents are reported, documented, and executed.

This policy has three sections and one appendix.

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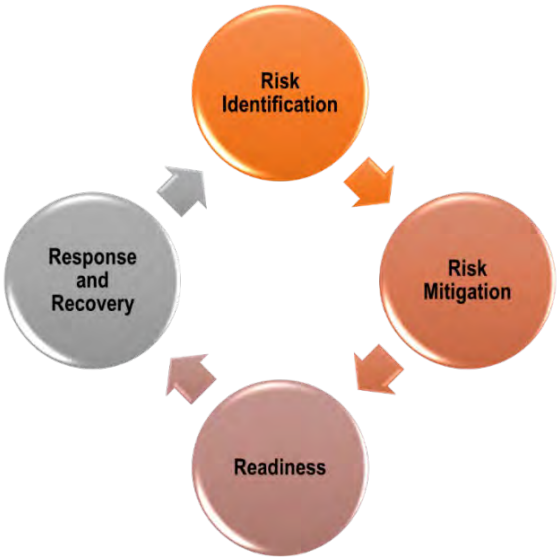
Section I. Security framework

The purpose of the security framework illustrated in Diagram 1 and further described in this section is to ensure local boards and local area administrative entities have the foundation necessary for development and implementation of effective security policies, processes, and procedures that proportionately and adequately:

1. identify security risks;
2. mitigate security risks;
3. establish security readiness; and
4. establish security incident response and recovery activities.

Local boards *must* ensure that local one-stop delivery system security policies, processes, and procedures are modeled after the four-phase framework illustrated in Diagram 1.

Diagram 1. Four-phase security framework for local one-stop delivery systems



(a) Risk identification

Identification of security risks cannot be achieved without conducting a risk assessment. Risk assessments are critical to the design and continuous improvement of security policies, processes, and procedures. Risks to one-stop delivery system customers, staff, and program participants may vary significantly throughout the statewide one-stop delivery system. An example risk assessment tool is provided as APPENDIX I. Local boards may elect to utilize alternative risk assessment tools, including tools that may be available through collaboration with local law enforcement entities and other entities.

(b) Risk mitigation

Once risks and corresponding risk levels are assessed, risk measures *must* be taken to mitigate the likelihood of security incidents and minimize the impact of security incidents. The selection of mitigation measures *must* be proportional to the likelihood and severity of risks. Mitigation measures may include, but are not limited to:

1. infrastructure hardening;
2. controlled facility access;
3. contracted security services;
4. early detection systems;
5. public alert systems;
6. digital or remote observation systems;
7. interior and exterior lighting;
8. signage and public notices;
9. evacuation plans and designated shelter areas; and
10. one-stop delivery system staff training.

Costs of security equipment and services may be funded locally as infrastructure costs under memorandums of understanding with required and additional one-stop partners.[3,4]

Local boards, safety committees, and administrative entities *must* regularly consult with representatives of all local area one-stop delivery system partners concerning risk mitigation.

[3] 2 CFR § 200.457; 20 CFR § 678.760

[4] 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. NDOL's policy on memorandums of understanding and funding agreements provides additional information on infrastructure costs.

(c) Readiness

Risk mitigation measures are effective only when properly planned, rehearsed, and maintained.

1. Local security policies, processes, and procedures *must* require regular and effective staff training and rehearsals.

2. Local area administrative entity, one-stop operator, and one-stop partner program staff *must*:

    a. be trained at least annually on local one-stop delivery system security policies, processes, and procedures; and

    b. participate in rehearsal of security response and recovery activities.

3. Local board safety committees *must* maintain documentation of annual training schedules and events, training agendas, and staff attendance rosters. Training recommendations include, but are not limited to:

    a. de-escalation training;

    b. lifesaving first-aid training; and

    c. active shooter training.

4. Local boards and safety committees *must* survey local area administrative entity, one-stop operator, and one-stop partner program staff on an annual basis to measure satisfaction with implementation of security policies, processes, and procedures and the effectiveness of security training. The surveys *must* provide an opportunity for staff to provide written input and suggestions to ensure continuous improvement.

(d) Response and recovery

(1) Types of security incidents

The following types of behaviors, threats, and actions are considered security incidents; however, there may be other types that contribute to security incidents.

(A) Behaviors

Individual instances of behavior or patterns of behavior may be considered security incidents and may include, but are not limited to:

1. reckless driving in one-stop center parking areas;

2. possession of weapons;

3. alcohol intoxication or possession of alcohol;

4. drug intoxication or possession of controlled substances;

5. viewing or possession of pornography;

6. lewd behavior, inappropriate bodily exposure, and nudity;
7. vulgar, discriminatory, or threatening language;
8. unwanted physical contact;
9. loitering; and
10. stalking.

(B) Threats

Individual instances of threats or patterns of threats may be considered security incidents and may include, but are not limited to, verbal and non-verbal intent to:

1. cause bodily harm to self or others;
2. damage or destroy property or equipment; and
3. commit theft.

(C) Actions

Individual instances of actions or patterns of action may be considered security incidents and may include, but are not limited to, actions that cause or result in:

1. bodily harm to self or others;
2. damage or destruction of property or equipment; and
3. theft.

(2) Required response and recovery actions

Once a security incident occurs, local boards, safety committees, and administrative entities *must* take the following response and recovery actions.

1. Security incidents *must* be documented through completion and submission of a security incident report form.

    a. NDOL provides a fillable PDF version of the form to local area administrative entities by email. The form *must be completed digitally*. Handwritten/scanned versions of completed forms are not acceptable, because they may not be legible based on handwriting style and the quality of scans.

    b. Completed security incident report forms *must submitted* by a local area administrative entity staff member within 24 hours of the initial security event to following individuals and entities identified in the form *through encrypted email.* Applicable supporting documentation should be submitted with completed forms.

2. Security incident response *may* involve, but is not limited to, seeking assistance from:

    a. law enforcement agencies whenever criminal behavior is suspected;

    b. fire response agencies in the event of fire; and

    c. emergency medical services in the event of medical situations.

3. Security incident recovery *may* involve, but is not limited to:

    a. investigation activities, involvement of law enforcement, fire response, and emergency medical services; and

    b. implementation of corrective actions for offending individuals, which may include full or partial restrictions on facility usage on a permanent or temporary basis.

4. If incident recovery activities occur *after* submission of a security incident report form, the form *must* be updated and resubmitted *through encrypted email* by a local area administrative entity staff member.

(e) Technical assistance

NDOL will provide technical assistance as necessary when security incidents call for state-level guidance. Requests for technical assistance relating to security incidents should be *immediately* submitted by email to ndol.wioa_policy@nebraska.gov.

Section II. Security and annual one-stop center assessments and triennial one-stop center certifications

Instructions on integration of security elements into annual one-stop center assessments and triennial one-stop center certifications are available in NDOL's policy on one-stop delivery system assessment and one-stop center certification.

Section III. Security monitoring

(a) Local-level monitoring

Local boards *must* ensure regular monitoring of compliance with local security policies, processes, and procedures, including compliance with training requirements and schedules.

(b) State-level monitoring

Compliance with all requirements of this policy is subject to review by the NDOL State Monitoring Unit. Failure of local boards, safety committees, and local area administrative entities to comply with requirements established under this policy may result in findings and implementation of corrective action plans.

During monitoring of compliance with requirements of this policy, inspectable items include, but are not limited to:

- one-stop delivery system security policies, processes, and procedures;
- training schedules, agendas, and staff attendance rosters for security training events;
- procurement of security-related equipment and services;
- one-stop delivery system security; and
- submission of security incident reports; and
- maintenance of security incident and incident resolution logs.

DISCLAIMER

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

APPENDIX I. Example one-stop delivery system/center security risk assessment tool

General information

1. *One-stop center information*

Name of center: _____
Address of center (street and city): _____
Center'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. *Identify one-stop delivery system partners located at the one-stop center or connected to a one-stop center*

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 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 information	Response
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 located at a one-stop center 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:

One-stop center infrastructure

4. *Is there adequate lighting for the one-stop center's main entrance and staff-only entrances/exits and emergency exits that ensures safety and security?*
   ☐Yes
   ☐No

5. *Is there adequate lighting in one-stop center parking areas from sunset and to sunrise?*
   ☐Yes
   ☐No

6. *Is one-stop center 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 one-stop center?*
   ☐Yes
   ☐No

8. *Other than the main entrance, are all other one-stop center 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 one-stop center is always secured after business hours or when facility staff are not in the facility?*
    ☐Yes
    ☐No

12. *What are the one-stop center'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 one-stop center 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 one-stop center roof that can provide illegal entry to the center?*
☐Yes
☐No
If yes, are the access points secured?
☐Yes
☐No

15. *Is US Mail delivered to a mailbox within the one-stop center?*
☐Yes
☐No

16. *Is janitorial and/or security service provided by third parties?*
☐Yes
☐No

17. *Do one-stop center staff and security service staff, US Postal workers, and other third parties have keys, badges, or other methods for accessing the one-stop center?*
☐Yes
☐No

18. *Have one-stop center and security service staff undergone background checks by an authorized government entity?*
☐Yes
☐No

Security measures (assets, facility, and staff protection)

19. *Does the one-stop center have methods for secure disposal of confidential information, including information that includes personally identifiable information (aka PII)?*
☐Yes
☐No

20. *Does the one-stop center 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 one-stop center have signage/public notices posted regarding security requirements that must be observed by one-stop center staff and visitors?*
☐Yes
☐No

22. *Has the one-stop center designated a custodian or custodians of all keys, badges, or other methods for physically accessing the one-stop center?*
☐Yes
☐No

23. *Are all keys, badges, or other methods for accessing the one-stop center physically accounted for thoroughly on an annual basis?*
☐Yes
☐No

24. *Does the one-stop center have a written standard operating procedure for retrieval of keys and badges or revocation of other methods for accessing the one-stop center once a staff member is no longer authorized to access the one-stop center?*
☐Yes
☐No

25. *What type(s) of security measures are in place to protect assets (physical, digital, etc.) and one-stop center 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 one-stop center 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 one-stop center 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 the one-stop center.*
    Agency name: _____
    Non-emergency number: _____

30. *Does local law enforcement actively patrol the one-stop center area?*
    - ☐Yes
    - ☐No

31. *What is the average response time to the one-stop center by the local law enforcement?*
    - ☐Less than 15 minutes
    - ☐15 to 30 minutes
    - ☐More than 30 minutes
    - ☐Other (explain): _____

Fire prevention and emergency

32. *What type of fire prevention and notification systems are in use at the one-stop center? (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

33. *Identify the local fire prevention and emergency agency responsible for fire prevention and emergencies occurring in and near the one-stop center.*
    Agency name: _____
    Non-emergency number: _____

34. *What is the average response time to the one-stop center by the local fire prevention and emergency agency?*
    ☐Less than 15 minutes
    ☐15 to 30 minutes
    ☐More than 30 minutes
    ☐Other (explain): _____

35. *How often does the local fire prevention and emergency agency conduct site inspections of the one-stop center?*
    ☐Monthly
    ☐Quarterly
    ☐Semi-annually
    ☐Annually
    ☐Biennially (every 2 years)
    ☐Never
    ☐Other (explain): _____

Emergency medical service

36. *Identify the local emergency medical service (EMS) provider responsible for services to and near the one-stop center.*
    Provider name: _____
    Non-emergency number: _____

37. *What is the average response time to the one-stop center by the local EMS provider?*
    ☐Less than 15 minutes
    ☐15 to 30 minutes
    ☐More than 30 minutes
    ☐Other (explain): _____

3. Performance Accountability

State Policy **Workforce Innovation and Opportunity Act (WIOA)**

Nebraska Department of Labor (NDOL)
Division of Reemployment Services
550 South 16th Street
Lincoln, NE 68508
402.471.9000
ndol.wioa_policy@nebraska.gov

Policy category
Performance Accountability

Effective
December 13, 2023

Supersedes
Performance Accountability, Change 4
(effective May 3, 2023)

Performance Accountability, Change 5

REFERENCE

Federal and state laws, rules, and regulations 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 (the Departments) established performance accountability requirements to assess the effectiveness of 6 core programs and 10 non-core programs (listed in TEGL 14-18) toward achieving positive outcomes for individuals served by the programs.

CHANGES

Under this Change 5, the following materials changes have made:

- Section IV(c) has been revised to clarify requirements relating to retention of supplemental wage information.
- Section IV(c)(1) has been revised to clarify staff training requirements relating to procedures for gathering supplemental wage information.
- Section V(b) has been revised based on TEGL 11-19 Change 1 concerning definitions relating to performance negotiations.

- Section V(c) has been revised based on TEGL 11-19 Change 1 in relation to state and local performance negotiations.

- Section VI(b) has been revised based on TEGL 11-19 Change 1 regarding sanctions against the state pertaining to failure to report and meeting adjusted levels of performance.

ACTION

This policy supersedes and cancels the State's policy titled Performance Accountability, Change 4 (effective May 3, 2023). Questions and comments on this policy may be submitted in writing to the policy mailbox at ndol.wioa_policy@nebraska.gov.

State policies referenced in this policy are included in the State policy manual, which is accessible at https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies. *State policy manual* refers to the policy manual created and maintained by the NDOL Reemployment Services Quality Control Unit.

POLICY

This policy establishes performance accountability requirements applicable to:

- WIOA Title I adult, dislocated worker, and youth programs (Title I);

- NDOL-administered programs:

    - WIOA Title III Wagner-Peyser Employment Service (Title III), including the Monitor Advocate System;

    - Jobs for Veterans State Grant program (JVSG);

    - Trade Adjustment Assistance program (TAA); and

- WIOA Title ID National Dislocated Worker Grant programs (DWG).

This policy has six sections.

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Section I. Primary indicators of performance

The US Department of Labor (USDOL) measures performance of USDOL funded programs using six primary indicators of performance, which are described in detail in TEGLs 10-16 Change 2 and 14-18:

1. employment rate second quarter after exit;
2. employment rate fourth quarter after exit;
3. median earnings rate second quarter after exit;
4. credential attainment rate;
5. measurable skill gains rate; and
6. effectiveness in serving employers.

TEGLs 10-16 Change 2 and 14-18 also provide detailed information on methodologies and operational requirements for calculating performance on the six primary indicators.

Section II. Categories of enrollment and exit

There are two points to understand while reading the definitions for reportable individual and participant.[1]

1. All participants are reportable individuals but not all reportable individuals are participants.
2. An individual can be a:
    a. participant in multiple programs;

[1] TEGL 14-18

b. reportable individual in multiple programs; or

c. participant in one program and only a reportable individual in another program.

(a) Reportable individual

A *reportable individual* is an individual who has taken action that demonstrates an intent to use Title I, Title III, or DWG program services *and* who meets specific reporting criteria of the applicable program, including when the individual:[2]

- 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.[3] However, USDOL requires inclusion of certain information in states' quarterly performance reports and related performance reporting tools to track the number of reportable individuals served.

(b) Participant

While the definition of *participant* is consistent across the core programs, there are slight differences to account for programmatic requirements. In general, for Title I and Title III programs, 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 individuals are not participants of Title I and Title III programs:[4]

- 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.

[2] 20 CFR § 677.150(b); TEGL 10-16 Change 2; TEGL 14-18 Attachment 6
[3] TEGL 10-16 Change 2; TEGL 14-18 Appendix I
[4] 20 CFR § 677.150(a)(3); TEGL 10-16 Change 2; TEGL 14-18

(1) Local youth programs

For local youth programs, reportable individuals become *participants* when they have satisfied all of the following four program requirements for the provision of services:[5]

1. eligibility determination;
2. an objective assessment;
3. development of an individual service strategy; and
4. received one or more of the 14 youth program elements.

TEGL 14-18 Appendix III provides a list of the *participant* level services that trigger a reportable individual's inclusion as a participant in Title I youth programs.

(2) Local adult and dislocated worker programs

For local adult and dislocated worker programs, reportable individuals become *participants* when they receive any: [6]

- training service or individualized career service; or
- basic career service that is neither self-service only nor information-only.

TEGL 14-18 Appendix III provides a list of the *participant* level services that trigger a reportable individual's inclusion as a participant in Title I adult and dislocated worker programs.

(3) Title III

For Title III, *reportable individuals* become *participants* when they receive any:[7]

- individualized career service; or
- basic career service that is neither self-service only nor or an information-only service or activity.

TEGL 14-18 Appendix III provides a list of the *participant* level services that trigger a reportable individual's inclusion as a Title III *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.[8]

[5] TEGLs 10-16 Change 2 and 14-18
[6] Ibid.
[7] Ibid.
[8] TEGL 14-18 Attachment 4

(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.[9]

(6) DWG

DWG defines *participant* as a *reportable individual* who has:[10]

- 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.

TEGL 14-18 Appendix III provides a list of the *participant* level services that trigger a *reportable individual's* inclusion as a participant in DWG.

(c) Period of participation[11]

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) Coenrollment

(1) State level coenrollment requirements

NDOL requires that coenrollment of *participants* occur whenever eligibility permits. This coenrollment requirement applies to:

- Title I;

[9] TEGL 14-18 Attachment 10
[10] TEGL 14-18 Attachment 6
[11] TEGLs 10-16 Change 2 and 14-18

- Title III;
- JVSG;
- TAA; and
- DWG, whether administered at state or local levels.

All DWG and TAA *participants* must be, at a minimum, coenrolled in a local dislocated worker program.

(2) Federal level coenrollment requirements

In addition to NDOL's coenrollment requirement, there are Federal coenrollment requirements.

- Local youth programs must coenroll 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,[12] *unless the State has a waiver permitting ITAs for ISY*.
- Individuals participating in Nebraska's RESEA program (i.e., NEres) must be coenrolled in Title III.[13]
- Homeless Veterans Reintegration Programs (HVRP) must coenroll all HVRP *participants* in a Title I program, Title III, or JVSG.[14]

It should be noted that the Monitor Advocate System does not have a coenrollment requirement, because the Monitor Advocate System is a system that uses performance data within Title III and does not operate as a separate program.[15]

(3) Partner programs

For the programs listed above in subsection (1), partner programs in which participants may be coenrolled include, but are not limited to:

- Title I;
- Title II Adult Education and Family Literacy Act program;
- Title III;
- Title IV vocational rehabilitation programs provided by the:
    - Nebraska Commission for the Blind and Visually Impaired; and
    - Nebraska Vocational Rehabilitation Program;

[12] TEGL 21-16
[13] UIPLs 8-18 and 7-19
[14] TEGLs 4-16 and 14-18
[15] TEGL 14-18

- 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;
- 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.[16] Exit requirements for *reportable individuals* and *participants* differ.

(1) Reportable individuals and exit

Reportable individuals do not exit, as defined in 20 CFR § 677.150(c), because *reportable individuals* are never considered *participants*.[17] 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 Title III through receipt of services that do not result in the individual becoming a *participant*.

[16] 20 CFR § 677.150(c); TEGL 10-16 Change 2
[17] TEGL 10-16 Change 2

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

For *participants* in Title I, Title III, JVSG, TAA, and DWG, the date of program exit is the last date of service.[18] 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:

- supportive services;
- follow-up services; and
- common exit.

These factors are described in the subsections below.

(3) Supportive services and Title I 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 and may take place after exit without delaying the exit date.

(4) Supportive services and Title I adult and dislocated worker and DWG participant exit

Under adult, dislocated worker, and DWG programs, supportive services may be provided 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. (Refer to the State's adult and dislocated worker program policy for clarifying information pertaining to differences between supportive services and follow-up services for adults and dislocated workers.)

(5) Supportive services and Title III, 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 Title III, 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.

[18] TEGL 10-16 Change 2; TEGL 14-18 Attachments 4 and 10

(6) Follow-up services and Title I 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. (Regarding adults and dislocated workers, refer to the State's adult and dislocated worker program policy for clarifying information pertaining to differences between supportive services and follow-up services.)

(7) Follow-up services and Title III, JVSB, and TAA program participant exit

Follow-up services are not provided by Title III, 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

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.[19] A *participant* is exited from all coenrolled programs only when all exit criteria are met for all coenrolled programs. NDOL implemented a common exit requirement that applies to all *participants* who are coenrolled in:

- Title I;
- Title III;
- JVSG;
- TAA; and
- DWG.

This common exit requirement does not apply to *participants* who are coenrolled in other partner programs.

(f) Exclusion from participation

A *participant* may be excluded from performance calculations under limited circumstances.[20] Table 1 describes those circumstances in detail. Program staff are responsible for determining when one or more of those circumstances have occurred and must provide source documentation to the NDOL Performance Program Coordinator 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 1. 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	• Title I • Title III • JVSG

[19] 20 CFR § 677.150(c)(3)(i); TEGL 10-16 Change 2; TEGL 14-18
[20] TEGLs 10-16 Change 2 and 14-18

Circumstance	Explanation	Applicable programs
	institution or a resident of an institution or facility providing 24-hour support, such as a hospital or treatment center.	• TAA • DWG
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.	• Title I • Title III • JVSG • TAA • DWG
Death	The participant is deceased.	• Title I • Title III • JVSG • TAA • DWG
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 and is called to active duty* for at least 90 days.	• Title I • Title III • JVSG • TAA • DWG
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.	• local youth programs

* Active duty[21] 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[22]

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). 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.

[21] 10 USC § 101(d)(1)
[22] TEGL Change 2

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 rate; and
- measurable skill gains rate.

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.

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 *participants* 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. (Refer to Section IV(c) for clarification on supplemental wage information.)

Section IV. Administrative requirements of performance accountability

(a) Reporting

(1) Title I and Title III

(i) Quarterly statewide and local performance reports

NDOL must submit quarterly statewide and local performance reports (ETA Form 9173) for Title I and Title III within 45 days of the end of each quarter.[23] The report covers program performance for the previous full quarter.

(ii) Annual statewide and local performance reports

In addition to quarterly reports, NDOL must submit an annual statewide and local performance report (ETA Form 9169) for Title I and Title III by October 1, or the first business day thereafter should that date fall on a weekend.[24] The report covers performance data from the four full

[23] US Department of Labor, Employment and Training Administration, "Reporting Timeline," https://www.dol.gov/agencies/eta/performance/reporting/timelines
[24] TEGL 3-17

previous quarters.[25] 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.[26]

(iii) Annual statewide performance report narrative

NDOL must submit an annual statewide performance report narrative for Title I and Tittle III by December 1, or the first business day thereafter should that date fall on a weekend.[27] 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. The requested items for the annual statewide performance report narrative are defined in TEGL 5-18.

NDOL must also submit the annual statewide performance report narrative to the Governor, Nebraska Legislature, and Nebraska Workforce Development Board by November 30, pursuant to pursuant to Neb. Rev. Stat. § 48-3304.

(iv) ETP performance reports

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.[28] The report must include the following information regarding each program on the Eligible Training Provider List, in accordance with 20 CFR §§ 677.160(c) and 677.230(a); TEGL 3-18. 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 and 20 CFR § 677.230(a) and (c). Nebraska's ETP performance data appears in NEworks, the State's management information system, and on USDOL's training provider results site.

(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).[29]

(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.[30]

(4) TAA

NDOL must submit quarterly performance reports (ETA Form 9173) for TAA programs within 45 days of the end of each quarter.[31] Each report covers program performance for the previous full

[25] WIOA Sec. 116(d)(2); TEGL 3-17
[26] TEGL 3-17
[27] TEGL 5-18
[28] WIOA Sec. 116(d)(4) and (d)(6)(B); 20 CFR 677.260(a)(5); TEGL 3-18
[29] TEGL 14-18 Attachment 4
[30] 20 CFR § 653.108(s)
[31] US Department of Labor, Employment and Training Administration, "Reporting Timeline," https://www.dol.gov/agencies/eta/performance/reporting/timelines]

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.[32]

(5) DWG

NDOL's annual statewide performance report narrative for Title I and Title III must include information on DWGs awarded to Nebraska at state or local levels.[33]

(b) Use of SSNs

In general, SSNs are collected in order to report on primary indicators of performance for:[34]

- 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. 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 the *participant*.

Program services must not be withheld if an individual is unwilling or unable to disclose an SSN.[35] More specifically, program eligibility is not contingent on the provision of an SSN for any of the core programs.[36]

(c) Supplemental wage data

While the most efficient method for determining employment status and earnings for *participants* is to obtain quarterly wage records, 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).[37] In such circumstances, the applicable program must gather supplemental wage information from other sources to determine employment and earnings status for performance reporting purposes. In addition, supplemental wage information must be well documented and maintained for monitoring and data validation purposes, in accordance with requirements established in the State's records management policy.

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[32] TEGL 14-18 Attachment 10
[33] TEGL 5-18; TEGL 14-18 Attachment 6
[34] TEGL 14-18
[35] Sec. 7(a)(1) of the Privacy Act of 1974 [5 USC 552a note]
[36] Core programs refers to Title I programs (youth, adult, and dislocated worker), Title I programs (Adult Education and Family Literacy Act), Title III, and Title IV programs (vocational rehabilitation).
[37] TEGLs 10-16 Change 2 and14-18

When it is determined that supplemental wage information is needed, acceptable forms of supplemental wage information, include, but are not limited to:[38]

1. employment records from Federal and state sources, such as:
    a. state departments of revenue or taxation; or
    b. Railroad Retirement System;
2. tax documents, payroll records, and employer records such as:
    a. copies of quarterly tax payment forms to the internal revenue service, such as a form 941 (employer's quarterly tax return);
    b. copies of pay stubs (minimum of two pay stubs required); or
    c. signed letter or other information from employer on company letterhead attesting to an individual's employment status and earnings;
3. other supplemental wage records:
    a. income earned from commission in sales or other similar positions;
    b. automated database systems or data matching with other partners with which data sharing agreements exist;
    c. detailed case notes, verified by the employer and signed by the case manager, if appropriate to the program;
    d. administrative records of one-stop operating systems, such as current records of eligibility for programs with income-based eligibility, such as TANF and SNAP;
    e. self-employment worksheets signed and attested to by program participants; or
    f. follow-up survey from program participants (i.e., self-reported).

(1) Staff training

Program staff conducting supplemental wage information follow-up should be trained on the implementation of procedures for gathering this information, including:[39]

- when to begin supplemental wage information follow-up (i.e., after program exit during follow-up services);
- frequency of supplemental wage information follow-up (no less frequently than quarterly following program exit);

[38] TEGL 26-16
[39] TEGL 26-16; TEGL 14-18 Appendix VI. Additional information on supplemental wage data is available at https://www.workforcegps.org/events/2017/06/23/15/05/WIOA-Wednesday-on-Tuesday-Supplemental-Wage-Information.

- what to say to former *participants* or their employers to encourage their cooperation;
- ways to encourage voluntary and truthful disclosure;
- what information is needed;
- how to respond to questions related to the supplemental wage information follow-up process; and
- how to document the information received.

Program staff should be thoroughly familiar with all follow-up procedures established by their respective programs before beginning.

(2) Technical assistance

NDOL provides technical assistance to programs regarding the collection of supplemental wage information upon request. Requests must be sent to the policy mailbox at ndol.wioa_policy@nebraska.gov.

Section V. Negotiating levels of performance for Title I and Title III programs

(a) Governing law, regulations, and guidance

TEGL 11-19 Change 1 defines the requirements pertaining to negotiating levels of performance at the state level, as required under WIOA Sec. 116(b)(3)(A)(iv). TEGL 11-19 Change 1 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 and local level performance negotiations for Title I and Title III.[40]

1. *Expected levels of performance* are the levels of performance proposed by NDOL in the initial submission of the state plan and the required two-year modification of the plan for each primary indicator of performance.
2. *Negotiated levels of performance* are the levels of performance mutually agreed upon by NDOL and USDOL for each program. The negotiations process must be based on four factors described below in Section V(d)(2). *Negotiated levels of performance* must be incorporated into the state plan and two-year modification of the plan for each primary indicator of performance.
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

[40] TEGL 11-19 Change 1

characteristics of *participants* served and actual economic conditions experienced using the statistical adjustment model.

4. *Actual levels of performance* are the outcomes reported by NDOL in the annual statewide performance report (ETA-9169) for each primary indicator of performance.[41] USDOL compares *actual levels of performance* to the *adjusted levels of performance* at the close of each program year to determine the state's performance success or failure pursuant to WIOA Sec. 116(b)(3)(A)(vii).

5. *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* based on pre-program year estimates of *participant* characteristics and economic conditions (described in TEGL 26-15 Attachment II) and the levels of performance reestimated by the statistical adjustment model after the close of the program year based on the actual *participant* characteristics and economic conditions. This calculation yields a positive or negative difference, which will be used as the *adjustment factor* for the program year.

6. *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*.

7. *Overall state indicator score* is the average of the *individual indicator scores* for a single performance indicator across all WIOA core programs.

8. *Overall state program score* is the average of the *individual indicator scores* for a single program across all performance indicators.

9. *Statistical adjustment model is* an objective regression model, developed pursuant WIOA Sec. 116(b)(3)(A)(3)(viii), used to estimate levels of performance and derive the *adjusted levels of performance* based on *participant* characteristics and economic conditions. Economic conditions include differences in unemployment rates and job losses or gains in particular industries. 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 welfare dependency. The *statistical adjustment model* also considers other factors that, through empirical support, are determined to have an effect on state outcomes. The Departments are committed to a transparent process for assessing state performance. Accordingly, the USDOL Employment and Training Administration (ETA), the Office of Career, Technical, and Adult Education (OCTAE), and the Rehabilitation Services Administration (RSA) will publish the statistical adjustment model for all primary indicators of performance on their websites

[41] WIOA Sec. 116(d)(2)

(c) Performance negotiations[42]

WIOA Sec. 116(b)(3)(A)(iv) requires that states reach agreement with the Departments on levels of performance for each primary indicator of performance for each of the core programs at two separate and distinct times, specifically during both the state plan and state plan modification approval process. The agreed-upon negotiated levels of performance must be included in the approved state plan and state plan modification. *Negotiated levels of performance* must cover the first two program years of the state plan, and new approved *negotiated levels of performance* covering the third and fourth years of the state plan. Submission of state plana and required modification of plans to the Departments, including the required *expected levels of performance*, initiates performance negotiations between states and the Departments.

Negotiated levels of performance for the first and second years of the state plan must be established before the start of the first program year and included in the state plan for its approval. Likewise, *negotiated levels of performance* for the third and fourth years of the required two-year state plan modification must be established before the start of the third program year. To ensure performance negotiations and state plan submission and approval are completed before the beginning of the first and third program years of the state plan, states must adhere to deadlines established by the Departments that govern state plans and their modifications. The primary indicator for the *effectiveness in serving employers* performance indicator has not yet been defined; therefore, the Departments do not negotiate levels of performance for this indicator with states.

The negotiations process will proceed as follows.

1. Pursuant to WIOA 116(b)(3)(A)(iii), each state must identify *expected levels of performance* in its state plan and in the two-year modification of the plan. *Expected levels of performance* for the first two years of a state plan must be submitted in the initial submission of the 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), and should be the result of the state's own analyses. *Expected levels of performance* must be stated to the nearest tenth of a percent (XX.X%) or to the nearest whole dollar for median earnings and published for public comment prior to submission. In order to satisfy these requirements and deadlines, the state should not wait for the release of the latest *estimated levels of performance* derived from the Departments' *statistical adjustment model*.

2. After state plan submission, the state must negotiate and reach agreement with the respective Federal agency on the *negotiated levels of performance* for the indicators for each of the first two years of the state plan (or third and fourth years of the plan modification) for each of the core programs under WIOA Sec. 116(b)(3)(A)(iv). The factors that will be taken into account during the negotiations process are described in detail in Section V(c)(1) below.

3. The Departments will use the *statistical adjustment model* as a tool in the negotiations process to estimate the states 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 Section V(c)(1) below will be taken into account during this process.

[42] TEGL 11-19 Change 1

4. Once *negotiated levels of performance* are agreed upon, states must incorporate *negotiated levels of performance* into their state plans and plan modifications prior to approval.

(1) Negotiation factors

In reaching agreement on *negotiated levels of performance*, states and the Departments must apply the following factors pursuant to WIOA Sec. 116(b)(3)(A)(v). Note that WIOA does not specify more or less weight on any specific negotiation factor.

1. Take into account how the levels involved compare with the *negotiated levels of performance* established for other states (section 116(b)(3)(A)(v)(I) of WIOA). The Departments 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 the Departments. Before the negotiations process begins, the Departments will provide the estimated performance 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 the Departments, to be used to inform the negotiations process. State agencies and their respective Federal agencies must negotiate using the levels of performance estimated by the model, as one of four factors pursuant to section 116(b)(3)(A)(v) of WIOA, for each primary indicator of performance. These *estimated levels of performance* may not be altered for the purposes of negotiations, including any changes in participant characteristics or economic conditions anticipated by the state that would result in changes to the levels of performance predicted by the *statistical adjustment 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. The Departments consider continuous improvement to be a critical factor in the negotiations process. The Departments will consider continuous improvement factors that ensure optimal return on investment of Federal funds. The Departments acknowledge that there are many ways to define continuous improvement as related to state or national program circumstances. For example, continuous improvement may reflect:

    a. an increase from the levels of performance previously attained;

    b. increases in percentile rankings of levels of performance either nationally or among similar states;

    c. changes in service strategy and delivery, including more progressive or innovative approaches designed to better meet *participant* needs;

    d. changes in intensity or comprehensiveness with which individuals are served; or

e. maintenance of previous performance for top performing states.

The Departments acknowledge that changes to service strategy or individuals served do not always lead to increases in performance levels.

4. Take into account the extent to which the levels involved will assist the state in meeting the performance goals established by the Secretaries of Education and Labor in accordance with the Government Performance and Results Act of 1993 (GPRA) (WIOA Sec. 116(b)(3)(A)(v)(IV)). WIOA Sec. 116(b)(3)(A)(vi) requires the Departments to establish long-term goals for *adjusted levels of performance* for each of their core programs as provided under GPRA. GPRA is a mechanism through which Congress and the Office of Management and Budget (OMB) evaluate the success of Federal programs, including those operated by states and local areas. During negotiations, the Departments will take into consideration levels of performance that will assist the Federal agencies in meeting the established GPRA goals.

(2) Use of the statistical adjustment model in the negotiations and state performance assessment process[43]

As required by WIOA Sec. 116(b)(3)(A)(viii), the Departments will use the *statistical adjustment model* to ensure that the impact of *participant* characteristics and economic conditions in the state are accounted for in determining the *negotiated levels of performance*. The *statistical adjustment model* will perform two major functions in performance negotiations and assessment of state performance. First, it is one of the factors used when coming to agreement on the *negotiated levels of performance*. It is used to account for the economic conditions and the characteristics of *participants* to be served in the state and/or local areas. Second, it will be used at the close of a program year to adjust the *negotiated levels of performance* for the actual economic conditions experienced and actual characteristics of *participants* served. These are the *adjusted levels of performance*.

The *statistical adjustment model* is critically important to the performance negotiations process. As more data become available, the Departments will periodically review the model and refine it as necessary. The Departments will assess state performance using the model containing coefficients that were reestimated after the program year using additional data that were not available at the time of negotiations. In other words, the Departments will assess performance using more current data, which will lead to more accurate and reliable results than under the prior approach of using data that were locked in at the time the negotiated levels of performance were approved. For all WIOA core programs, the additional data used to reestimate the coefficients include more recent observations of economic conditions and *participant* characteristics up to, but not including, the cohorts associated with the program year being assessed. By not including economic conditions and *participant* characteristics for the program year being assessed, the Departments will maintain separation between state performance results being assessed and data used to inform the reestimated coefficients.

(3) State level negotiations process for Title I and Title III

State plan submissions and submissions of modifications of the plans must contain states' *expected levels of performance* for the primary indicators of performance.[44] Submitting this

[43] TEGL 11-19 Change 1
[44] WIOA Sec. 116(b)(3)(A)(iii)

information is the first step in the negotiations process. Once the *expected levels of performance* have been submitted, NDOL must begin negotiations with USDOL Employment and Training Administration (ETA) Region V for Title I and Title III. The Departments will outline how this negotiation process will apply to the *effectiveness in serving employers* indicator after the final rule defining the indicator is promulgated.

States have access to their own historical performance information and various other tools and resources, such as data from the Bureau of Labor Statistics or US Census Bureau. These tools may be used to establish states' *expected levels of performance*. When using other resources to analyze the relationship between labor market or economic conditions and actual performance, states should consider the reference period of the resource and the timeframes associated with each of the primary indicators of performance and apply them accordingly.

(i) Negotiation factors[45]

While reaching agreement on the *negotiated levels of performance*, states and the Departments must apply the following factors. Note that WIOA does not specify more or less weight on any specific negotiation factor.

1. Take into account how the levels involved compare with negotiated levels of performance established for other states. 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 the *statistical adjustment model*. 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, as one of four factors pursuant to WIOA Sec. 116(b)(3)(A)(v), for each primary indicator of performance. These *estimated levels of performance* may not be altered for the purposes of negotiations, including any changes in *participant* characteristics or economic conditions anticipated by the state that would result in changes to the levels of performance predicted by the *statistical adjustment 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. 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:

    a. increases from levels of performance previously attained;

[45] TEGL 11-19 Change 1

b. increases in percentile rankings of levels of performance either nationally or among similar states;

c. changes in service strategy and delivery, including more progressive or innovative approaches;

d. changes in the intensity or comprehensiveness with which customers are served; or

e. 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.

States and local areas must adhere to priority of service requirements of WIOA Title I programs, as established under WIOA.[46] Additionally, USDOL encourages all other WIOA programs to serve more individuals with barriers to employment who may need more intensive services to achieve a positive outcome. The effect of serving more of these customers will be accounted for in *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).[47] 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 Title III as provided under GPRA. 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.

(4) Use of a statistical adjustment model in the negotiations and local performance assessment process[48]

In addition to negotiating state levels of performance, NDOL must work with local workforce development areas to establish performance goals for Title I. The local board, Chief Elected Official (CEO), and NDOL, on behalf of the Governor, must negotiate and reach agreement on local levels of performance based on the State's *negotiated levels of performance*. In negotiating local levels of performance, the local board, CEO, and NDOL must use the four factors described in Section V(c)(3) for local level negotiations. In addition, a local level statistical adjustment model that aligns with the framework of the state level *statistical adjustment model* must be used at the end of the program year to adjust local *negotiated local levels of performance* in order to reflect the actual economic conditions experienced in the local area and the characteristics of *participants*. States should make these negotiated and adjusted levels, as well as the established

[46] WIOA Sec. 134(c)(3)(E); TEGLs 19-16, 11-19 Change 1, and 7-20 provide additional information regarding priority of service populations and service requirements, as does the State's priority-of-service policy.
[47] WIOA Sec. 116(b)(3)(A)(v)(IV)
[48] TEGL 11-19 Change 1

policies for local performance assessment, available to the local boards and the State's ETA Regional Office prior to the start of the program year in which the policies will be applied.

The local board, CEO, and the Governor must negotiate and reach agreement on local levels of performance for two program years at a time no later than September 30 during each year in which state negotiations occur. The State must notify its ETA Regional Office that negotiations are complete and include in the notification the agreed-upon levels of performance for each local area.

Section VI. Sanctions and corrective actions[49]

(a) Governing law, regulations, and guidance

TEGL 11-19 Change 1 explains two instances in which a state may be sanctioned for performance failure or failure to report, as required under WIOA Sec. 116(f). TEGL 11-19 Change 1 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).

(b) Sanctions against the state

Two types of failure lead to sanctions:[50]

- failure to report; and
- failure to meet adjusted levels of performance.

Information of both failure types is provided below in Sections VI(b)(1) and (2) below.

(1) Sanctions for failure to report[51]

Sanctions will be applied when a state fails to submit performance reports to the appropriate Federal agency, as required under WIOA Sec. 116(d). Consistent with 20 CFR § 677.185(a), the Departments consider a state as failing to submit performance reports if the state either (1) does not submit performance reports by 11:59 pm local time[52] on October 1 or the next business day if October 1 falls on a holiday or weekend or (2) submits performance reports by the established date for timely submission but the report is incomplete. Annual performance reports are complete when a state:

1. attests all reports are complete and accurate to the best of its knowledge;
2. submits a WIOA Statewide Performance Report (ETA-9169) for each of the six WIOA core programs, as applicable to the reporting entity;

[49] 20 CFR § 677.190
[50] WIOA Sec. 116(f); TEGL 11-19 Change 1
[51] TEGL 11-19 Change 1
[52] Local time is the time zone for the State Capitol [TEGL 11-19 Change 1].

3. collects and reports all required elements of WIOA Statewide Performance Reports as applicable to the reporting entity and uses appropriate data for the reporting period;

4. makes available a mechanism of electronic access to local area performance reports for WIOA Title I programs;

5. makes available a mechanism of electronic access to ETP performance reports for WIOA Title I programs; and

6. submits at least one WIOA Statewide Performance Report that includes *effectiveness in serving employers* performance results reflecting all six core programs.

If the performance report submitted by the state does not meet all of the above requirements by the reporting deadline, it is incomplete.

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 the State'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:

- natural disasters;
- unexpected personnel transitions; and
- unexpected technology related issues.

When exceptional circumstances occur, the State may request an extension of the submission deadline.

(i) Extension requests[53]

In the event of exceptional circumstances, the State must notify the Secretary of Labor in writing of the potential impact on the State's ability to submit an annual performance report and request an extension in order not to be considered as failing to report. The State's request for an extension should include a detailed account identifying the unexpected events precluding timely reporting sufficient for the Departments to make a determination. The following information should be included in an extension request:

1. sufficient detail of the unexpected circumstances that will lead to untimely or incomplete reporting to warrant an extension;

2. proposed extension period, fitting of the circumstances causing the delay, which should not exceed 30 calendar days after the established annual reporting deadline;

3. names and contact information of each responsible State designee or designated point of contact who will ensure that any extended deadline will be met; and

[53] TEGL 11-19 Change 1

4. any other information that the State deems relevant to help explain the need for an extension.

The State must submit the extension request as soon as possible, but not later than 30 calendar days prior to the established annual reporting deadline (20 CFR § 677.185(c)(1)). The annual reporting deadline is October 1 each year or the next business day if October 1 falls on a holiday or weekend. Therefore, the State must submit reporting extension requests no later than September 1 (or the next business day if September 1 falls on a holiday or weekend).

In cases where unexpected, exceptional circumstances occur within 30 calendar days of the established annual reporting deadline, the State must submit an extension request to the Secretary of Labor or Education, as applicable, as soon as possible but not later than the established annual reporting deadline (20 CFR § 677.185(c)(2)). Under these circumstances, in addition to the information described above, the request should include sufficient explanation as to why notification of the delay could not be provided 30 calendar days prior to the established annual reporting deadline.

All extension requests will be reviewed by the Departments for completeness and a thorough explanation of exceptional circumstances. The Departments may grant extension requests as submitted, grant extension requests with revisions, or reject the extension requests. Proposed reporting extensions should not exceed 30 calendar days after the established annual reporting deadline and should be appropriate to and commensurate with the exceptional circumstances.

In the event of failure to report timely or completely, pursuant to WIOA Sec. 116(f)(1)(B), the Governor's discretionary funds provided under WIOA Sec. 128(a) will be reduced by five percent of the maximum available allotment in the immediately succeeding program year. 20 CFR § 677.195(a) stipulates that the sanction is equal to five percent of the maximum allotment percentage that could be reserved by the Governor in the succeeding program year. This sanction will be enforced for each year in which a state fails to report timely or completely.

(2) Sanctions for failure to meet adjusted levels of performance[54]

In accordance with 20 CFR § 677.190(e), a performance failure occurs if:

- any single *individual indicator score* for any single core program 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 the State 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. If the same performance failure occurs for two consecutive program years, USDOL will apply sanctions.

Any state that fails to meet *adjusted levels of performance* for the primary indicators of performance for any year will receive technical assistance, including assistance in the

[54] TEGL 11-19 Change 1

development of a performance improvement plan provided by the Secretary of Labor or Secretary of Education (20 CFR § 677.190(b)). However, if the state has the same performance failure occur in two consecutive program years, the Departments will apply sanctions.

(i) Determining state performance success or failure[55]

The Departments will determine state 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 that year will be adjusted using the *statistical adjustment model*, which will factor in data on the actual economic conditions of the state and the actual characteristics of the populations served by the program during that year. This adjustment will be calculated using the *adjustment factor* to produce the *adjusted levels of performance*. A detailed explanation of this calculation is found in TEGL 11-19 Change 1 Attachment II. This will determine the *adjusted levels of performance* for the program year against which the state's *actual levels of performance* will be evaluated through the calculation of the performance score. TEGL 11-19 Change 1 Attachment IV provides an overview of the entire process.

The individual indicator score is calculated by dividing the *actual level of performance* achieved by the *adjusted level of performance*. The *adjusted level of performance* is calculated by adding the *adjustment factor* to the *negotiated level of performance*. The *individual indicator score* will not be rounded; it will be truncated to the first decimal place. A detailed example can be found in TEGL 11-19 Change 1 Attachment I.

(ii) Phasing in sanctions for performance failure[56]

The Departments used their transition authority under WIOA Sec. 503(a) to implement a phased-in approach to determine performance success or failure for each indicator or program, due to lack of available data, consistent with the requirements of 20 CFR § 677.190(c). Consistent with past practice, the Departments will continue to inform states when the assessment of any performance indicator is delayed. If a performance failure occurs at the end of the program year, the respective Federal agency and the state agency will work to develop a performance improvement plan, and the Federal agency will provide technical assistance in accordance with WIOA Sec. 116(f)(1)(A).

To be clear, if a state has the same performance failure occur in two consecutive program years, the Departments will apply sanctions, pursuant to WIOA Sec. 116(f)(1)(B). This applies regardless of where those program years fall within the negotiations cycle. That is, although state *negotiated levels of performance* are negotiated at two-year intervals, a failure in the second year of one negotiation cycle followed by the same failure in the first year of the subsequent negotiation cycle is considered a failure in two consecutive program years. For example, the Departments will establish *negotiated levels of performance* for PYs 2024 and 2025 in one negotiations cycle and *negotiated levels of performance* for PYs 2026 and 2027 in another negotiations cycle. A state will be sanctioned if it has a repeat performance failure in PYs 2025 and 2026. Specifically, the Departments will reduce the Governor's discretionary funds provided under WIOA Sec. 128(a) by five percent of the maximum available amount in the program year immediately succeeding the second consecutive performance failure. This sanction will be enforced each successive year in which the state continues to have the same performance failure.

[55] TEGL 11-19 Change 1
[56] Ibid.

(3) Sanctions for failure to report and repeat failure to meet adjusted levels of performance in the same program year[57]

If a state during the same year has both types of failure, that would result in sanctions being applied as described in Section IV(b)(1) and (2) above, meaning the state has both a failure to report and a failure to meet *adjusted levels of performance* for a second consecutive program year. In this case, the Departments will apply sanctions for both types of failure. 20 CFR § 677.195(b) stipulates that such a sanction would be equal to ten percent of the maximum allotment percentage that could be reserved by the Governor in the succeeding program year. The Departments will enforce this sanction each successive year in which the state continues to have the same reporting and performance failures.

(c) Corrective action against local areas for failure to meet adjusted levels of performance

NDOL must use local performance goals for Title I to determine when corrective action must be taken against a local area for failure to meet *adjusted levels of performance*.[58] 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*. NDOL's established thresholds are described in Section VI(c)(1) below.

(1) Determining local area performance success or failure[59]

States must use local performance goals for Title I programs for two required purposes, to determine (1) if a local area "performed successfully" for subsequent local area designation and (2) when the state must take corrective action when a local area fails to meet the *adjusted levels of performance*.

For the purpose of determining subsequent local area designation, the term "performed successfully" means that the local area (1) met or exceeded local *negotiated levels of performance* for primary indicators of performance and (2) has not failed any individual measure for the last two consecutive program years in accordance with a state-established definition for "met or exceeded performance", provided in the state plan. For subsequent designation determinations made at the conclusion of PY 2018, or at any point thereafter, states must base their findings of whether a local area performed successfully for the two most recently completed program years on five of the six of primary indicators of performance where at least two years of data are available. (Note that Nebraska performance on sixth indicator, *effectiveness in serving employers*, is not measured at the local level.)

A state must establish the threshold for failure to meet *adjusted levels of performance* for a local area before coming to agreement on the *negotiated levels of performance* for the local area. NDOL has established the following thresholds for determining a local area failure to meet *adjusted levels of performance*.

- *Individual local single indicator score*. For any single adult, dislocated worker, or youth program, failure to meet an adjusted level of performance occurs when any *individual local*

[57] TEGL 11-19 Change 1
[58] 20 CFR § 677.220; TEGL 11-19 Change 1
[59] TEGL 11-19 Change 1

single indicator score falls below 50 percent of the *adjusted level of performance* for that single indicator during the previous two consecutive program years.

- *Overall local single indicator score*. For any single performance indicator across all Title I, failure to meet adjusted levels of performance for the indicator occurs when the *overall local single indicator* score falls below 90 percent of the *adjusted level of performance* for that indicator during the previous two consecutive program years.

- *Overall local 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 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.

Following the conclusion of the applicable program year, a state must establish the *adjusted level of performance* for a local area, using the local level statistical adjustment model described above. At least two years of complete data on any indicator for any local core program are required in order to establish *adjusted levels of performance* for a local area.

(i) Technical assistance

States must provide technical assistance if a local area fails to meet *adjusted levels of performance* for the programmatic primary indicators of performance in any program year. Upon the state's request to the Secretary of Labor, USDOL may provide this technical assistance. The technical assistance 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.

(ii) Corrective action

If a local area fails to meet *adjusted levels of performance* for the same primary indicators of performance for the same Title I program for a third consecutive program year, the Governor must take corrective actions. If the Governor takes corrective action against a local area for failing to meet *adjusted levels of performance*, NDOL must advise its Federal Project Officer of this action. The 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 in 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 are appropriate.

(2) Appeal[60]

A local board and CEO 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 no later than 30 days after receiving the decision from the Governor. 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:

- 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;
- simultaneously submitted to:
    - Governor of the State of Nebraska, 1445 K Street, Lincoln, Nebraska, 68508; and
    - Commissioner of Labor, Nebraska Department of Labor, 550 South 16th 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

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

[60] 20 CFR § 677.225

4. Administrative Requirements

4.1. Administrative Rules, Costs, and Limitations

State Policy **Workforce Innovation and Opportunity Act (WIOA)**

Nebraska Department of Labor (NDOL) Division of Reemployment Services 550 South 16th Street Lincoln, NE 68508 402.471.9000 ndol.wioa_policy@nebraska.gov	Policy category Administrative Requirements
	Effective May 21, 2024
	Supersedes WIOA Title IB Program Funding, Change 4

WIOA Title IB Program Funding, Change 5

REFERENCE

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

BACKGROUND

The State must establish policy addressing the following matters pertaining to WIOA Title IB program funding:

- allocation, obligation, disbursement, and availability Title IB adult, dislocated worker, and youth program funds;[1]
- transfer of adult and dislocated worker funds, including procedures and required criteria and factors;[2]
- quarterly financial reporting requirements, including procedures and timelines;[3]
- recapture and reallocation of unobligated funds;[4] and
- return and reallocation of unexpended funds.[5]

[1] WIOA Secs. 127(b)(3) and 133(b)(3)
[2] 20 CFR § 683.130
[3] 20 CFR § 683.300
[4] WIOA Secs. 128(c) and 132(c); 20 CFR §§ 683.110 and 683.140
[5] 20 CFR § 683.140

CHANGES

Section III has been added to this policy to provide information concerning WIOA pay-for-performance contract strategy.

ACTION

State

This policy supersedes and cancels NDOL's policy titled WIOA Title IB Program Funding, Change 4. Questions and comments on this policy may be submitted in writing to the policy mailbox at ndol.wioa_policy@nebraska.gov.

State policies referenced in this policy are included in the State policy manual (accessible at https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies). *State policy manual* refers to the policy manual created and maintained by the NDOL Reemployment Services Quality Control Unit.

Local areas

Local boards, fiscal agents, and administrative entity staff must adhere to all requirements established in this policy.

POLICY

This policy has seven sections and one appendix.

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Section I. Allocation of Title IB funds

(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) and 20 CFR § 683.120.

(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

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 performed in two steps.

1. NDOL determines the percentage of the State's allotment of dislocated worker funds to be assigned to each allocation factor described in Table 1 (assigned percentage).

2. NDOL determines the amount of the assigned percentage based on allocation factors described in Table 1 as they apply to local areas (allocation percentage).

(c) Minimum allocations

Local area adult, dislocated worker, and youth programs *must not* receive an allocation percentage for a fiscal year that is less than 90 percent of the average allocation percentage for the programs for the preceding two fiscal years.[6]

- Amounts necessary to adjust local area allocations to comply with the *minimum allocation percentage requirement* are determined by ratably reducing allocations to other local areas.

- If amounts of WIOA funds appropriated in a fiscal year are not sufficient to meet the *minimum allocation percentage requirement*, amounts allocated to all local areas must be ratably reduced.

Section II. Obligation, disbursement, and availability of Title IB funds

(a) Obligation of funds[7]

Adult and dislocated worker funds are available for obligation beginning July 1 of the applicable program year. Youth funds may be made available for obligation beginning April 1 for the program year that begins the following July 1.

(b) Disbursement of funds

Availability of Title IB funds for disbursement to local areas is described below, subject to conditions established by the US Department of Labor.

- Adult and dislocated worker program year funds (base funds) are typically available for disbursement on July 1.

- Adult and dislocated worker fiscal year funds (advance funds) are typically available for disbursement on October 1.

- Youth funds are typically available for disbursement to local areas on July 1.

Conditions. Title IB program funds are available for disbursement by NDOL to local areas on the latter of the following events:[8]

- 30 days after the funds are made available by USDOL to NDOL; or

- 7 days after the date of approval of local plans or local plan modifications, as applicable.

[6] 20 CFR § 683.125
[7] 20 CFR § 683.100
[8] WIOA Sec. 182(e); 20 CFR § 683.120

(1) Processes

To request disbursement of Title IB funds from NDOL, fiscal agents must submit invoices *no more or less frequently than once per calendar month*. Disbursement requests must be submitted by fiscal agents to NDOL Accounts Payable at ndol.accountspayable@nebraska.gov, using NDOL's approved invoice template.[9]

- 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 [base funds] and fiscal year funds [advance funds]).

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.[10]

(c) Availability of funds during the period of performance

Subject to the requirements of Sections VI and VII, allocated Title IB funds are available for expenditure by local boards during the first program year and one succeeding program year.[11] This two-year period is known as the *period of performance*. During the period of performance, funds with the shortest period of availability must be expended first (i.e., first in first out), unless otherwise authorized in the applicable grant agreement issued to NDOL by a Federal Contracting Officer.

Section III. WIOA pay-for-performance contract strategy

(a) Overview

Title IB funds may be reserved and used to implement a WIOA pay-for-performance contract strategy in accordance with 20 CFR 683 Subpart E. A WIOA pay-for-performance contract

[9] This requirement does not apply to the Greater Nebraska Workforce Development Area because requests for disbursements to Greater Nebraska are processed and documented within NDOL financial management information systems.
[10] 2 CFR § 200.305
[11] 20 CFR § 683.110

strategy is a specific type of performance-based contract[12] strategy that has four distinct characteristics.[13]

1. It is a strategy to use pay-for-performance contracts as they are described in 20 CFR § 683.510.

2. It must include an identification of the workforce development problem and target populations for which a local area will pursue a pay-for-performance contract strategy; the outcomes the local area would hope to achieve through a pay-for-performance contract relative to baseline performance; and the acceptable cost to government associated with achieving these outcomes.

3. It must include a strategy for independently validating the performance outcomes achieved under each contract within the strategy prior to payment occurring.

4. It must include a description of how the local area will reallocate funds to other activities under the contract strategy in the event a service provider does not achieve performance benchmarks under a pay-for-performance contract.

(b) Pay-for-performance contract requirements

Prior to the implementation of a pay-for-performance contract strategy, a local area must conduct a feasibility study to determine whether the intervention is suitable for a pay-for-performance contract strategy.[14] The Pay-for-Performance contract strategy must be developed in accordance with guidance issued by the Secretary of Labor.[15] 20 CFR § 683.510 provides detailed information on pay-for-performance contract requirements.

(c) Funding pay-for-performance contract strategies

No more than 10 percent of the combined allocation of program year funds for adult and dislocated worker programs can be reserved and used for implementation of pay-for-performance contract strategies *for adult training services* described in WIOA Sec. 134(c)(3).[16]

No more than 10 percent of the allocation of program year funds for youth programs can be reserved and used for the implementation of pay-for-performance contract strategies *for youth training services and other activities* described in WIOA Sec. 129(c)(2).[17]

[12] In general, performance-based contracting is a procurement method that structures all aspects of the procurement around the purposes of the work to be performed instead of describing the manner by which the work is to be performed.
[13] 20 CFR § 683.500(a)
[14] 20 CFR § 683.500(b)
[15] 20 CFR § 683.500(c)
[16] 20 CFR § 683.520(a)
[17] Ibid.

Section IV. Transfer of Title IB adult and dislocated worker program funds

Local boards may transfer up to 100 percent of program year allocations between adult and dislocated worker programs,[18] in accordance with Federal and State laws, rules, regulations, guidance, and this policy. Local boards must obtain written approval from NDOL before any transfer will be made.[19] NDOL's written approval will be based on requirements and factors described below in subsections (a) and (b).

(a) Submission requirements

Transfer request forms[20] must be signed digitally and submitted by email *by chairs of local boards* to the:

- NDOL Reemployment Services Division Director;
- NDOL Reemployment Services Division Quality Control Unit Administrator; and
- NDOL policy mailbox.

(b) Documentation requirements

The following documentation must be submitted with signed transfer request forms:

1. minutes from local board public meetings during which proposed transfer requests were approved, which must demonstrate that documentation required below was provided to the local board;
2. fiscal reports detailing current local area funding available for adult and dislocated worker programs, as of the date of the request;
3. descriptions of the programs to and from which funds may be transferred *and* total amounts of funds requested for transfer;
4. descriptions of program years or fiscal years from which from funds may be transferred and in what amounts (example: $20,000 from PY23 and $50,000 from FY24);
5. NEworks reports detailing the following characteristics of **current** adult and dislocated worker program participants:
    a. age;
    b. sex;
    c. race/ethnicity;

[18] 20 CFR § 683.130
[19] Ibid.
[20] NDOL provides the current transfer request form to local boards and administrative entities by email.

d. low-income status; and

e. Veteran and non-Veteran status;

6. NEworks reports that list the number of enrollments in adult and dislocated worker programs for the eight most recently completed program performance quarters preceding the date of the request;

7. detailed descriptions of how transfers will meet employment and training needs of **current** and **future** participants in the programs *to* which funds may be transferred;

8. detailed descriptions of how local boards will continue to meet employment and training needs of **current** and **future** participants in the programs *from* which funds may be transferred;

9. detailed descriptions of how local boards will ensure priority of service is and will continue to be implemented within adult and dislocated worker programs in accordance with Federal and State laws, rules, regulations, guidance, and NDOL's current policy on priority of service;

10. current labor market information reports available through NEworks concerning employment and training needs of **employers** providing employment opportunities *in in-demand occupations in local areas;*

11. detailed descriptions of how requested transfers will support employment and training needs of **employers** providing employment opportunities *in in-demand occupations in local areas;*

12. detailed responses to the following questions:

    a. Will funds that may be approved for transfer under this request be used to directly or indirectly support incumbent worker training or customized training services provided to employers?

    b. If the answer to the previous question is yes:

        i. What is the specific amount of the transferred funds that will be used to *directly* fund incumbent worker training or customized training services provided to employers?

        ii. How will *indirect* support of incumbent worker training or customized training services based on transfer of funds effect the employment and training needs of **current** and **future** participants in programs *to* and *from* which funds may be transferred?

13. detailed descriptions of how transfers are consistent with the goals and strategies described in the **current** state plan;

14. annual *adjusted levels of performance* reports issued by NDOL for the previous two completed program years preceding the date of the request; and

15. when applicable, detailed explanations of reasons for local area failures meet *adjusted levels of performance* for adult and dislocated worker programs.

(1) Additional factors

NDOL may take into account any other factors it deems relevant to transfer requests, including monitoring reports issued by the NDOL Reemployment Services State Monitoring Unit.

(c) Transfer request determinations

Absent extenuating circumstances, determinations on transfer requests will be issued in writing to local board chairs by an NDOL Reemployment Services Division representative *within 30 calendar days of NDOL's receipt of complete, compliant, and signed transfer request forms*.

- Submitted transfer requests that are incomplete or conflict with Federal, State, or local laws, rules, regulations, guidance, or this policy will not be approved; in which case, an NDOL Reemployment Services Division representative will advise chairs of the local boards accordingly.

- If outdated or modified versions of the current transfer request form are submitted, resubmission will be required using the current form.

Section V. Title IB quarterly financial reporting requirements, procedures, and timelines

(a) General requirements

Local area fiscal agents must submit quarterly financial reports and acceptable supporting documentation according to the requirements, procedures, and timelines described below.

(b) Content requirements

Fiscal agents must submit quarterly financial reports using NDOL's quarterly reporting forms,[21] along with acceptable supporting documentation.[22] Quarterly financial reports must include financial data and acceptable supporting documentation detailing local area obligations, program income, indirect costs, expenditures (including training expenditures), and disbursements, as described in Table 2.[23]

Table 2. Financial data and supporting documentation required for Title IB quarterly reporting

Reporting category	Required data	Acceptable supporting documentation
Obligations	a listing of all newly incurred and ongoing obligations	completed obligations report
Program income	total amount of program income earned during the reporting quarter	written documentation clearly detailing the sources and amounts of program income

[21] Quarterly reporting forms are available by email request to ndol.accountspayable@nebraska.gov.
[22] Processes for submitting acceptable supporting documentation for quarterly reporting requirements are determined by NDOL Finance Division. Email ndol.accountspayable@nebraska.gov for technical assistance.
[23] 20 CFR § 683.300

Reporting category	Required data	Acceptable supporting documentation
Indirect costs	total amount of indirect costs incurred during the reporting quarter based on local board 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

(c) Program income

Program income (defined at 2 CFR § 1200.80) must be reported on an accrual basis and cumulatively by fiscal year of appropriation.[24] In addition, the following administrative requirements apply:[25]

1. The addition method described at 2 CFR § 200.307 must be used for all program income earned.

2. Any excess of revenue over costs incurred for services provided by Title IB programs must be included in program income.

(d) Submission of quarterly financial reports

Fiscal agents *must* simultaneously submit quarterly financial reports by email to:

- NDOL Accounts Payable at ndol.accountspayable@nebraska.gov; and

- Reemployment Services State Monitoring Unit at ndol.state_monitor@nebraska.gov.

(e) Timelines

Quarterly reports must be submitted *no later than* 30 calendar days after the end of each performance 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

(f) Records retention requirements

Each local board must ensure that all quarterly reports submitted to NDOL are retained locally, as required under the State's policy on records management. Record retention requirements under the NDOL records management policy apply equally to the supporting documentation on which local area quarterly financial reports are based.

[24] 20 CFR § 683.300
[25] Ibid.

Section VI. Recapture and reallocation of unexpended/unobligated Title IB funds

(a) Unexpended/unobligated funds[26]

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 the first year program year of a period of performance. If more than 20 percent of the funds remain unexpended/unobligated at the conclusion of the first program year of the period of performance, the State may *recapture* the amount that exceeds 20 percent. (Recaptured amounts are 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.

(b) Recapture of unexpended/unobligated funds[27]

In the event that local areas do not expend or obligate at least 80 percent of funds allocated to local areas during the first program year of a period of performance for their adult, dislocated worker, and youth programs, NDOL may recapture amounts that do not meet the minimum 20 percent expenditure/obligation threshold and reallocate that amount to other local areas for the same programs from which the funds were recaptured, following consultation with the state board.

(c) Reallocation of unexpended/unobligated funds[28]

To be eligible for reallocation of unobligated funds, local areas must have expended or obligated at least 80 percent of prior program year allocations for applicable programs, less any amount reserved for the costs of administration (up to 10 percent). Local area eligibility to receive reallocated funds must be separately determined for each applicable program. Local areas that receive reallocated funds must fully expend the funds by June 30 of the program year during which the reallocated funds are received.

(d) Pay-for-performance exception

Funds obligated by local boards to carry out WIOA pay-for-performance contract strategy, in accordance 20 CFR 683 Subpart E, remain available until expended.[29]

[26] 20 CFR § 683.140
[27] 20 CFR § 683.140
[28] Ibid.
[29] WIOA Sec. 189(g)(2)(D); 20 CFR § 683.110

Section VII. Return and reallocation of unexpended Title IB funds after periods of performance

Funds not expended by local boards during periods of performance must be returned to NDOL.[30] Returned funds may be used by NDOL during the following program year for:

- expenditure on statewide projects; or
- reallocation to eligible local boards.

Eligible local boards are those that have fully expended their allocated funds for the same program within the same period of performance. Eligible local boards that receive reallocated unexpended funds must fully expend those funds by June 30 of the program year the funds are received.

DISCLAIMER

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

[30] 20 CFR § 683.110

APPENDIX I. Definitions

Definitions in this appendix are provided as supplemental information that supports the provisions of the policy. 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. Declining industries data

Declining industries data refers to data that identifies reductions in the number of jobs within given industries.[31]

2. Dislocated worker program enrollment data

Dislocated worker program enrollment data means data collected in NEworks regarding local area enrollments in local dislocated worker programs.

3. Farmer-rancher economic hardship data

Farmer-rancher economic hardship data refers to data that identifies the number of:[32]

- 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.

4. Insured unemployment data

The term insured unemployment data refers to data that identifies the relative average number of unemployed individuals who reside in the local area compared to the total average number of unemployed individuals in Nebraska.[33]

5. Long-term unemployed data

Long-term unemployed[34] 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 NDOL unemployment insurance records.

6. Plant closings and mass layoff data

Plant closings and mass layoff data means data that is manually collected by NDOL through Rapid Response activities.

[31] NDOL Finance Division obtains this data from NDOL LMI Division.
[32] Ibid.
[33] NDOL Finance Division obtains this data from NDOL UI Division.
[34] TEGL 19-16

7. 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 Nebraska.

State Policy **Workforce Innovation and Opportunity Act (WIOA)**

Nebraska Department of Labor (NDOL)
Division of Reemployment Services
550 South 16th Street
Lincoln, NE 68508
402.471.9000
ndol.wioa_policy@nebraska.gov

Policy category
Administrative Requirements

Effective
May 3, 2023

Supersedes
Procurement
(effective February 23, 2018)

Procurement, Change 1

REFERENCE

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

BACKGROUND

WIOA and the Uniform Guidance[1] establish administrative requirements, procurement standards, and methods of procurement for WIOA Title I programs (youth, adult, and dislocated worker).

CHANGES

Under this Change 1, footnotes have been revised for clarity and links have been updated where necessary.

[1] Uniform Guidance refers collectively to 2 CFR Parts 200 and 2900.

ACTION

This policy supersedes and cancels the State's policy titled Procurement (effective February 23, 2018). Questions and comments on this policy may be submitted in writing to the policy mailbox at 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 worker). The policies and procedures must adhere to state and local procurement laws and the following laws, regulations, and guidance:[2]

- Uniform Guidance;
- 2 CFR Part 180, guidelines on debarment and suspension;[3] and
- other applicable Federal laws, regulations, and guidance, including requirements for procurement established under WIOA and its implementing rules, regulations, and guidelines.

POLICY

This policy establishes requirements applying to administrative entities[4] regarding procurement of property and services required to carry out WIOA Title I programs, except for the procurement of one-stop operators.[5]

This policy has three sections and one appendix.

Section I. Administrative requirements....3
Section II. Procurement standards....3
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[2] 2 CFR § 200.318; 20 CFR § 681.400
[3] 2 CFR § 200.213
[4] The CEO, local board, administrative representatives, and fiscal agent(s) for a local area are collectively referred to as administrative entity throughout this policy.
[5] Procurement of one-stop operators is addressed in the State's policy on one-stop operator competitive selection and is available in the State policy manual, which is accessible at https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies..

Section I. Administrative requirements

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.

Section II. Procurement requirements

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;[6]
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;[7]
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;[8]
4. maintain, retain, and provide access records detailing the history of procurement;[9]
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;[10] and

[6] 2 CFR § 200.318
[7] 2 CFR § 200.318(c). The State's policies on workforce development boards and chief elected officials and internal controls and conflicts of interest provide additional information pertaining to conflict of interest requirements. The State policy manual is accessible at https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies.
[8] Ibid.
[9] 2 CFR §§ 200.318(c)(1), 200.333, 200.336, 200.337. The State's policy on records management provides additional information on requirements pertaining to records maintenance, retention, and access and is included in the State policy manual, which is accessible at https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies.
[10] 2 CFR § 200.330

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;[11]

6. conduct all procurement transactions in a manner providing full and open competition;[12]

7. take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and firms in labor surplus areas[13] are used when possible;[14]

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;[15]

9. award subawards and contracts only to third parties capable of successful performance under the provisions of their respective agreement or contract;[16]

10. maintain oversight to ensure that subrecipients perform according to the provisions of their respective grant agreement, pay-for-performance contract, or cooperative agreement;[17] and

11. be responsible for the settlement of all contractual and administrative issues arising out of agreements and contracts.[18]

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[19]

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.[20] To the extent possible, local boards must 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.

[11] Uniform Guidance, including 2 CFR §§ 200.331 and 200.326 and Appendix II to 2 CFR Part 200 provide information on required provisions. In addition, refer to 20 CFR Parts 680, 681, and 683 for regulations on pay-for-performance contracts contract strategies.
[12] 2 CFR § 200.319
[13] Information on labor surplus areas is accessible at https://www.dol.gov/agencies/eta/lsa.
[14] 2 CFR § 200.321
[15] 2 CFR § 200.213
[16] 2 CFR § 200.318
[17] Ibid.
[18] Ibid.
[19] 2 CFR § 200.320; 20 CFR § 681.400(b)(4); TEGL 21-16
[20] Refer to 2 CFR § 200.320 and 48 CFR Part 2 Subpart 2.1 for information on micro-purchase thresholds.

Method	Description
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.[21] If small purchase procedure is used, price or rate quotations must 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 only when: ▪ the item is available only from a single source; ▪ public exigency or emergency will not permit a delay resulting from competitive solicitation; ▪ 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; ▪ after solicitation of a number of sources, competition is determined inadequate; or ▪ 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.[22]

(a) Leveraged resources

Local 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:[23]

- 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.

[21] Refer to 2 CFR § 200.320 and 48 CFR Part 2 Subpart 2.1 for information on simplified acquisition thresholds.
[22] 20 CFR §§ 679.370(l)(1), 680.320(a)(2), and 681.400(b)(4)
[23] 20 CFR § 681.470

DISCLAIMER

This policy is based on NDOL's reading of the applicable laws, rules, regulations, and guidance released by the Federal 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

Definitions in this appendix are provided as supplemental information that supports the provisions of the policy. 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.[24]

1. contract[25]

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).[26]

3. cooperative agreement

Cooperative agreement means a legal instrument of financial assistance between a pass-through entity and a non-Federal entity that is:[27]

- 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:[28]

- 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);

[24] 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.
[25] 2 CFR § 200.22
[26] 2 CFR § 200.23
[27] 2 CFR § 200.24
[28] 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).[29]

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.[30]

7. subaward[31]

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[32]

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.

[29] 2 CFR § 200.74
[30] 2 CFR §§ 683.510 and 683.520
[31] 2 CFR § 200.92
[32] 2 CFR § 200.93

State Policy **Workforce Innovation and Opportunity Act (WIOA)**

Nebraska Department of Labor (NDOL) Division of Reemployment Services 550 South 16th Street Lincoln, NE 68508 402.471.9000 ndol.wioa_policy@nebraska.gov	Policy category Administrative Requirements
	Effective June 14, 2024
	Supersedes Records Management, Change 6

Records Management, Change 7

REFERENCE

Federal and state laws, rules, and regulations and other guidance and documentation relied upon for 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:[1]

- prepare accurate Federally required program performance reports;
- verify reported performance data are valid, accurate, reliable, and comparable across programs; and
- trace funds to a level of expenditure adequate to ensure that funds have been spent lawfully.

In addition, recipients and subrecipients of Federal financial assistance are required to provide access to such records.[2]

[1] WIOA Secs. 116(d)(5) and 185. Refer to 2 CFR § 200.1 for definitions of recipient, subrecipient, and Federal financial assistance.
[2] 2 CFR § 200.337(a)

CHANGES

Under this policy, the following material changes have been made.

- Section IV(c), record retention exceptions, has been simplified.
- Section V, records access, has been simplified.
- Section VI, quality control and data validation, has been revised to clarify:
    - requirements and processes concerning Title I and Title III quality control and data validation activities; and
    - prohibitions pertaining to conflicts of interest in the performance of quality control activities.
- APPENDIX I has been simplified by removing definitions that are now cited in footnotes.

ACTION

State

This policy supersedes and cancels Records Management, Change 6. Questions and comments on this policy may be submitted in writing to the policy mailbox at ndol.wioa_policy@nebraska.gov.

NDOL policies referenced within this policy are included in the State policy manual, which is accessible at https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies. State policy manual refers to the policy manual created and maintained by the NDOL Reemployment Services State Policy Unit.

Local boards and administrative entities

Local boards and administrative entities must:[3]

- ensure creation, management, and maintenance of Title I program records; and
- provide access to those records according to the requirements of this policy; WIOA and its implementing rules, regulations, and guidance; Uniform Guidance; and terms and conditions of their respective Title I subawards issued by NDOL.

NDOL administered programs

Administrators of NDOL administered programs listed in Section I(c) must:

- ensure creation, management, and maintenance of their respective program records; and

[3] WIOA Secs. 116(d)(5) and 185. Uniform Guidance refers to 2 CFR Parts 200 and 2900. Refer to 2 CFR § 200.1 for the definition of subaward.

- provide access to those records according to the requirements of this policy; their programs' authorizing legislation and applicable implementing rules, regulations, and subregulatory guidance; Uniform Guidance; and terms and conditions of corresponding awards issued by USDOL to NDOL.

POLICY

This policy establishes requirements for records management by Title I programs and NDOL administered programs and has six sections and one appendix.

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Section I. General requirements

(a) NDOL

NDOL is required to submit reports to the US Department of Labor (USDOL) documenting the operations, program activities, and program expenditures of Title I, Title III, JVSG, TAA, and applicable USDOL funded discretionary grant programs.[4] In addition, the required reports must include information necessary to demonstrate compliance with the nondiscrimination provisions of WIOA Sec. 188 and 29 CFR Part 38 and include information about:[5]

1. demographic characteristics (including race, ethnicity, sex, and age) and other related characteristics pertaining to participants;

[4] WIOA Sec. 185(c)
[5] WIOA Sec. 185(d)

2. programs and activities in which participants are enrolled and the length of time participants are engaged in programs and activities; and

3. outcomes for participants taking part in programs and activities, including information on occupations and placement of participants in nontraditional employment.

(b) Local boards and administrative entities

For reporting, monitoring, and quality control purposes, local boards and administrative entities must:[6]

- ensure utilization of NEworks by Title I programs to safeguard NDOL's ability to perform uniform compilation, cross tabulation, and analysis of program data, including data necessary to ensure compliance with the requirements of the nondiscrimination provisions of WIOA Sec. 188 and 29 CFR Part 38;

- submit and make available in NEworks and NEworks Document Manager (NDM) all documentation supporting program activities; and

- ensure timely submission of mandatory Title I quarterly financial reports to NDOL, in accordance with NDOL's policy on program funding.

(c) NDOL administered programs

NDOL administers and implements the following USDOL funded programs:

1. Jobs for Veterans State Grant program (JVSG);

2. Senior Community Service Employment Program (SCSEP);

3. Title III Wagner Employment Service (Title III);

4. Trade Adjustment Assistance program (TAA); and

5. from time to time:

    a. Federally funded discretionary grant programs, including National Dislocated Work Grant programs authorized under WIOA Sec. 170; and

    b. other Federally funded discretionary grant programs.

For reporting, monitoring, and quality control purposes, administrators of NDOL administered programs listed above must:[7]

- ensure utilization of NEworks, except as otherwise required by a Federal partner, to safeguard NDOL's ability to perform uniform compilation, cross tabulation, and analysis of programmatic and participant data, including data necessary to ensure compliance with

[6] WIOA Sec. 185(c); TEGLs 10-16 Change 2 and Change 3
[7] WIOA Sec. 185(c). SCSEP utilizes a separate management information system pursuant to Federal partner requirements.

the requirements of the nondiscrimination provisions of WIOA Sec. 188 and 29 CFR Part 38, and NDOL's financial reporting systems; and

- submit and make available through NEworks and NDM all case management records and source documentation.

Section II. Required records management systems

NEworks is NDOL's management information system of record for Federal reporting pertaining to Title I programs and NDOL administered programs. In addition, NDM is NDOL's designated source documentation management system. Title I programs and NDOL administered programs must use NEworks and NDM to record and document all program activities and services, except as otherwise required by Federal partners.

Section III. Records corrections

Program staff may correct errors in NEworks during the 30-day period beginning on the date of entry of incorrect information. After the 30-day period expires, record correction requests must be submitted, subject to the following restrictions and requirements.

1. Correction requests must not be used to enhance program performance or distort actual events.

2. NDOL's Reemployment Services Division Quality Control Unit (QCU) Administrator is responsible for review and approval of submitted correction requests.

3. All submitted record correction requests must concisely reference existing acceptable source documentation that substantiates requested corrections, which must be accessible to the QCU Administrator during review of correction requests.

4. Correction requests will not be approved if source documentation for affected records is not:

    a. accessible to the QCU Administrator; or

    b. acceptable in accordance with TEGL 23-19 Change 2, Attachment II.

Section IV. Records retention

(a) Local boards and administrative entities

Subject to the exceptions described in Section IV(c) below, local boards and administrative entities must ensure that all Title I records listed below 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:[8]

1. financial records;
2. source documentation;
3. statistical records; and
4. all other records pertaining to the programs, including but not limited to local board meeting minutes.

Local boards and administrative entities may request the date of NDOL's submission of the final expenditure report for an applicable program year by sending a request to the policy mailbox at ndol.wioa_policy@nebraska.gov.

(1) Additional retention requirements

Greater Lincoln and Greater Omaha Workforce Development Areas may be subject to additional record retention requirements based on applicable state, regional, or local laws. Greater Lincoln and Greater Omaha administrative entity staff must determine if their respective local areas are subject to additional record retention requirements.

The Greater Nebraska Workforce Development Area is subject to additional records retention requirements under the Nebraska Records Management Act.[9] Greater Nebraska administrative entity staff must refer to the records retention and disposition schedules established by the Nebraska Secretary of State to determine additional record retention requirements.[10]

Regardless of state, regional, and local laws, rules, and regulations that may impact local workforce development areas, Federally established record retention requirements cannot be lessened by record retention requirements established under state, regional, and local laws, rules, and regulations.

(b) NDOL administered programs

Subject to exceptions described in Section IV(c) below, 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 record retention requirements established under the Nebraska Records Management Act, which means administrators of those programs must refer to the records retention and disposition schedules established by the Nebraska Secretary of State to determine any additional retention requirements, beyond the Federal three-year retention requirement. Federally established record retention requirements cannot be lessened by record retention requirements established under state, regional, and local laws, rules, and regulations.

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[8] 2 CFR § 200.334

[9] Nebraska Records Management Act is accessible at https://sos.nebraska.gov/records-management/records-management-act.

[10] Retention schedules for NDOL are accessible at https://sos.nebraska.gov/records-management/department-labor-schedule-45.

(c) Record retention exceptions

USDOL is not permitted to impose record retention and access requirements other than those stated in the 2 CFR Part 200 Subpart D, except under the circumstances described in 2 CFR § 200.334. Likewise, NDOL and local boards and administrative entities are not permitted to impose record-retention requirements upon their respective subrecipients other than those stated in 2 CFR § 200.334, subject to the requirements of the Nebraska Records Management Act and other applicable state, regional, and local laws, rules, and regulations

Section V. Records access

2 CFR § 200.337 describes rights of access to records pertaining to Federal awards.[11] 2 CFR § 200.315(e), 5 USC 552, and Executive Order 13556 provide information concerning to public access to records.

Section VI. Quality control and data validation

(a) State level system-automated quality control processes

Data quality is verified quarterly and annually at the state level through large-scale, system-automated processes within NEworks pertaining to performance reporting for Title I and Title III programs.

1. NDOL's NEworks vendor provides a PIRL[12] file to NDOL on a daily basis through secure file transfer.

2. The PIRL is uploaded to WIPS[13] during quarterly and annual reporting cycles. The PIRL passes through edit check protocols that scan all individual and programmatic data elements. Edit check protocols search for date range errors and inconsistencies, anomalies, and waterfall errors (i.e., if element a = 1 then element b cannot = 2).

3. Once quarterly and annual PIRL files successfully clear edit check protocols, PIRL reports are certified by the QCU.

4. Similar edit check processes for wage data occur simultaneously in SWIS[14] during quarterly and annual reporting cycles established by USDOL.

[11] Refer to 2 CFR § 200.1 for definition of Federal award.
[12] PIRL refers to a Participant Individual Record Layout, a format for reporting program performance data to USDOL.
[13] WIPS refers to the Workforce Integrated Performance System, the system by which states report on performance of Federally funded workforce programs.
[14] SWIS refers to the State Wage Interchange System, the system used to facilitate the interstate exchange of Wage Data between participating state agencies.

(b) Title I and Title III quality control requirements and procedures

NDOL has established quality control requirements and procedures for Title I and Title III programs.

1. Quality control activities must be conducted annually by Title I and Title III programs for quarters 1 through 3 of each program year following conclusion of quarter 3, based on the schedule provided in Table 1.

2. QCU generates lists of randomly selected participant cases from Title I and Title III participant populations for quarters 1 through 3 of each program year using the NEworks random sampling function described in Section VI(e) below.

3. QCU provides random sample lists to local Title I administrative entities and the Title III administrator within 15 calendar days of conclusion quarter 3 of each program year.

4. During performance of annual quality control activities, all participant cases listed in random sample lists must be evaluated by Title I and Title III programs to compare recorded NEworks activities and case notes to documentation available in NDM to determine if acceptable source documentation is present. TEGL 23-19 Change 2, Attachment II identifies multiple types of acceptable source documentation. If multiple types of source documentation are present in NDM for NEworks activities and case notes and those source documents conflict, the most objective acceptable source document must be used to determine if NEworks activities and case notes are accurate.

5. Following completion of annual quality control activities, the following actions must be taken by Title I and Title III programs.

    a. Record correction requests must be submitted, as described in Section III, whenever quality control activities reveal that NEworks activities and case notes:

        i. do not include or align with source documentation stored in NDM; and

        ii. source documentation stored in NDM does not comply with types of acceptable source documentation described in TEGL 23-19 Change 2, Attachment II.

    b. Quality control reports must be generated that:

        i. indicate numbers of participant cases evaluated based on the random sample participant lists provided by QCU;

        ii. identify anomalies that may cause inaccurate reporting;

        iii. identify trends in common data accuracy issues;

        iv. identify participant cases with data accuracy issues; and

        v. identify corrective actions that were or will be taken based on the results of annual quality control activities.

c. Quality control reports must be submitted to the QCU State Monitoring Unit (SMU) Supervisor at ndol.state_monitor@nebraska.gov based on the schedule provided in Table 1.

Table 1. Annual schedule for Title I and Title III quality control activities and reporting

Quality control period	Start date of quality control activities	End date of quality control activities	Quality control report due date	Submission of quality control reports
July 1 – March 30	April 15	June 30	July 1	to SMU Supervisor at ndol.state_monitor@nebraska.gov

(c) Conflicts of interest and quality control activities

NDOL prohibits local area organizational practices that allow or require Title I service provider staff to conduct Title I quality control activities. NDOL also prohibits practices that allow or require Title III staff to conduct quality control activities for their respective participant cases. Both prohibitions are necessary, as these practices constitute real or apparent conflicts of interest. To avoid real or apparent conflicts of interest, Title I service provider staff and Title III program staff cannot:

- conduct quality control activities for programs of which they are part; or
- evaluate participant cases for participants they may have served.

Refer to NDOL's policy on internal controls and conflicts of interest for additional information on other circumstances that constitute real or apparent conflicts of interest.

(d) Title I and Title III data validation requirements and activities

NDOL has established data validation requirements and procedures for Title I and Title III programs.

1. Data validation activities must be conducted annually by the SMU Supervisor following conclusion of each program year based on the schedule provided in Table 2.

2. QCU generates lists of randomly selected participant cases from Title I and Title III participant populations for the completed program year program year using the NEworks random sampling function described in Section VI(e) below.

3. QCU provides random sample lists to the SMU Supervisor within 15 calendar days of the conclusion of each program year.

4. During performance of annual data validation activities, all participant cases listed in Title I and Title III random sample lists must be evaluated to compare recorded NEworks activities and case notes to documentation available in NDM to determine if acceptable source documentation is present. TEGL 23-19 Change 2, Attachment II identifies multiple types of acceptable source documentation. If multiple types of source documentation are present in NDM for NEworks activities and case notes and those source documents conflict, the most objective acceptable source document must be used to determine if NEworks activities and case notes are accurate.

5. Following completion of annual data validation activities, the following actions must be taken by the SMU Supervisor.

    a. Data validation reports must be generated that:

        i. indicate numbers of participant cases evaluated based on the random sample participant lists provided by the QCU;

        ii. identify anomalies that may cause inaccurate reporting;

        iii. identify trends in common data accuracy issues; and

        iv. identify participant cases with data accuracy issues;

    b. Resulting data validation reports must be submitted to the QCU Administrator at ndol.wioa_policy@nebraska.gov based on the schedule provided in Table 2.

6. The QCU Administrator will evaluate data validation reports and implement necessary corrective actions, in collaboration with the SMU Supervisor and QCU State Policy Unit (SPU).

Table 2. Annual schedule for Title I and Title III data validation activities and reporting

Validation period	Start date of validation	End date of validation	Validation report due date	Submission of validation report
July 1 – June 30	July 15	September 30	October 1	to QCU Administrator at ndol.wioa_policy@nebraska.gov

(e) Random record sampling

QCU generates lists of randomly-selected participant cases for Title I and Title III program populations using the NEworks random sampling function. The random sampling function selects participant cases based on program population size, confidence level percentages, confidence intervals, and required case sample sizes described in Table 3.

Table 3. Required participant case sample size based on program population

Program population size	Confidence level %	Confidence interval	Required case 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

Program population size	Confidence level %	Confidence interval	Required case sample size
15000 - 19999	95	15	43
20000 – 24999	95	15	43
25000 – 29999	95	15	43
30000 +	95	15	43

(f) Technical assistance

QCU provides monthly statewide technical assistance on topics relating the use of NEworks and NDM. Requests for additional technical assistance on NEworks and NDM use should be submitted simultaneously to NEworks Help Desk at ndol.neworkshelp@nebraska.gov and SPU at ndol.wioa_policy@nebraska.gov.

The SMU Supervisor will provide technical assistance on required quality control activities upon request, in collaboration with the QCU Administrator and SPU Program Coordinator.

DISCLAIMER

This policy is based on NDOL's reading of applicable laws, rules, regulations, and guidance released by the Federal 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

Definitions in this appendix are provided as supplemental information supporting provisions of the policy. 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. confidence interval

Confidence interval refers to a range of values that you can be confident contains the true mean of the program population size.[15]

2. confidence level

Confidence level refers to the percentage of probability or certainty that the confidence interval would contain the true program population parameter when you draw a random sample many times.[16]

3. participant case

A participant case is the set of records documenting services provided to a program participant enrolled in a particular program who was active or exited a program during the applicable data validation timeframe.

4. program population size

A program population is the total number of participants who were active or exited a program during an established data validation timeframe.

[15] Joseph F. Healey, Statistics: A Tool for Social Research [California: Thomson Wadsworth, 2005], 544
[16] Ibid.

State Policy **Workforce Innovation and Opportunity Act (WIOA)**

Nebraska Department of Labor (NDOL)
Division of Reemployment Services
550 South 16th Street
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Policy category
Administrative Requirements

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Internal Controls and Conflicts of Interest, Change 1

REFERENCE

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

BACKGROUND

Non-Federal entities must establish internal controls that provide reasonable assurances that they are managing Federal awards in compliance with Federal law, rules, regulations, and terms and conditions of Federal awards.[1]

CHANGES

Under this Change 1, footnotes have been revised for clarity and links have been updated where necessary.

[1] 2 CFR § 200.303

ACTION

This policy supersedes and cancels the State's policy titled Internal Controls and Conflicts of Interest (effective April 14, 2023). Questions and comments on this policy may be submitted in writing to the policy mailbox at ndol.wioa_policy@nebraska.gov.

Local boards and chief elected officials (CEOs) must:

- implement written policies that establish safeguards described in Section II(a) and address requirements concerning internal controls and conflicts of interest as required under Federal and state laws, rules, regulations, and guidance; requirements of this policy; and all requirements concerning internal controls and conflicts of interest in State policies, including:[2]
    - audit and audit resolution;
    - memorandums of understanding and funding agreements;
    - nondiscrimination and equal opportunity;
    - on-the-job training;
    - one-stop delivery system assessment and one-stop center certification;
    - one-stop operator competitive selection;
    - procurement;
    - records management;
    - workforce development boards and chief elected officials; and
    - youth program;
- ensure local area compliance with local written policies pertaining to the safeguards described in Section II(a) and requirements concerning internal controls and conflicts of interest as required under Federal and state laws, rules, regulations, and guidance; requirements of this policy; and all requirements concerning internal controls and conflicts of interest in State policies.

[2] The State policy manual is accessible at https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies.

POLICY

This policy has two sections and one appendix.

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Section I. Purposes of internal controls and prevention of conflicts of interest

The purpose of internal controls is to safeguard an organization and further its objectives. Internal controls function to prevent conflicts of interest and:

- minimize risks;
- protect assets;
- protect personally identifiable information (PII);
- prevent fraud;
- ensure accuracy of records;
- promote operational efficiency; and
- ensure compliance with Federal and state laws, rules, regulations, and guidance, as well as State policies.

Section II. Requirements for internal controls and prevention of conflicts of interest

(a) Internal controls

Recipients and subrecipients of WIOA Title I and Wagner-Peyser Act funds must establish internal control structures and written policies that provide safeguards to protect personally identifiable information, records, contracts, grant funds, equipment, sensitive information, tangible items, and other information that is readily or easily exchanged in the open market *or* that the US Department of Labor, recipients (i.e., NDOL), and subrecipients (i.e., local boards and CEOs) consider to be sensitive, consistent with applicable Federal, state, and local privacy and confidentiality laws.[3] Internal controls established by non-Federal entities should comply with Standards for Internal

[3] 20 CFR § 683.220(a)

Control in the Federal Government[4] and Internal Control – Integrated Framework.[5]. Internal controls must also include reasonable assurances that recipients and subrecipients are:[6]

- managing Federal awards in compliance with Federal statutes, regulations, and the terms and conditions of Federal awards;
- complying with Federal statutes, regulations, and the terms and conditions of the Federal awards;
- evaluating and monitoring recipient and subrecipient compliance with WIOA and its implementing rules, regulations, and guidance, and the terms and conditions of Federal awards; and
- taking prompt action when instances of noncompliance are identified.

Further, 2 CFR § 200.303 requires that non-Federal entities, including NDOL and local boards and CEOs receiving Title I subawards, must:

1. establish and maintain effective internal controls over Federal awards that provide reasonable assurances that they are managing the awards in compliance with Federal laws, rules, regulations, and guidance and terms and conditions of awards;
2. comply with the United States Constitution, Federal laws, rules, regulations, and guidance and terms and conditions of Federal awards;
3. evaluate and monitor compliance with Federal laws, rules, regulations, and the terms and conditions of Federal awards;
4. take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings; and
5. take reasonable measures to safeguard protected personally identifiable information (PII) and other information Federal awarding agencies or pass-through entities designate as sensitive *or* the non-Federal entities consider sensitive, consistent with applicable Federal, State, local, and tribal laws regarding privacy and responsibility over confidentiality.

[4] Standards for Internal Control in the Federal Government issued by the Comptroller General of the United States are issued by the Comptroller General of the United States and are accessible at https://www.govinfo.gov/content/pkg/GAOREPORTS-AIMD-00-21-3-1/pdf/GAOREPORTS-AIMD-00-21-3-1.pdf.

[5] Internal Control – Integrated Framework is issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) and is accessible at https://www.coso.org/sitepages/internal-control.aspx?web=1.

[6] 20 CFR § 683.220(a)

(b) Prevention of conflicts of interest

As mentioned above, requirements regarding conflicts of interest appear in the following State policies:

- audit and audit resolution;
- memorandums of understanding and funding agreements
- nondiscrimination and equal opportunity;
- on-the-job training;
- one-stop delivery system assessment and one-stop center certification;
- one-stop operator competitive selection;
- procurement;
- records management;
- workforce development boards and chief elected officials; and
- youth program.

In addition to conflicts-of-interest requirements established under the policies listed above, this policy establishes additional requirements relating to internal controls and conflicts of interest, which are described below in subsections (i) and (ii).

(i) Conflicts of interest and monitoring and oversight

Local boards, in partnership with their respective CEOs, must:[7]

- conduct oversight and monitoring of youth workforce investment activities authorized under WIOA Sec. 129(c);
- conduct oversight and monitoring of adult and dislocated worker employment and training activities authorized under WIOA Sec. 134(c) and (d);
- conduct oversight and monitoring of their entire local one-stop delivery systems; and
- ensure appropriate use, management, and investment of funds to maximize performance outcomes as described in WIOA Sec. 116.

To prevent real or apparent conflicts of interest in the conduct local oversight and monitoring of Title I programs and the local one-stop delivery system, local boards and CEOs must require that their monitors/monitoring teams are functioning independently. Functioning independently means

[7] WIOA Sec. 107(d)(8); 2 CFR §§ 200.303(c) – (d), 200.318(b), 200.328, 200.331(d); 20 CFR §§ 378.380(a) and 679.370(i)(1) – (3)

local area monitors report directly to and are solely accountable to local boards concerning conduct of local area oversight and monitoring activities.

The State *prohibits* local area organizational structures that require local monitors to function under and/or report to local area administrative entities or local area service providers. This prohibition is necessary as such organizational structures constitute inherent conflicts of interest for monitors because monitors cannot effectively monitor an entity of which they are part. This prohibition does not, however, restrict local area personnel practices and procedures concerning compensation due to local area monitors, including payroll and leave benefits, pursuant to their roles as monitors.

(ii) Conflicts of interest and the provision of workforce system services

The State prohibits staff from enrolling, case managing, or otherwise directly working with family members who are seeking workforce system services. When family members of staff are seeking services, those services must be provided by other staff in order to prevent inherent, real, and apparent conflicts of interest. This State-established prohibition applies to staff providing services under:

- Title I adult, dislocated worker, and youth programs; and
- 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).

(c) Compliance

NDOL's Reemployment Services State Monitoring Unit is responsible for ensuring local area compliance with applicable Federal laws, rules, and regulations; all requirements of this policy; and all requirements concerning internal controls and conflicts of interest established under the State policies listed in Section II(b).

DISCLAIMER

This policy is based on NDOL's reading of the applicable laws, rules, regulations, and guidance released by the Federal 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

Definitions in this appendix are provided as supplemental information that supports the provisions of the policy. 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:[8]

- 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 an 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. cooperative agreement

The term cooperative agreement[9] means a legal instrument of financial assistance between a Federal awarding agency and a recipient or a pass-through entity and a subrecipient that is, consistent with 31 USC §§ 6302 – 6305:

- 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[10] 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:

(1) direct United States Government cash assistance to an individual;

(2) a subsidy;

(3) a loan;

[8] WOA Sec. 3(9)
[9] 2 CFR § 200.1
[10] 31 USC § 6101(3)

(4) a loan guarantee; or

(5) insurance.

3. family member

The term family member refers to:[11]

(a) grandparents, parents, and step-parents;

(b) siblings and step-siblings;

(c) spouses;

(d) children, step-children, adopted children, and foster children;

(e) siblings of spouses;

(f) spouses of siblings; and

(g) nieces and nephews.

4. Federal award

Federal award means either, depending on context:[12]

(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).

5. Federal awarding agency

The term Federal awarding agency refers to the Federal agency that provides a Federal award directly to a non-Federal entity.[13]

[11] Family member is defined by the State.
[12] 2 CFR § 200.1
[13] Ibid.

6. Federal financial assistance

Federal financial assistance means:[14]

(a) assistance that non-Federal entities receive or administer in the form of:

(1) grants;

(2) cooperative agreements;

(3) non-cash contributions or donations of property (including donated surplus property);

(4) direct appropriations;

(5) food commodities; and

(6) other financial assistance (excluding assistance described in paragraph (b) of this definition).

(b) pursuant to 2 CFR § 200.203 (and 2 CFR Part 200 Subpart F), assistance that non-Federal entities receive or administer in the form of:

(1) loans;

(2) loan guarantees;

(3) interest subsidies; and

(4) insurance;

(c) pursuant to 2 CFR § 200.216, assistance that non-Federal entities receive or administer in the form of:

(1) grants;

(2) cooperative agreements;

(3) loans; and

(4) 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).

[14] 2 CFR § 200.1

7. grant agreement

Grant agreement[15] refers to 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 and 6304:

- 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[16] 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.

8. 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:[17]

- effectiveness and efficiency of operations;

- reliability of reporting for internal and external use; and

- compliance with applicable laws and regulations.

9. 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.[18]

[15] 2 CFR § 200.1
[16] 31 USC § 6101(3)
[17] Ibid.
[18] Ibid.

10. pass-through entity (PTE)

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.[19]

11. personally identifiable information (PII)

The term personally identifiable information[10] (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.

12. 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.[20] The term recipient does not include subrecipients or individuals that are beneficiaries of the award.

13. subaward

Subaward[21] 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

The term subrecipient[22] 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.

[19] 2 CFR § 200.1
[20] Ibid.
[21] Ibid.
[22] Ibid.

State Policy **Workforce Innovation and Opportunity Act (WIOA)**

Nebraska Department of Labor (NDOL) Division of Reemployment Services 550 South 16th Street Lincoln, NE 68508 402.471.9000 ndol.wioa_policy@nebraska.gov	Policy category Administrative Requirements
	Effective May 3, 2023
	Supersedes State Monitoring Program – WIOA Title I, Change 1 (effective April 10, 2023)

State Monitoring Program – WIOA Title I, Change 2

REFERENCE

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

BACKGROUND

As the WIOA Title I grant recipient for the State of Nebraska, the Governor is required to oversee and monitor the activities of Nebraska's Title I subrecipients to ensure that Title I subawards are used for authorized purposes in compliance with Federal laws, regulations, rules, and guidance; terms and conditions of subaward agreements; and applicable State policies.[1] NDOL meets this requirement, on behalf of the Governor, through the efforts of the NDOL Reemployment Services Division State Monitoring Unit (SMU).

CHANGES

Under this Change 2, footnotes have been revised for clarity and links have been updated where necessary.

[1] WIOA Sec. 184(a)(4); 2 CFR §§ 200.303(c), 200.329(a), 200.332(b), and 200.332(d)

ACTION

Questions and comments on this policy may be submitted in writing to the policy mailbox at ndol.wioa_policy@nebraska.gov.

POLICY

This policy has two sections and one appendix.

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Section I. State Monitoring Program

(a) Overview

NDOL is responsible for oversight and monitoring of Nebraska's Title I subrecipients, on behalf of the Governor, to ensure WIOA Title I subrecipient compliance with WIOA and its implementing rules, regulations, and guidance; other applicable Federal laws, rules, regulations, and guidance; terms and conditions of subaward agreements with the subrecipients; and applicable State policies.[2] Oversight and monitoring is conducted by the SMU through annual Title I comprehensive monitoring and may be conducted pursuant to ad hoc monitoring and single audits.

[2] The State policy manual is accessible at https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies.

(b) Annual Title I comprehensive monitoring

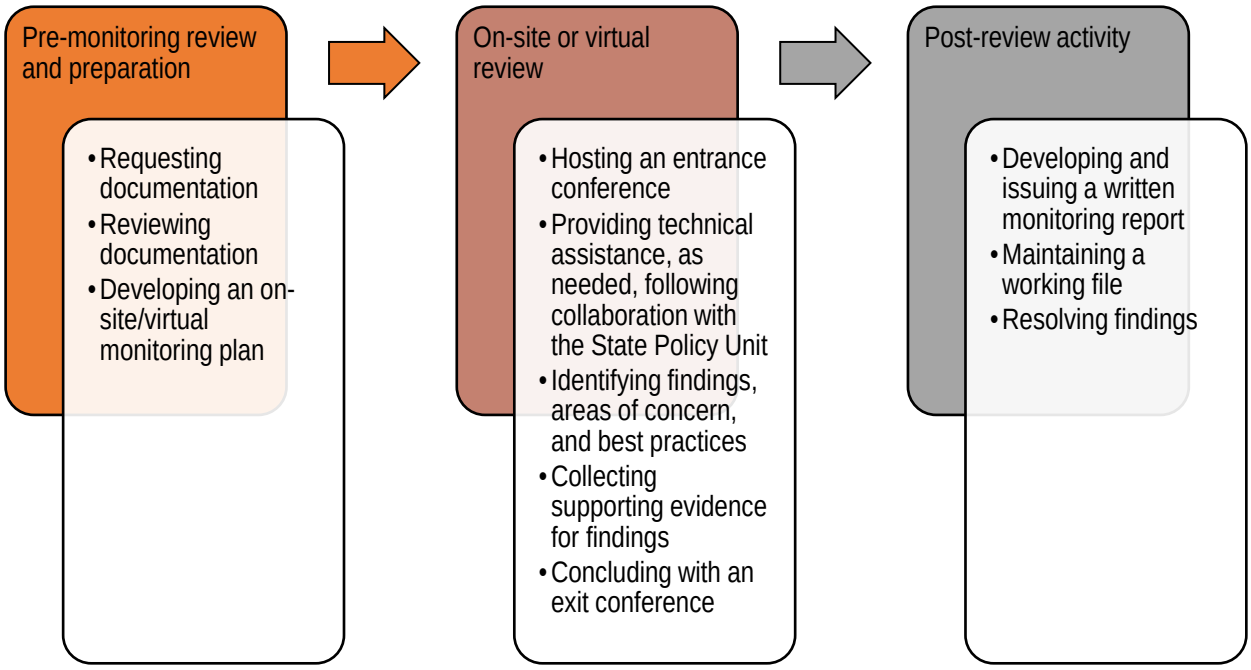
The SMU conducts annual comprehensive monitoring of Nebraska's Title I subrecipients in accordance with NDOL's current Comprehensive Monitoring Guide,[3] as well as:

- WIOA and its implementing rules, regulations and guidance;
- other applicable Federal laws, rules, regulations, and guidance; and
- applicable State policies.

(1) Process

Diagram 1 illustrates the monitoring process typically followed by the SMU which includes three components: pre-monitoring review and preparation, on-site or virtual review, and post-review activity.

Diagram 1. 3 components of the monitoring process



(2) Roles and responsibilities

The SMU is responsible for conducting annual Title I comprehensive monitoring, including fiscal monitoring, in accordance with NDOL's Comprehensive Monitoring Guide. During fiscal monitoring activities, the SMU coordinates with NDOL's Finance Division and the applicable subrecipient regarding transaction testing and other fiscal matters.

[3] The Comprehensive Monitoring Guide is accessible on the Manuals, Plans, and Reports page (https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/ManualsPlansReports) under the WIOA Monitoring and Oversight section.

(3) Scope

Annual Title I comprehensive monitoring events involve monitoring based on three core monitoring activities, which are described in detail in the Comprehensive Monitoring Guide.[4] A summary of the focus of the core activities is provided below.

Core activity 1. Service design and delivery

Core activity 1 addresses service design and delivery that guides and supports grant subrecipient strategy for accomplishing the goals of the grant subaward. It also addresses the systems, procedures, and program operational elements essential to the effective delivery of participant and employer services and the development of a subaward delivery product, such as a regional or local plan.

Core activity 1 is dissected into five objectives that help the monitor determine compliance and effectiveness of subrecipient service design and delivery.

1. Objective 1.a. Planning and program design
2. Objective 1.b. Implementation
3. Objective 1.c. Products and deliverables
4. Objective 1.d. Business services and employer engagement
5. Objective 1.e. Participant services

Core activity 2. Grant operations

Core activity 2 addresses grant operations supporting successful administration of subawards. Programmatic and fiscal operations under subawards support effective management of subrecipient activities required pursuant to WIOA and its implementing rules, regulations and guidance; other applicable Federal laws, rules, regulations, and guidance; terms and conditions of subaward agreements with the subrecipient; and applicable State policies.

Core activity 2 is divided into nine objectives to help the monitor determine compliance and effectiveness of grant operations.

1. Objective 2.a. Project management
2. Objective 2.b. Budget
3. Objective 2.c. Property management
4. Objective 2.d. Procurement and contract administration
5. Objective 2.e. Performance management

[4] The Comprehensive Monitoring Guide is accessible on the Manuals, Plans, and Reports page (https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/ManualsPlansReports) under the WIOA Monitoring and Oversight section.

6. Objective 2.f. Subrecipient management and oversight
7. Objective 2.g. Records management
8. Objective 2.h. Personnel
9. Objective 2.i. Civil rights, complaints, grievances, and incident reporting

Core activity 3. Financial management

Core activity 3 addresses the financial management systems and funds used by subrecipients to administer subawards in a manner that promotes transparency, accountability, and compliance with the requirements of WIOA and its implementing rules, regulations and guidance; other applicable Federal laws, rules, regulations, and guidance; terms and conditions of subaward agreements with the subrecipient; and applicable State policies.

Core activity 3 is broken down into eight objectives to help the monitor determine compliance and effectiveness of financial management.

1. Objective 3.a. Internal controls
2. Objective 3.b. Accounting system and financial reporting
3. Objective 3.c. Payment and cash management
4. Objective 3.d. Match and leveraged resources
5. Objective 3.e. Program income
6. Objective 3.f. Allowable costs and cost classification
7. Objective 3.g. Cost allocation/indirect costs
8. Objective 3.h. Audits and audit resolution

(4) Schedules and timelines

The SMU publishes annual Title I comprehensive monitoring schedules on the Manuals, Plans, and Reports page.[5] Prior to commencement of each annual comprehensive monitoring event, the SMU provides an announcement letter to the applicable subrecipient that includes:

- a description of the focus of the review;
- identification of the review period;
- a list of requested subrecipient documents and materials to be reviewed by the monitor and due date(s) for submission of the requested documents and materials;

[5] The comprehensive monitoring schedule is accessible on the Manuals, Plans, and Reports page (https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/ManualsPlansReports) under the WIOA Monitoring and Oversight section.

- planned dates of entrance and exit conferences;
- planned dates for review of participant records;
- planned date of release of the monitoring report (typically within 45 days of the exit conference, absent extenuating circumstances).

The schedule for annual comprehensive monitoring, as well as timelines in announcements to subrecipients, may be adjusted to accommodate the business purposes of NDOL and the SMU.

(c) Ad hoc monitoring and single audits

In addition to annual Title I comprehensive monitoring, the SMU may schedule ad hoc monitoring events and single audits, as circumstances require. If the SMU plans to conduct an ad hoc monitoring or a single audit, an announcement will be sent by the SMU to the local area. Ad hoc monitoring and single audits will be conducted in accordance NDOL's current Comprehensive Monitoring Guide; WIOA and its implementing rules, regulations and guidance; other applicable Federal laws, rules, regulations, and guidance; terms and conditions of subaward agreements with the subrecipient; and applicable State policies.[6]

Section II. Substantial violations of 2 CFR Part 200

(a) Corrective action

As required under WIOA Sec. 184(a)(4), all Title I subrecipients must comply with the applicable administrative requirements of 2 CFR Part 200 (also known as the Uniform Guidance). If the SMU identifies any substantial violation of 2 CFR Part 200 regarding use of Title I funds by a subrecipient during compliance monitoring or other means, such as ad hoc monitoring and single audits, NDOL must require corrective actions to secure compliance with the requirements of 2 CFR Part 200,[7] in addition to the requirements established under WIOA and its implementing rules, regulations and guidance; other applicable Federal laws, rules, regulations, and guidance; terms and conditions of subaward agreements with the subrecipient; and applicable State policies.

(b) Sanctions

If the SMU identifies any substantial violation of 2 CFR Part 200 regarding use of Title I funds by a subrecipient through compliance monitoring, or other means such as ad hoc monitoring single audits, and the applicable local board fails to take corrective actions as required by NDOL, the Governor must:[8]

- issue a notice of intent to revoke approval of all or part of the applicable local board's local plan; or

[6] The State policy manual is accessible at https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies.
[7] WIOA Sec. 184(a)(5)(A); 20 CFR § 683.410(b)(4)
[8] WIOA Sec. 184(b)(1)

- 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(s);
    - 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 pursuant to a determination that a Nebraska Title I 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 Title I program year allocation to the affected subrecipient from funds reserved for administrative costs of the applicable subrecipient Title I program.[9]

(d) Appeals and administrative adjudication

If a Title I subrecipient has been found in substantial violation of 2 CFR Part 200 regarding use of Title I funds *and* notified of a sanction issued by the Governor, as described in Section II(b), the subrecipient may appeal the sanction to the Secretary.[10] The Governor's sanction will not become effective until the time for appeal has expired *or* the Secretary has issued a decision.[11]

(1) Appeal procedure

Subrecipient appeals must be filed no later than 30 calendar days after receipt of written notification of local plan revocation or imposed reorganization.[12] The appeals must be submitted by certified mail, return receipt requested, to:

- Secretary, US Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210, Attention: ASET;[13] and
- Office of the Governor, PO Box 94848, Lincoln, NE 68509-4848.[14]

[9] WIOA Sec. 184(c)(3) – (4); 20 CFR § 683.410(b)(5)
[10] WIOA Sec. 184(b)(2)(A); 20 CFR § 683.650(a)
[11] Ibid.
[12] 20 CFR § 683.650(a)
[13] 20 CFR § 683.650(d)
[14] Ibid.

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.[15] In making this decision, the Secretary may consider any comments submitted by the Governor in response to the appeal.

(2) Administrative adjudication

If the affected Title I subrecipient is dissatisfied with the Secretary's final decision, the subrecipient may appeal to the US Department of Labor Office of Administrative Law Judges by requesting a hearing.[16] The request for a hearing must:[17]

- 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

- 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.[18]

Further, 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.[19] Only alleged violations of WIOA, its implementing regulations, the applicable grant or other

[15] WIOA Sec. 184(b)(2)(B)
[16] WIOA Sec. 186(a); 20 CFR § 683.800(a), (c), and (d)
[17] WIOA Sec. 186(b)
[18] 20 CFR § 683.800(b)
[19] 20 CFR § 683.800(c)

agreement under WIOA raised in the Secretary's final decision and the subrecipient's request for hearing are subject to review.[20]

DISCLAIMER

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

[20] Ibid.

APPENDIX I. Definitions

Definitions in this appendix are provided as supplemental information that supports the provisions of the policy. 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[21] 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[22] 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. pass-through entity

Pass-through entity[23] means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.

4. recipient

Recipient[24] 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.

5. subaward

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.[25]

[21] WIOA Sec. 3(9)
[22] 2 CFR § 200.22
[23] 2 CFR § 200.74
[24] 2 CFR § 200.86
[25] 20 CFR § 675.300

6. subrecipient

Subrecipient[26] 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.

[26] 2 CFR § 200.93

State Policy **Workforce Innovation and Opportunity Act (WIOA)**

Nebraska Department of Labor (NDOL)
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Policy category
Administrative Requirements

Effective
May 3, 2023

Supersedes
Audit and Audit Resolution, Change 1
(effective January 18, 2023)

Audit and Audit Resolution, Change 2

REFERENCE

Federal and state laws, rules, regulations, 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

Under this Change 2, footnotes have been revised for clarity and links have been updated where necessary.

ACTION

This policy supersedes and cancels the State's policy titled Audit and Audit Resolution, Change 1 (effective January 18, 2023). Questions and comments on this policy may be submitted in writing to the policy mailbox at ndol.wioa_policy@nebraska.gov.

- Local areas must ensure that they comply with all requirements of this policy, as well as Federal and state laws, rules, regulations, and guidance.

- The Reemployment Services Division State Monitoring Unit is responsible for ensuring local area compliance with this policy.

POLICY

This policy has six sections and two appendices.

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Section I. General

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

(a) Audit requirements[1]

(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.[2]

(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).[3]

(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.[4]

(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).[5]

[1] Thresholds change over time, so it is important that local areas routinely verify Federally established thresholds to ensure compliance with Federal laws, rules, regulations, and guidance.
[2] 2 CFR § 200.501(a)
[3] 2 CFR § 200.501(b)
[4] 2 CFR § 200.501(c)
[5] 2 CFR § 200.501(d)

(5) Subrecipients and contractors[6]

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[7]

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, 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[8]

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[9]

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;

[6] 2 CFR § 200.501(f)
[7] 2 CFR § 200.501(g)
[8] 2 CFR § 200.501(h)
[9] 2 CFR § 200.502(a)

- 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.

(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.[10]

(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.[11]

(c) Relation to other audit requirements[12]

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)[13] 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.

[10] 2 CFR § 200.502(f)
[11] Ibid.
[12] 2 CFR § 200.503(a) – (e)
[13] Information on the FAC is accessible at https://facweb.census.gov/uploadpdf.aspx.

(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 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[14]

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.

[14] 2 CFR § 200.504

(f) Audit costs (audit services)[15]

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.

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[16]

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;[17] suggested audit procedures; and audit reporting requirements. A listing of current program-specific audit guides is provided in the compliance supplement.[18] When a current program-specific audit guide is available, the auditor must follow GAGAS *and* the guide when performing a program-specific audit.

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[15] 2 CFR § 200.425. Thresholds change over time, so it is important that local areas routinely verify Federally established thresholds to ensure compliance with Federal laws, rules, regulations, and guidance

[16] 2 CFR § 200.507(a)

[17] 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.

[18] The compliance supplement is accessible at https://www.whitehouse.gov/wp-content/uploads/2022/05/2022-Compliance-Supplement_PDF_Rev_05.11.22.pdf.

(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.[19]

- 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;

    - 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[20]

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.

[19] 2 CFR § 200.507(b)
[20] 2 CFR § 200.507(c)

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

(a) Auditee responsibilities[21]

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;
- 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[22]

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.

[21] 2 CFR § 200.508
[22] 2 CFR § 200.509(a)

(2) Restriction on auditor preparing indirect cost proposals[23]

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.[24]

(c) Financial statements

(1) Financial statements[25]

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 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[26]

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;

[23] 2 CFR § 200.509(b). Thresholds change over time, so it is important that local areas routinely verify Federally established thresholds to ensure compliance with Federal laws, rules, regulations, and guidance.
[24] 2 CFR § 200.509(c)
[25] 2 CFR § 200.510(a)
[26] 2 CFR § 200.510(b)

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[27]

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 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[28]

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, the summary schedule must provide an explanation.

[27] 2 CFR § 200.510(a)
[28] 2 CFR § 200.510(b)

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[29]

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.

(e) Report submission

(1) General[30]

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[31]

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

[29] 2 CFR § 200.510(c)
[30] 2 CFR § 200.512(a)
[31] 2 CFR § 200.512(b)

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 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 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[32]

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[33]

The auditee must electronically submit to FAC the data collection form and the reporting package.

[32] 2 CFR § 200.512(c)
[33] 2 CFR § 200.512(d)

(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.[34]

(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.[35]

(7) FAC responsibilities[36]

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.

Section IV. Federal agencies

Responsibilities of Federal agencies regarding audits are described in 2 CFR § 200.513.

Section V. Auditors

(a) Scope of audit

(1) General[37]

The audit must be conducted in accordance with GAGAS.[38] 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.

[34] 2 CFR § 200.512(e)
[35] 2 CFR § 200.512(f)
[36] 2 CFR § 200.512(g)
[37] 2 CFR § 200.514(a)
[38] 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.

(2) Financial statements[39]

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[40]

The compliance supplement[41] provides guidance on internal controls over Federal programs based upon the guidance in Standards for Internal Control in the Federal Government[42] and Internal Control – Integrated Framework.[43]. 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.[44] Except as described below, the auditor must:

- 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[45]

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

[39] 2 CFR § 200.514(b)
[40] 2 CFR § 200.514(c)
[41] The compliance supplement is accessible at https://www.whitehouse.gov/wp-content/uploads/2022/05/2022-Compliance-Supplement_PDF_Rev_05.11.22.pdf.
[42] Standards for Internal Control in the Federal Government issued by the Comptroller General of the United States are issued by the Comptroller General of the United States and are accessible at https://www.govinfo.gov/content/pkg/GAOREPORTS-AIMD-00-21-3-1/pdf/GAOREPORTS-AIMD-00-21-3-1.pdf.
[43] Internal Control – Integrated Framework is issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) and is accessible at https://www.coso.org/sitepages/internal-control.aspx?web=1.
[44] Refer to Section V(e) for detail on major program determinations.
[45] 2 CFR § 200.514(d)

requirements related to Federal programs contained in the compliance supplement,[46] 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.[47]

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[48]

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 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[49]

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

[46] 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.
[47] Refer to Section II(g)(2) for information relating to the lack of program-specific audit guides.
[48] 2 CFR § 200.514(e)
[49] 2 CFR § 200.515

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 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;[50]

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 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[51]

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

[50] In the case of a cluster of programs, only the cluster name as shown on the schedule of expenditures of Federal awards is required. Section III(c)(2) provides information on schedules of expenditures of Federal awards.
[51] 2 CFR § 200.516

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:[52]

    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.

d. known questioned costs that are greater than $25,000 for a Federal program which is not audited as a major program:[53]

    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:

[52] Questioned-cost thresholds may change over time, so it is important that local areas routinely verify thresholds to ensure compliance with Federal laws, rules, regulations, and guidance.
[53] Ibid.

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[54]

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.

[54] 2 CFR § 200.517

(e) Major program determination

(1) General[55]

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[56]

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.[57]

Table 1. Total Federal awards expended and Type A/B threshold[58]

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 multiplied by 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 multiplied by 0.003.
Exceed $10 billion but less than or equal to $20 billion	$30 million.
Exceed $20 billion	Total Federal awards expended multiplied by 0.0015.

Federal programs that meet one of the thresholds in Table 1 muse be labeled Type A; and Federal programs that do not meet any of the thresholds in Table 1 must be labeled Type B programs.[59]

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.[60]

(3) Step two[61]

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

[55] 2 CFR § 200.518(a)
[56] 2 CFR § 200.518(b)
[57] 2 CFR § 200.518(b)(1)
[58] Thresholds change over time, so it is important that local areas routinely verify thresholds to ensure compliance with Federal laws, rules, regulations, and guidance.
[59] 2 CFR § 200.518(b)(2)
[60] 2 CFR § 200.518(b)(4)
[61] 2 CFR § 200.518(c)

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[62]

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.

(5) Step four[63]

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.

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[62] 2 CFR § 200.518(d)
[63] 2 CFR § 200.518(e)

(6) Percentage of coverage rule[64]

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.[65]

(8) Auditor's judgment[66]

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[67]

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. 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[68]

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.

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[64] 2 CFR § 200.518(f)
[65] 2 CFR § 200.518(g)
[66] 2 CFR § 200.518(h)
[67] 2 CFR § 200.519(a)
[68] 2 CFR § 200.519(b)

- 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[69]

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[70]

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 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.

[69] 2 CFR § 200.519(c)
[70] 2 CFR § 200.519(d)

(g) Criteria for a low-risk auditee[71]

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.

Section VI. Management decisions

(a) General[72]

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

[71] 2 CFR § 200.520
[72] 2 CFR § 200.521(a)

issue a management decision on findings relating to the financial statements which are required to be reported in accordance with GAGAS.

(b) Federal agency[73]

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.[74]

(d) Time requirements[75]

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[76]

Management decisions must include the reference numbers the auditor assigned to each audit finding in accordance with 2 CFR § 200.516(c).

DISCLAIMER

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

[73] 2 CFR § 200.521(b)
[74] 2 CFR § 200.521(c)
[75] 2 CFR § 200.521(d)
[76] 2 CFR § 200.521(e)

APPENDIX I. Definitions

Definitions in this appendix are provided as supplemental information that supports the provisions of the policy. 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. 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).[77]

2. assistance listing number

Assistance listing number means a unique number assigned to identify an assistance listing, formerly known as the CFDA Number.[78]

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.[79]

4. auditee

Auditee means any non-Federal entity that expends Federal awards which must be audited under 2 CFR Part 200 Subpart F.[80]

5. auditor[81]

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.[82]

[77] 2 CFR § 200.1
[78] Ibid.
[79] Ibid.
[80] Ibid.
[81] Ibid.
[82] 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.[83]

8. cooperative agreement[84]

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.[85]

[83] 2 CFR § 200.1
[84] Ibid.
[85] Ibid.

10. Federal award[86]

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.[87]

12. Federal financial assistance[88]

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;

[86] 2 CFR § 200.1
[87] Ibid.
[88] 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:[89]

(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[90]

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;

[89] 2 CFR § 200.1
[90] Ibid.

(b) a subsidy;

(c) a loan;

(d) a loan guarantee; or

(e) insurance.

15. improper payment[91]

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::[92]

- 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

[91] 2 CFR § 200.1
[92] Ibid.

Federal awarding agency or pass-through entity in accordance with 2 CFR § 200.503(e).[93] (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.[94]

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.[95]

20. questioned cost[96]

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[97]

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[98]

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

[93] 2 CFR § 200.1
[94] Ibid.
[95] Ibid.
[96] Ibid.
[97] Ibid.
[98] 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[99]

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.

[99] 2 CFR § 200.1

APPENDIX II. Allowed and unallowed activities for WIOA Title I programs

Allowed and unallowed activities for WIOA Title I programs are provided in the compliance supplement[100] (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;[101]

(2) operating a fiscal and management accountability information system;[102]

(3) carrying out monitoring and oversight activities[103]

b. Programmatic

(1) Conducting statewide workforce development activities:

(a) *required statewide youth activities*: administration of youth workforce development activities;[104]

(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;[105]

(c) *required statewide adult dislocated worker services*: providing employment and training activities, such as rapid response activities, and additional assistance to local areas;[106] and

(d) *other allowable statewide adult dislocated worker services*: establishing and implementing innovative incumbent worker training programs;[107]

(2) providing support to local areas for the identification of eligible training providers;[108]

[100] The compliance supplement is accessible at https://www.whitehouse.gov/wp-content/uploads/2022/05/2022-Compliance-Supplement_PDF_Rev_05.11.22.pdf.
[101] WIOA Sec. 116(d)(1); 20 CFR §§ 677.160 and 683.300(d)
[102] WIOA Sec. 116(i); 20 CFR §§ 652.8(b) and 682.200(l)
[103] WIOA Secs. 129(b)(1)(E), 134(a)(2)(B)(iv), and 184(a)(4); 20 CFR §§ 682.200(j) and 683.410
[104] WIOA Sec. 129(b)(1)
[105] WIOA Sec. 129(b)(2)
[106] WIOA Sec. 134(a)(2)
[107] WIOA Sec. 134(a)(3)
[108] WIOA Sec. 122(a)(2)

(3) implementing innovative programs for displaced homemakers and programs to increase the number of individuals trained for and placed in nontraditional employment;[109]

(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;[110]

(5) disseminating the following:[111]

(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;[112]

(7) providing incentive grants;[113]

(8) providing technical assistance to local areas that fail to meet local performance measures;[114]

(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[115]

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;

[109] WIOA Sec. 134(c)(3)
[110] WIOA Sec. 134(a)(2)
[111] WIOA Sec. 122
[112] Ibid.
[113] WIOA Sec. 134(a)(3)(A)(xi)
[114] WIOA Sec. 129(b)(2)(E)
[115] WIOA Sec. 129(b)(1)(F)

(2) required basic career services for all interested individuals:[116]

(a) eligibility determination for WIOA services;

(b) outreach, intake, and orientation to available information and services;

(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:[117]

(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;

[116] WIOA Sec. 134(c)(2)(A)(i) – (xi)
[117] WIOA Sec. 134(c)(2)(A)(xii)

(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;

(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:[118]

(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;[119] and

(6) allowable pay-for performance (PFP) strategies and performance contracts.

[118] WIOA Sec. 134(c)(3)(D)
[119] WIOA Sec. 134(c)(2)(A)(xiii)

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:[120]

(1) job seeker services, including:

(a) customer support to enable individuals with barriers to employment to navigate among multiple services;

(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

[120] WIOA Sec. 134(d)

(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[121]

(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;

[121] WIOA Sec. 129(c)(2)

(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;

(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.[122]

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

   (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;[123]

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.[124]

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;[125]

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;[126]

[122] WIOA Sec. 129(c)(1)(A) – (C)
[123] WIOA Sec. 181(e)
[124] WIOA Sec. 188(a)(3)
[125] WIOA Sec. 181(d)(1)
[126] WIOA Sec. 181(d)(2)

f. paying the wages of incumbent employees during their participation in economic development activities provided through a statewide workforce investment system;[127]

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.[128]

[127] WIOA Sec. 181(b)(1)
[128] 20 CFR § 683.250(b); 29 USC § 2931(e)

State Policy **Workforce Innovation and Opportunity Act (WIOA)**

Nebraska Department of Labor (NDOL)
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Policy category
Administrative Requirements

Effective
May 3, 2023

Supersedes
Grant Closeout
(effective January 20, 2023)

Grant Closeout, Change 1

REFERENCE

Federal and state laws, rules, regulations, 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.[1]

CHANGES

Under this Change 1, footnotes have been revised for clarity and links have been updated where necessary.

[1] 2 CFR § 200.344

ACTION

This policy supersedes and cancels the State's policy titled Grant Closeout (effective January 20, 2023). Questions and comments on this policy may be submitted in writing to the policy mailbox at ndol.wioa_policy@nebraska.gov.

Local boards, as 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

This policy has two sections and one appendix.

Section I. Closeout requirements 2
Section II. Post-closeout adjustments and continuing responsibilities 3
APPENDIX I. Definitions 5

Section I. Closeout requirements[2]

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.

[2] 2 CFR § 200.344

(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.

(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[3]

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;[4]

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.[5]

[3] 2 CFR § 200.345

[4] The State's policy on audit and audit resolution provide information on audit and audit resolution requirements and is included in the State policy manual, which is accessible at https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies.

[5] The State's policy on records management provides additional information on record retention requirements, some of which are based on Nebraska law. The State policy manual is accessible at https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies.

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.

DISCLAIMER

This policy is based on NDOL's reading of the applicable laws, rules, regulations, and guidance released by the Federal 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

Definitions in this appendix are provided as supplemental information that supports the provisions of the policy. 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. 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).[6]

2. assistance listing number

Assistance listing number means a unique number assigned to identify an assistance listing, formerly known as the CFDA Number.[7]

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.[8]

4. contractor

The term contractor means an entity that receives a contract.[9]

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.[10]

6. cooperative agreement

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:[11]

- 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

[6] 2 CFR § 200.1
[7] Ibid.
[8] Ibid.
[9] Ibid.
[10] Ibid.
[11] 2 CFR § 200.1

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:[12]

(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.[13]

[12] Ibid.
[13] 2 CFR § 200.1

9. Federal financial assistance[14]

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).

[14] Ibid.

10. Federal program

Federal program means:[15]

(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[16]

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.

[15] 2 CFR § 200.1
[16] 2 CFR § 200.1

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:[17]

- effectiveness and efficiency of operations;
- 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.[18]

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.[19]

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.[20]

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.[21]

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.[22]

The term recipient does not include subrecipients or individuals that are beneficiaries of the award.

[17] Ibid.
[18] 2 CFR § 200.1
[19] Ibid.
[20] 20 CFR § 683.110(c)
[21] 2 CFR 200.1
[22] Ibid.

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. Subaward does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.

18. subrecipient[23]

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*.

[23] 2 CFR § 200.1

4.2. Nondiscrimination and Equal Opportunity

State Policy **Workforce Innovation and Opportunity Act (WIOA)**

Nebraska Department of Labor (NDOL)
Division of Reemployment Services
550 South 16th Street
Lincoln, NE 68508
402.471.9000
ndol.wioa_policy@nebraska.gov

Policy category
Administrative Requirements

Effective
May 3, 2023

Supersedes
Nondiscrimination and Equal Opportunity, Change 3 (effective March 28, 2022)

Nondiscrimination and Equal Opportunity, Change 4

REFERENCE

Federal and state laws, rules, and regulations 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.[1] 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).[2]

CHANGES

Under this Change 4, footnotes have been revised for clarity and links have been updated, where necessary.

[1] 20 CFR § 683.285(a)(1)
[2] 20 CFR § 683.285(a)(2); 29 CFR § 38.20; TEGL 37-14

ACTION

This policy supersedes and cancels the State's policy titled Nondiscrimination and Equal Opportunity, Change 3 (effective March 28, 2022). Questions and comments on this policy may be submitted in writing to the policy mailbox at ndol.wioa_policy@nebraska.gov.

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.

POLICY

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

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:[3]

- 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;[4]
- the requirements of Titles I, II and III of the Americans with Disabilities Act of 1990 (ADA);[5] and
- all applicable obligations the recipient may have under:[6]
    - 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.

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:[7]

- state or local law or other requirement; or

[3] 20 CFR § 683.285
[4] 29 CFR § 38.3(b)
[5] 29 CFR § 38.3(c)
[6] 29 CFR § 38.3(d)
[7] 29 CFR § 38.24

- private organization rules or policies.

(a) Applicability

The requirements of WIOA Sec. 188 and 29 CFR Part 38 apply to:[8]

- 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:[9]

- 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.[10]

(1) Discrimination and harassment[11]

WIOA Sec. 188 prohibits discrimination and harassment based on race, color, religion, sex (including pregnancy[12]), 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 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.[13]

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[8] 29 CFR § 38.2(a)
[9] 29 CFR § 38.2(b)
[10] TEGL 37-14
[11] 29 CFR § 38.1. Note: 29 CFR §§ 38.6 – 38.12 provides detailed information on specifically prohibited actions.
[12] 29 CFR § 38.8
[13] 29 CFR § 38.24(c)

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.[14]

(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:[15]

- 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[16]

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[17]

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 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.

[14] 29 CFR § 38.38(c)
[15] 29 CFR § 38.19
[16] WIOA Sec. 188(a)(3)
[17] Ibid.

(2) Employment and training in religious activities[18]

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

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.[19]

(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.[20]

(ii) Programmatic accessibility

Each recipient must insure that all WIOA Title I financially assisted programs and activities are programmatically accessible, which includes:[21]

- providing reasonable accommodations for individuals with disabilities;
- making reasonable modifications to policies, practices, and procedures;

[18] TEGL 1-05
[19] TEGL 37-14
[20] 29 CFR § 38.13(a)
[21] 29 CFR § 38.13(b)

- 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;[22] 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.[23]

(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.[24]

(4) Assurances[25]

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 WOA 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.

[22] 29 CFR § 38.14(a)
[23] 29 CFR § 38.14(b)
[24] 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)].
[25] 29 CFR §§ 38.25 and 38.26

(5) Equal Opportunity Officers[26]

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 16th 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.

[26] 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.[27]

(6) Equal Opportunity Notice[28]

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[29]

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;
- provided to each participant and employee; and

[27] 29 CFR § 38.33
[28] 29 CFR § 38.34
[29] 29 CFR § 38.36

- 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;[30] 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).

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[31]

Recipients must indicate the WIOA Title I financially assisted program or activity in question is an equal opportunity employer/program and that 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[32]

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
- 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

[30] 29 CFR § 38.9
[31] 29 CFR § 38.38(a)
[32] 29 CFR § 38.38(b)

to file a complaint of discrimination with the recipient or CRC Director.[33] This information must be communicated in appropriate languages and in formats accessible for individuals with disabilities.[34] 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[35]

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[36]

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;
- 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

[33] 29 CFR § 38.36
[34] 29 CFR §§ 38.9, 38.15, and 38.39
[35] 29 CFR § 38.40
[36] 29 CFR § 38.41

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[37]

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;
- political affiliation or belief;
- citizenship; or
- participation in a WIOA Title I financially assisted program or activity.

[37] 29 CFR 38.41(c)

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[38]

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;
- 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.

[38] 29 CFR § 38.42(a)

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[39]

Each recipient, as part of a compliance review[40] or monitoring activity[41] 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.

Where designation of individuals by race or ethnicity is required, the guidelines of the Office of Management and Budget must be used.

[39] 29 CFR § 38.42(b)
[40] 29 CFR § 38.63
[41] 29 CFR § 38.65

(iv) Records retention[42]

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[43]

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.

[42] 29 CFR § 38.43
[43] 29 CFR § 38.44

(b) Procedures

(1) Complaint filing[44]

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[45] 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.[46]

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[44] 29 CFR § 38.69
[45] The Complaint Information Form and Privacy Act Consent Form are accessible at https://www.dol.gov/oasam/programs/crc/external-enforc-complaints.htm.
[46] 29 CFR § 38.71

(2) Complaint processing procedures for recipients[47]

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.

[47] 29 CFR § 68.72

(i) Alternative Dispute Resolution (ADR)[48]

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[49]

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[50]

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[51]

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

[48] 29 CFR § 38.72(c)
[49] 29 CFR § 38.73
[50] 29 CFR § 38.74
[51] 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[52]

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.[53]

DISCLAIMER

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

[52] WIOA Sec. 188(b)
[53] WIOA Sec. 188(c)

APPENDIX I. Definitions

Definitions in this appendix are provided as supplemental information that supports the provisions of the policy. 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.[54]

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:[55]

- 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.[56]

3. financial assistance

Financial assistance means any of the following:[57]

- 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

[54] Additional definitions relating to nondiscrimination and equal opportunity are provided in 29 CFR § 38.4.
[55] 29 CFR § 38.4(b)
[56] 20 CFR § 38.4(c)
[57] 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.[58]

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.[59]

[58] 29 CFR § 38.4(oo)
[59] 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.[60]

7. qualified individual with a disability[61]

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[62]

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.

[60] 29 CFR § 38.4(tt)
[61] 29 CFR § 38.4(ww)
[62] 29 CFR § 38.4(yy)

9. recipient[63]

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;
- 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:[64]

- 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.

[63] 29 CFR § 38.4(zz)
[64] 29 CFR § 38.4(ggg)

11. small recipient[65]

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).

12. subrecipient[66]

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:[67]

- 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;

[65] 29 CFR § 38.4 (hhh)
[66] 2 CFR § 200.93
[67] 29 CFR § 38.4(y)

- 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
- 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[68]

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.

[68] 29 CFR § 38.4(xxx)

APPENDIX II. Example Equal Opportunity Notice[69]

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.

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.

[69] 29 CFR § 38.35

4.3. Grievances, Complaints, and Appeals

State Policy **Workforce Innovation and Opportunity Act (WIOA)**

Nebraska Department of Labor (NDOL)
Division of Reemployment Services
550 South 16th Street
Lincoln, NE 68508
402.471.9000
ndol.wioa_policy@nebraska.gov

Policy category
Administrative Requirements

Effective
May 3, 2023

Supersedes
Grievances and Complaints – WIOA Title I
(effective February 12, 2018)

Grievances and Complaints – WIOA Title I, Change 1

REFERENCE

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

BACKGROUND

Local areas must establish and maintain procedures for participants and others to file non-criminal[1] grievances and complaints alleging violations of the requirements of WIOA Title I.[2]

CHANGES

Under this Change 1, minor revisions to the body of the policy have been made for clarity and readability purposes; definitions have been added or updated; and footnotes have been revised for clarity and links have been updated where necessary.

[1] The US Department of Labor established procedures for filing criminal complaints, as described in Section II.
[2] 20 CFR § 683.600(a)

ACTION

This policy supersedes and cancels the State's policy titled Grievances and Complaints – WIOA Title I (effective February 12, 2018). Questions and comments on this policy may be submitted in writing to the policy mailbox at ndol.wioa_policy@nebraska.gov.

Each 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

This policy addresses requirements and procedures for:

- 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.

This policy does not address requirements pertaining to:

- non-discrimination and equal opportunity;

- 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; or

- required contributions under the state funding mechanism.

Requirements pertaining to issues listed directly above are addressed separately in applicable policies issued by the State.[3]

[3] The State policy manual is accessible at https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies.

This policy has two sections and one appendix.

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Section I. Non-criminal grievances and complaints

(a) Requirements

Each local area, with regard to their respective WIOA Title I non-criminal grievance and complaint procedures must take the following actions.[4]

1. Information about the procedures must be provided to WIOA Title I program participants and documentation must be recorded in participant case files that the information has been provided.

2. Information about the procedures must be provided to others affected by the local one-stop delivery system, including one-stop partners, job seekers, and employers served by the system.

3. Every entity to which a local area awards (i.e., subawards) WIOA Title I funds for the provision of services to program participants must have access to information about and is fully aware of the procedures.

4. Reasonable efforts must be made to assure that 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:[5]

- 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;

[4] 20 CFR § 683.600(b)(1)
[5] 20 CFR § 683.600(f)

- 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;

- 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 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) Appeal procedures[6]

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 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 five 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.

[6] 20 CFR § 683.600(d)

An appeal may be submitted to NDOL regarding a non-criminal grievance or complaint when:

- no decision is reached at the local level within 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 simultaneously to:

Director
Reemployment Services Division
Nebraska Department of Labor
PO Box 94600
Lincoln, NE 68509-4600

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 30 calendar days of the Commissioner's receipt of the written request for a hearing. The hearing officer will issue a decision within 30 calendar days of the hearing, to the extent possible.

(d) Federal appeal procedures[7]

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 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.

[7] 20 CFR § 683.610

If appealing to the Secretary based on:

- the lack of a decision within 60 calendar days of filing a grievance or complaint with NDOL, the appeal to the Secretary must be filed within 120 calendar days of the date the appeal was filed with NDOL; or

- dissatisfaction with the decision on the appeal filed with NDOL, the appeal to the Secretary must be filed within 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 simultaneously to the opposing party and:

Regional Administrator, Region 5
Employment and Training Administration
John C. Kluczynski Building
230 South Dearborn Street, 6th Floor
Chicago, IL 60604-1505

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:[8]

- 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.

[8] 20 CFR 683.610(e)

Section II. Criminal complaints[9]

(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. 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 funded programs.[10] Allegations are reported to the Department of Labor Office of the Inspector General (OIG) and 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.

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 lR system, the individual may send the report directly to the OIG or OFAM.

[9] 20 CFR § 683.620; TEGL 2-12
[10] The IR form is provided as Attachment C to TEGL 2-12 and is accessible at https://www.dol.gov/agencies/eta/advisories/training-and-employment-guidance-letter-no-02-12.

(b) Procedures

(1) Grant recipients

As the administrative entity representing the Governor (Nebraska's WIOA Title I grant recipient), NDOL is responsible for following the 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 $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 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 Incident Reporting System to either the OIG or the Regional Inspector General at the following addresses.

Department of Labor Office of Inspector General
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, 6th 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

The hotline number for reporting criminal fraud, waste, abuse or other criminal activity related to WIOA Title I is 1.800.347.3756.

DISCLAIMER

This policy is based on NDOL's reading of the applicable laws, rules, regulations, and guidance released by the Federal 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

Definitions in this appendix are provided as supplemental information that supports the provisions of the policy. 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. Assistance listing number

Assistance listing number[11] means a unique number assigned to identify a Federal Assistance Listings, formerly known as the CFDA Number

2. Federal awarding agency

Federal awarding agency[12]means the Federal agency that provides a Federal award directly to a non-Federal entity.

3. Federal program

Federal program means:[13]

(a) all Federal awards which are assigned a single Assistance Listings Number.

(b) When no Assistance Listings Number is assigned, all Federal awards from the same agency made for the same purpose must be combined and considered one program.

(c) Notwithstanding paragraphs (1) and (2) of this definition, a cluster of programs. The types of clusters of programs are:

(1) Research and development (R&D);

(2) Student financial aid (SFA); and

(3) "Other clusters," as described in the definition of cluster of programs in this section.

4. non-Federal entity

Non-Federal entity[14] means a State, local government, Indian tribe, Institution of Higher Education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient.

5. pass-through entity

Pass-through entity[15] means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.

[11] 2 CFR § 200.1
[12] Ibid.
[13] Ibid.
[14] Ibid.
[15] Ibid.

6. recipient

Recipient[16] 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.

7. subrecipient

Subrecipient[17] 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.

8. subaward

Subaward[18] 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. It 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.

[16] 2 CFR § 200.1
[17] Ibid.
[18] Ibid.

5. Adult, Dislocated Worker, and Youth

5.1. Program Eligibility and Design

State Policy **Workforce Innovation and Opportunity Act (WIOA)**

Nebraska Department of Labor (NDOL)
Division of Reemployment Services
550 South 16th Street
Lincoln, NE 68508
402.471.9000
ndol.wioa_policy@nebraska.gov

Policy category
Adult, Dislocated Worker, and Youth

Effective
December 15, 2023

Supersedes
Program Eligibility for Adults, Dislocated Workers, and Youth, Change 4 (effective May 3, 2023)

Program Eligibility for Adults, Dislocated Workers, and Youth, Change 5

REFERENCE

Federal and State laws, rules, and regulations 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.

CHANGES

Under this Change 5, the following materials changes have been established.

- Section IV(a) has been added concerning acceptable source documentation types for dislocated worker eligibility determination.
- The definition of “mass layoff” in APPENDIX I has been revised.
- APPENDIX I now includes a definition for “underemployed”.

ACTION

State

This policy supersedes and cancels the State's policy titled Program Eligibility for Adults, and Dislocated Workers, and Youth Change 4 (effective May 3, 2023). Questions and comments on this policy may be submitted in writing to the policy mailbox at ndol.wioa_policy@nebraska.gov.

State policies referenced in this policy are included in the State policy manual, which is accessible at https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies. *State policy manual* refers to the policy manual created and maintained by the NDOL Reemployment Services State Policy Unit.

Local boards and administrative entities[1]

Local boards *and* administrative entities must take the following actions, in compliance with the requirements of this policy.

1. Local boards *and* administrative entities must establish policies and procedures pertaining to Title I program eligibility that comply and align with the requirements and defined terms established in this policy, as well WIOA and its implementing rules, regulations, and guidance and other applicable Federal laws, rules, regulations, and guidance.

2. Local boards *and* administrative entities must establish policies and procedures pertaining to Title I program eligibility that do not add to or detract from eligibility requirements established under this policy, as well WIOA and its implementing rules, regulations, and guidance and other applicable Federal laws, rules, regulations, and guidance.

3. Local boards *and* administrative entities must establish policies and procedures pertaining to Title I program eligibility that defines the criterion constituting *unemployed as a result of general economic conditions in the community in which the individual resides* used to determine eligibility as a dislocated worker based on conditions affecting self-employed individuals. Further, such policies and procedures must also cover family members and farm workers or ranch hands regarding dislocated worker programs and must describe:

    a. locally required methods for determining eligibility based on the criterion of *unemployed as a result of general economic conditions in the community in which the individual resides* and must relate to general economic conditions in individuals' respective communities, rather than personal circumstances of the individuals, such as disability, injury, or other situations not related to general economic conditions; and

    b. acceptable source documentation required to demonstrate eligibility determinations in accordance with TEGL 23-19 Change 2 Attachment II.

[1] 20 CFR §§ 680.130(b)(2), 681.290(b) – (c), 681.300, and 681.310(a)

4. Local boards *and* administrative entities must establish policies and procedures pertaining to Title I program eligibility that describe methods for determining *underemployed* employment status for both adult and dislocated worker programs based on the requirements described under Section IV and in accordance with definition of *underemployed* provided in APPENDIX I.

5. Local boards *and* administrative entities must establish policies and procedures pertaining to Title I program eligibility concerning the *basic skills deficient criteria* in accordance with the definition for *basic skills deficient* in APPENDIX I.

    a. Such policies must describe procedures and implement quantifiable methods that must be used by local Title I program staff when determining eligibility for in-school youth (ISY), out-of-school youth (OSY), and adults concerning basic skills deficiency criteria in accordance with the definition for *basic skills deficient* in APPENDIX I.

    b. Such policies must describe and implement quantifiable procedures that must be followed by local Title I program staff pertaining 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.

    c. Such policies must describe and implement quantifiable procedures that must be used by local Title I program staff for identifying and documenting acceptable source documentation required to demonstrate eligibility determinations in accordance with TEGL 23-19 Change 2 Attachment II.

6. Local boards *and* administrative entities must establish policies and procedures pertaining to Title I program eligibility that include a definition for the *requires additional assistance to complete an education program or to secure or hold employment* criterion pertaining to 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 Change 2 Attachment II.

7. Local boards *and* administrative entities must establish policies and procedures pertaining to Title I program eligibility that defines 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.

8. Local boards *and* administrative entities must establish policies and procedures pertaining to Title I program eligibility that define implementation, oversight, and independent monitoring of priority of service for adult, dislocated worker, and youth programs, as required under the State's priority of service policy.

9. Local boards *and* administrative entities must establish policies and procedures pertaining regular independent monitoring on behalf of the local boards. To prevent real or apparent conflicts of interest in the conduct local oversight and monitoring of Title I programs and the local one-stop delivery system, local boards and CEOs must require that their monitors/monitoring teams are functioning independently, as required under the State's policy on internal controls and conflicts of interest.

POLICY

This policy establishes eligibility requirements for adult, dislocated worker, and youth programs, including priority-of-service requirements and has five sections and one appendix.

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Section I. General Title I eligibility requirements

In addition to the eligibility requirements described in Sections II through V, all adult, dislocated worker, and youth program participants must be:[2]

- citizens or nationals of the United States; or
- 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, local boards *and* administrative entities 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.[3]

Section II. Priority-of-service requirements

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. Local boards *and* administrative entities must ensure that Title I staff adhere to priority-of-service requirements in this policy, as well as the State's policy on priority-of-service, which provides detailed information on program-specific requirements for priority of service.

Section III. Adult program eligibility

In addition to the requirements described in Section I and Section II and in order to receive career services and training services through the adult program, individuals must be age 18 or older.[4]

(a) Employment status clarification pertaining to adult eligibility and underemployment

Individuals who are *underemployed* and meet the definition of a low-income individual must receive career and training services under the adult program on a priority basis.[5] Also, individuals who meet the definition of an *individual with a barrier to employment*, as defined in WIOA Sec. 3(24), who are *underemployed* may also be served in the adult program.

[2] 20 CFR § 683.285(a)(5)
[3] 50 USC 3801 et seq.; WIOA Sec. 189(h). Federal information on Selective Service registration requirements is accessible at https://www.sss.gov/register/who-needs-to-register/.
[4] 20 CFR § 680.120
[5] TEGL 19-16

Section IV. Dislocated worker program eligibility[6]

In addition to the requirements described in Section I and Section II, the remainder of this 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, taking into consideration circumstances of underemployment as described later in this section. Further, workers who are determined to be *underemployed* subsequent to their dislocation may still be considered eligible to receive services under dislocated worker programs.[7] For instance, an individual was dislocated that found full-time employment or part-time employment may still be considered a dislocated worker if they are *underemployed*.

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 not due to a permanent closure or mass layoff, and are either:

- eligible for or have exhausted unemployment compensation; or
- 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.

Category I workers must also be determined as *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 or any substantial layoff at a plant, facility, or enterprise;
- 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.

[6] WIOA Sec. 3(15); 20 CFR § 680.120; TEGL 19-16
[7] TEGL 19-16

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 above and in APPENDIX I.

Category IV. Displaced homemaker[8]

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 and are no longer supported by that income; or
- are dependent spouses of members (i.e., military spouses) of the United States 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* may be considered eligible to receive services under a dislocated worker program.[9] For instance, an individual who is dislocated from a full-time job and has found part-time employment may be considered a dislocated worker.

Additional information is provided below in Section V Category V subsection (2)(A)(i) concerning military spouses as displaced homemakers, which is further addressed in the State's priority-of-service policy.

Category V. Service members and military spouses[10]

(1) 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,

[8] WIOA Sec. 3(16)(A) – (B); 20 CFR § 680.630(d)
[9] TEGL 19-16
[10] 20 CFR § 680.660; TEGL 19-16

general, entry-level, other than honorable, and bad conduct discharges; dismissal [aka 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.

Subsection (A) located directly below clarifies employment status information regarding eligibility and underemployment pertaining to separating military service members. Also, refer to the State's priority of service policy.

(A) Employment status clarification on Separating military service members[11]

A basic requirement to qualify as a dislocated worker is that workers be terminated or laid off. It is USDOL policy that being discharged under honorable conditions, either voluntarily or involuntarily, terminates an employment relationship between military service members 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. Refer to the State's priority of service policy for additional information.

As mentioned above, individuals who are determined to be *underemployed*, may still be considered eligible to receive services under the dislocated worker program.[12] This clarification applies to separating military service members.

(2) Military spouses

This eligibility category applies to military spouses, meaning:[13]

- 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.

Section IV Category V(2)(A) below provides information pertaining to military spouse employment status.

[11] TEGLs 22-04 and 19-16
[12] TEGL 19-16
[13] TEGL 22-04

(A) Employment status 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.

(i) Displaced homemakers[14]

Military spouses may qualify to be served as a dislocated worker if they meet 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.

(ii) Cessation of employment[15]

When military spouses are unable to continue an employment relationship because of their military service members' permanent change of military station or the military spouses loses employment as a result of their military service members' discharge from the military, then the cessation of employment meets the termination component of the definition of Category IV dislocated worker. Military spouses' cessation of employment due to their military service members' permanent change of military station or 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 Categories IV and V as dislocated workers.

This criterion of the definition of dislocated worker recognizes the breadth of job types and considers whether individuals are *unlikely to return to either their previous industry or occupation*. To clarify, the standard for determining the likelihood to return is not absolute. Instead, it is a matter of judgment based on relevant circumstances pertaining to the military spouse. In the majority of cases, circumstances in which military spouses are required to leave a job/occupation as a result of their military service members' transfer do not position the spouse to return immediately to their previous industry or occupation, particularly at the same level for one or more of following reasons.

1. Spouses are generally not resuming employment with the same employer.

2. 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 previous location.

3. 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.

[14] TEGL 22-04
[15] TEGLs 22-04 and 22-04 Change 1

4. There is frequently a gap in employment as military spouses move to address their military service members' relocation, reassignment, etc., and search for new employment, which may lessen their likelihood of returning to the same level of job type or occupation.

5. The skills of the military spouse may be obsolete or inadequate compared to the advancing competency needs of the current workforce and economy.

6. The industries in which military spouses have prior work experience may be in decline within the geographical region to which the military spouses have relocated.

7. 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 their military service members' duty reassignments or discharges 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. Refer to the State's policy on priority of service for additional information.

(a) Acceptable source documentation for dislocated worker eligibility determination

As indicated in TEGL 23-19 Attachment II, there are five types of acceptable source documentation for determining dislocated worker eligibility, which must be documented in NDM:

1. verification from employer;

2. Rapid Response list;

3. notice of layoff;

4. public announcement with follow-up cross match with UI database; and

5. self-attestation.

All five types are sufficient for determining dislocated worker eligibility. It is important to note, though, that self-attestation should be used as a last resort.

Section V. Youth program eligibility

(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[16]

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 school, including secondary school or postsecondary school.
4. The individual is a low-income individual.

Potential ISY who receive or are eligible to receive free or reduced lunch, foster youth, homeless youth, and youth living in a high-poverty area to automatically considered low income.[17]

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[18]

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; 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.
8. The individual requires additional assistance to complete an educational program or to secure or hold employment.

[16] 20 CFR §§ 680.110(c) and 681.220(a)-(c)

[17] TEGL 9-22. Potential youth program participants who live in high-poverty area census tracts are automatically considered low-income individuals [20 CFR §§ 681.250(d) and 681.260], in accordance with NDOL's current Notice regarding high-poverty area census tracts, which is accessible at https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Notices.

[18] 20 CFR § 681.220(d)

(1) Age-based eligibility for ISY[19]

As stated above, an individual must be at least age 14 and 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 reengagement programs[20]

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 reengagement 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[21]

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 (see Table 5 in APPENDIX I 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.

[19] 20 CFR § 681.220(b)
[20] 20 CFR § 681.230; TEGL 21-16
[21] 20 CFR § 681.250(c); TEGL 21-16

(4) Additional assistance limitation for ISY[22]

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 a program, only 5 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[23]

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 attending school (secondary school) or attending postsecondary school.

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[24]

OSY level 2 eligibility criteria
1. The individual is a dropout.
2. The individual is within the age of compulsory school attendance under state law and 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, and either basic skills deficient or 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; d. lives in cars, parks, public spaces, abandoned buildings, substandard housing, bus or training stations, or similar settings; or e. is a runaway.

[22] 20 CFR § 681.310(b)
[23] 20 CFR §§ 680.110(c) and 681.210(a)-(b)
[24] WIOA Sec. 3(24)(G); 20 CFR § 681.210(c)

OSY level 2 eligibility criteria
6. The individual: a. is in foster care; b. has aged out of the foster care system; c. has attained age 16 and left foster care for kinship guardianship or adoption; d. is eligible for assistance under the John H. Chafee Foster Care Independence Program; 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[25]

As stated above, individuals must be at least age 16 and 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 requirements for OSY

There are only three instances where low-income status must be documented for OSY. Only those OSY who are determined eligible by virtue of one or more of the following characteristics:[26]

1. basic skills deficiency;

2. English language learner; or

3. requires additional assistance to enter or complete an educational program or to secure of hold employment criterion.

Other out-of-school youth do not need to be low-income or document their income.[27] Additionally, OSY who are foster youth, homeless youth, and youth living in a high-poverty area are automatically be considered low income.[28]

(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.

[25] 20 CFR § 681.210(b)
[26] 20 CFR § 681.250(a); TEGL 9-22
[27] TEGL 9-22
[28] Ibid.

DISCLAIMER

This policy is based on NDOL's reading of the applicable laws, rules, regulations, and guidance released by the Federal 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

Definitions in this appendix are provided as supplemental information that supports the provisions of the policy. 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[29] 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:[30]

- 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.[31]

3. age of compulsory school attendance

An individual who is within the age of compulsory school attendance[32] 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;

[29] 10 USC § 101(d)(1)
[30] 38 USC § 101(24)
[31] 20 CFR § 1010.110
[32] TEGL 21-16; Neb. Rev. Stat. § 79-201

- 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

Attachment to the workforce[33] means having been employed at least 20 or more hours per week for at least 6 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 stated above.

5. attending postsecondary school

Attending postsecondary school[34] 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 Nebraska state law. Nebraska state law defines attending school[35] 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, 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.

[33] This is a term defined by the State.
[34] TEGL 21-16
[35] 20 CFR § 681.550(a); TEGL 21-16; Neb. Rev. Stat. §§ 79-201, 79-202, 79-319, and 79-1601

7. basic skills deficient

An individual who is basic skills deficient is:[36]

- a youth who has English reading or writing skills or computing skills at or below the 8th 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[37] 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 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;

- 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.

[36] WIOA Sec. 3(5)
[37] 10 USC § 101(a)(13)(B)

10. dropout

A dropout[38] 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 and then 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,[39] 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 as:
    - 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.[40] 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.

[38] WIOA Sec. 3(54); TEGL 21-16
[39] WIOA Sec. 3(54); TEGL 21-16
[40] TEGL 07-09

12. English language learner

English language learner[41] 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[42] 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. A list of high-poverty area census tracts in Nebraska is provided by the NDOL Reemployment Services Division every five years pursuant to 20 CFR § 681.260.

15. individual with a disability

Individual with a disability[43] means an individual with a disability as defined in Section 3 of the Americans with Disabilities Act of 1990.

16. laid off or layoff

For determining eligibility as a dislocated worker, laid off or layoff[44] mean an employment relationship is or will be suspended by an employer without cause[45] 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.[46]

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[41] WIOA Secs. 3(20) and 203(7); TEGL 21-16
[42] Defined by the State as permitted under 20 CFR § 680.130(b)(1).
[43] WIOA Sec. 3(25); 20 CFR § 675.300
[44] This is a term defined by the State.
[45] Cause, with or without, might be a determination that has to be made by the State's unemployment compensation determinations unit regarding the circumstances surrounding a separation from employment.
[46] 20 CFR §§ 681.250(d) and 681.260

Table 5. Low-income criteria[47]

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: 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 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. 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.

[47] WIOA Secs. 3(36) and 181(a)(2); 38 USC § 4213

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:[48]

- at least 25 workers have been laid off *or* 25 percent of the employers' workers, whichever amount is smaller; 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[49] 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[50] 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:[51]

- 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.[52] An individual who is parenting is a custodial or non-custodial mother or father.[53]

23. requires additional assistance to complete an education program or to secure or hold employment

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.[54]

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[48] 20 CFR § 682.305
[49] 20 CFR § 1010.110
[50] This is a term defined by the State.
[51] WIOA Sec. 3(38)
[52] TEGL 21-16
[53] Ibid.
[54] 20 CFR §§ 681.300 and 681.310

24. requires additional assistance to enter or complete an education program or to secure or hold employment

Requires additional assistance to enter or 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.[55]

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;[56] 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.[57]

26. school

School is defined under Nebraska state law which defines school[58] 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.

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.

[55] Ibid.
[56] Neb. Rev. Stat. §§ 85-1607 – 85-1658
[57] Neb. Rev. Stat. §§ 85-1607 – 85-1658
[58] 20 CFR § 681.550(a); TEGL 21-16; Neb. Rev. Stat. §§ 79-201, 79-202, 79-319, and 79-1601

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.[59]

28. temporary recall

Temporary recall[60] means a request from an employer to 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, even if the employer still intends to terminate the worker.

29. terminated

For determining eligibility as a dislocated worker, terminated[61] employment is a permanent situation in which the employer lays off an individual without cause[62] 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 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[63] individual means an individual who is employed:

- less than full-time who is seeking full-time employment;
- in a position that is inadequate with respect to their skills and training;
- and meets the definition of low-income individual; or
- and whose current job earnings are not sufficient compared to their previous earnings from previous employment.

[59] 38 USC § 101(16)
[60] This is a term defined by the State.
[61] Ibid.
[62] Cause, with or without, might be a determination that has to be made by the State's unemployment compensation determinations unit regarding the circumstances surrounding a separation from employment.
[63] TEGL 19-16

31. unemployed as a result of general economic conditions in the community in which the individual resides

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.[64]

32. unemployed as a result of a natural disaster

Unemployed as a result of a natural disaster[65] 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 on one or more of the following four criteria, subject to the clarification provided below relating to separating service members and military spouses:[66]

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;
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 Categories IV and V in the policy.

[64] Defined by the State as permitted under 20 CFR § 680.130(b)(1).
[65] Ibid.
[66] Defined by the State as permitted under 20 CFR § 680.130(b)(1).

34. Veteran

Veteran[67] 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).

[67] 20 CFR § 1010.110; 38 USC § 101(2)

State Policy **Workforce Innovation and Opportunity Act (WIOA)**

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Policy category
Adult, Dislocated Worker, and Youth

Effective
December 11, 2023

Supersedes
Adult and Dislocated Worker Programs, Change 2 (effective July 11, 2023)

WIOA Title IB Adult and Dislocated Worker Programs

REFERENCE

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

BACKGROUND

WIOA Title IB adult and dislocated worker programs must make available and provide career services, training services, supportive services, and follow-up services to adult and dislocated worker program participants.

ACTION

State

This policy supersedes and cancels the State's policy titled Adult and Dislocated Worker Programs, Change 2. Questions and comments on this policy may be submitted in writing to the policy mailbox at ndol.wioa_policy@nebraska.gov.

State policies referenced in this policy are included in the State policy manual, which is accessible at https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies. *State policy manual* refers to the policy manual created and maintained by the NDOL Reemployment Services Quality Control Unit.

Local boards and administrative entities

Local boards and local administrative entities must ensure that basic and individualized career services, training services, supportive services, and follow-up services for adults and dislocated workers are available and accessible through comprehensive American Job Centers in their respective local areas, in accordance with this policy and the State's policy on one-stop delivery systems and one-stop centers, other applicable State policies, and applicable Federal laws, rules, regulations, and guidance.

POLICY

This policy establishes requirements regarding career services, training services, supportive services, and follow-up services for Title IB adult and dislocated worker program participants.

This policy has eight sections and one appendix.

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Section I. Basic and individualized career services

(a) General requirements

Local boards and local administrative entities must ensure that basic and individualized career services, training services, supportive services, and follow-up services are available to and accessible by adult and dislocated worker program participants, which may be provided by:[1]

- one-stop operators or through contracts with service providers that have been approved by local boards;[2] and

- Title IB adult and dislocated worker programs, Title III Wagner-Peyser Employment Service, and other *required* one-stop partner programs, subject to legislative authorization, requirements, and limitations for each partner program.[3]

(b) Basic career services

Basic career services that must be available to and accessible by adult and dislocated worker program participants are described in detail in the State's policy on one-stop delivery systems and one-stop centers.

(c) Individualized career services

Individualized career services must be available to individuals enrolled in adult and dislocated worker programs in order for program participants to obtain or retain employment.[4] Individualized career services are listed in Table 1.

Table 1. Individualized career services[5]

Description
1. Comprehensive and specialized assessments of the skill levels and service needs of adults and dislocated workers, which may include: a. diagnostic testing and use of other assessment tools; and b. in-depth interviewing and evaluation to identify employment barriers and appropriate employment goals
2. Development of individual employment plans (IEPs) that identify employment goals, appropriate achievement objectives, and appropriate combinations of services for participants to achieve their employment goals, including provision of access to the Eligible Training Provider List (ETPL) and information about ETPs
3. Group [career] counseling
4. Individual [career] 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 to prepare individuals for unsubsidized employment or training

[1] WIOA Secs. 134(b)(1) and 134(c)(2); 20 CFR §§ 680.100 and 680.160; TEGL 19-16
[2] 20 CFR § 680.160. Local boards may be providers of career services but only when approved by the local area 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 subawards with service providers, which is included in the State policy manual.
[3] TEGL 19-16
[4] 20 CFR §§ 680.140(a) and 680.150(b); TEGL 19-16
[5] 20 CFR § 678.430(b)

Description
7. Internships and work experiences, including transitional jobs, that are linked to careers
8. Workforce preparation activities
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 for individualized career services

Eligibility for individualized career services for adults and dislocated workers must be based on initial assessments of skill levels, as described below and mentioned in the State's policy on one-stop delivery systems and one-stop centers. Initial assessments of skill levels must assess:[6]

- literacy and numeracy skills;
- English language proficiency;
- aptitudes and abilities, including skills gaps; and
- supportive services needs.

(2) Priority of service requirements

Eligibility for individualized career services must be provided according to requirements established in the State's policy on priority of service relating to adults and dislocated workers.

(3) Local policies on individualized career services

Local boards and local administrative entities must establish new or revised policies, processes, and procedures for local Title IB adult and dislocated worker programs that:[7]

- identify the initial assessments[8] to be used to determine eligibility for individualized career services in compliance with Section I(c)(1); and
- require Title IB adult and dislocated worker program staff adhere to established requirements pertaining to initial assessments, eligibility determinations for individualized career services, and priority of service requirements defined in this policy and the State's policy on priority of service relating to adults and dislocated workers.

[6] 20 CFR § 680.150(b); TEGL 19-16
[7] TEGL 19-16
[8] Use of recent previous interviews, evaluations, or assessments by partner programs is permitted for determining when determining if individualized career services are appropriate [20 CFR § 680.220].

Section II. Training services

(a) Types of training services

Training services must be available to adults and dislocated workers who meet eligibility criteria defined in Section II(b) below.[9] Training services that may be funded by Title IB adult and dislocated worker programs are listed in Table 2.

Table 2. Training services for adults and dislocated workers[10]

Type of training service
1. Occupational skills training, including: a. training for nontraditional employment; b. Registered Apprenticeship programs; c. pre-apprenticeships, *provided they include the following elements*:[11] i. training and curricula that aligns with the skill needs of employers in the economy of the State or region involved; ii. access to educational and career counseling and other supportive services, directly or indirectly; iii. 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; iv. opportunities to attain at least one industry-recognized credential; and v. partnership with one or more Registered Apprenticeship programs that assist in placing individuals who complete pre-apprenticeships in Registered Apprenticeship programs
2. On-the-job training
3. Incumbent worker training, in accordance with WIOA Sec. 134(d)(4) and 20 CFR §§ 680.780, 680.790, 680.800, 680.810, and 680.820
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 rows 1 through 8 above
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 rows 1 through 8 above
11. Customized training conducted with a commitment by employers or groups of employers to employ individuals upon successful completion of the training

(b) Eligibility for training services

Pursuant to WIOA Sec. 134(c)(3)(A), training services may be provided if Title IB adult and dislocated worker program staff determine after conducting an interview, evaluation, or assessment *and* career planning that demonstrates employed, underemployed, and unemployed

[9] 20 CFR § 680.140(a); TEGLs 19-16 and 19-22 Change 1
[10] 20 CFR § 680.200
[11] 20 CFR § 681.480

adults and dislocated workers meet criteria 1 through 6 and criterion 7 in the case of trade-affected workers:[12]

1. are 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 alone;

2. are in need of training services to obtain or retain employment that leads to economic self-sufficiency or wages comparable to or higher than wages from previous employment;

3. have skills and qualifications to successfully participate in training services;

4. have selected programs of training services that are directly linked to in-demand employment opportunities in the applicable local area or the Statewide planning region, or in another area to which the individual is willing to commute or relocate; and

5. are unable to obtain grant assistance from other sources to pay the costs of such training, such as state-funded training, Trade Adjustment Assistance, or Federal Pell Grants established under Title IV of the Higher Education Act of 1965, as amended, *or* require WIOA assistance in addition to other sources of grant assistance, subject to coordination of services requirements established under WIOA Sec. 134(c)(3)(B) and 20 CFR § 680.230, and Section IV(b) below;

6. are determined eligible in accordance with the State's priority of service policy as it pertains to adults and dislocated workers; and

7. in the case of workers who are members of a worker group covered under a petition filed for Trade Adjustment Assistance and are awaiting a determination:

    a. if the petitions are certified, workers then transition to TAA funded training; or

    b. if the petitions are denied, workers continue training under adult or dislocated worker programs.

There is no "income test" for determining eligibility for training services, with one exception. Adult and dislocated worker income must not be considered when determining eligibility for training services funded by Title IB adult and dislocated worker programs, except in relation to priority of service determinations for adults as described in the State's priority of service policy.

(1) Training services eligibility and career services exception

There is no requirement that career services be provided as a condition to receive training services.[13] However, if career services are not provided before training services, local boards and administrative entities must ensure that local Title IB adult and dislocated worker program staff accurately and concisely document in NEworks the circumstances justifying determinations to provide training services without first providing an interview, evaluation or assessment, and career planning services informed by local labor market information and training provider performance information, in accordance with Section II(b)(2) directly below and Section VII.

[12] 20 CFR § 680.210; TEGL 19-16
[13] 20 CFR § 680.220(b); TEGL 19-16

(2) Training services documentation requirements

Adult and dislocated worker case files in NEworks must contain documentation relating to determination of need for training services based on the seven eligibility criteria described above.[14] In addition, if career services are not provided before training services are provided, Title IB adult and dislocated worker program staff must accurately and concisely document in NEworks circumstances justifying determinations to provide training services without first providing an interview, evaluation, and assessment and career planning services informed by local labor market information and training provider performance information.[15] The documentation must be included in case files prior to the provision of training services.

(c) Individual training accounts (ITAs)

Training services for Title IB program participants are typically provided by ETPs listed on the State's ETPL through ITAs.[16] ITAs are payment agreements with ETPs established on behalf of Title IB program participants by Title IB programs to purchase training services from ETP programs selected by participants in consultation with career planners (aka case managers) and discussion of program quality and performance information for programs listed on the ETPL.[17]

(1) ITA limitations

Local boards may establish financial limitations on ITAs,[18] which may be established based on:[19]

- limits for individual Title IB participants based on needs identified in participant IEPs or ISSs, such as participant occupational choices or goals and levels of training needed to succeed in achieving those goals; or

- policy decisions by local boards to establish ranges of amounts and/or a maximum amounts applicable to all ITAs established for Title IB participants.

Title IB program participants may select programs of training services from the ETPL that exceed locally established maximum amounts available for ITAs pursuant to local plans and plan modifications and local policies and procedures, when other sources of funds (other than Title IB programs) are available to supplement ITAs, such as Pell Grants, scholarships, severance pay, and other sources.[20]

Local boards must not establish ITA limitations, such as restricting the availability of ITAs for specific occupations, that undermine requirements that training services be provided in a manner that maximizes consumer choice in the selection of a training provider,[21] in accordance with WIOA

[14] 20 CFR § 680.220(b)
[15] Ibid.
[16] 20 CFR § 680.300
[17] Ibid.
[18] 20 CFR § 680.310(a)
[19] 20 CFR § 680.310(b)
[20] 20 CFR § 680.310(d)
[21] 20 CFR § 680.310(d)

Sec. 107(d)(10)(E), 20 CFR § 680.340, TEGL 19-16, and applicable State policies addressing consumer choice requirements.[22]

ITA limitations must be described in local plans and plan modifications,[23] as well as local policies and procedures, *prior to implementation of limitations*.

(2) ITA payments

Payments to ETPs based on ITAs may be made in a variety of ways, including electronic transfer of funds through financial institutions, vouchers, or other appropriate methods. Payments may be made incrementally through payment of a portion of the costs at different points in the training course. Regardless of methods of payment for ITAs, all payments must be made in a timely manner.

In the event that Title I participants drop out of or fail to complete training services authorized under ITAs, Title IB programs must pay for actual services provided by ETPs to participants, including all training materials provided by ETPs to participants pursuant to ITAs. In other words, formal and informal practices established by local Title IB programs that result in non-payment to ETPs for actual training services and training materials provided are not permitted.

(3) ITA alternatives

Under limited circumstances, local boards may directly provide training services, but only if they've obtained a written waiver from the Governor for this purpose and meet other requirements established under WIOA Sec. 107(g)(1) and 20 CFR § 679.410.[24] Under limited conditions, local boards may contract for training services rather than using ITAs (read subsection (A) directly below).

(A) Contract exceptions to use of ITAs

Training services, when determined appropriate, must be provided either through an ITA, as described above, or through a training contract. Except under limited conditions described in WIOA Sec. 122(h) and 20 CFR § 680.320, training services must be provided by ETPs in accordance with WIOA Sec. 122(d).[25]

As mentioned above, ITAs are the primary method to be used for procuring training services for Title IB program participants. However, training contracts may be used to provide training services instead of ITAs under limited conditions (referred to as training exceptions or contract exceptions).[26] Pursuant to WIOA Sec. 134(c)(3)(G)(ii) and consistent with 20 CFR §§ 680.320, 680.340, and 680.530, local boards may use contracts for training services instead of ITAs under one or more of the following conditions:[27]

[22] James Lambert (Grants Management Specialist, Policy Development, USDOL), meeting with NDOL Quality Control Unit pertaining to consumer choice and supportive services [August 24, 2023]
[23] 20 CFR § 680.310(c)
[24] 20 CFR § 680.300; TEGL 19-16
[25] TEGL 19-16
[26] Ibid.
[27] TEGL 19-16

1. on-the-job training services, which may include paying for the on-the-job training portion of Registered Apprenticeship programs, customized training, incumbent worker training, and transitional jobs;

2. when local boards determine through processes and procedures established under local plans and plan modifications and local policies, processes, and procedures that there are an insufficient number of ETPs in local areas to accomplish the purpose of a system of ITAs, provided such processes and procedures require a public comment period of at least 30 days for interested providers of training services;

3. in order to use training services from programs having demonstrated effectiveness in serving individuals with barriers to employment that are offered by community-based organizations or other private organizations, provided local boards have developed criteria for determining demonstrated effectiveness particularly as it applies to individuals with barriers to employment to be served, which may include:

    a. evaluation of the financial stability of the organizations;

    b. evaluation of documentation on the organizations' demonstrated performance in the delivery of services to individuals with barriers to employment through such means as:

        i. program completion rates;

        ii. attainment rates for skills, certificates, or degrees the programs are designed to provide; and

        iii. placement rates after training in unsubsidized employment and retention in such employment;

    c. how the training programs relate to workforce investment needs identified in local plans and plan modifications;

4. when local boards determine that the most appropriate training could be provided by an institution of higher education or other provider of training services in order to facilitate the training of a cohort of multiple individuals for jobs in in-demand sectors or occupations; or

5. when local boards determine pay-for-performance contracts are suitable, consistent with 20 CFR § 683.500:

    a. No more than 10 percent of the local funds may be spent on pay-for-performance contract strategies as defined in WIOA Sec. 3(47) and consistent with 20 CFR § 683.510.

When electing to use contracts for the provision of training services under conditions 2 through 5 listed above, local boards must ensure that consumer choice requirements established under 20 CFR § 680.340 have been fulfilled.

Local boards may determine that providing training services through a combination of ITAs and contracts for training services is the most effective approach. This combined approach could be

used to support placing participants in programs such as Registered Apprenticeships and other similar types of training.

(4) Local plans and plan modifications and training services

As mentioned above, local plans and plan modifications must describe processes and procedures to be used when selecting non-ETPL training providers for contracted training services in lieu of ITAs;[28] and local policies, processes, and procedures must also be established concerning use of training contracts instead of ITAs, as described in subsection (d) directly below. Further, processes and procedures established under local plans and plan modifications for procurement and selection of contracted non-ETPL training providers must be based on one or more conditions described under paragraphs 2 through 5 in subsection (c) above *and* must adhere to the requirements of the Uniform Guidance pertaining to subawards and subrecipients[29] and all other applicable Federal laws, rules, regulations, guidance, and applicable State policies.

(d) Local policies on training services

In addition to processes and procedures established under local plans and plan modifications, local boards and local administrative entities *must* establish new or revised policies, processes, and procedures for local Title IB adult and dislocated worker programs that:[30]

- identify processes and procedures for determining adult and dislocated worker eligibility for training services in relation to conditions described under paragraphs 2 through 5 in subsection (c) above;

- define requirements pertaining to ITA limitations, payments, and alternatives to ITAs (including exceptions to ITAs), as defined in subsection (c) above;

- require Title IB adult and dislocated worker program staff adhere to established requirements pertaining to training services established in this policy, as well as the State's policy on priority of service; and

- require adherence to the requirements of Uniform Guidance pertaining to procurement and selection of non-ETPL training providers and subawards to subrecipients,[31] as well as all other applicable Federal laws, rules, regulations, guidance, this policy, and the State's policy on procurement.

[28] 20 CFR § 680.310(c)
[29] Refer to 2 CFR §§ 200.317 through 200.327 for Federal procurement standards, especially 2 CFR § 200.322.
[30] TEGL 19-16
[31] Refer to 2 CFR §§ 200.317 through 200.327 for Federal procurement standards, especially 2 CFR § 200.322.

Section III. Supportive services

(a) Availability

Title I adult and dislocated worker supportive services may be provided only:[32]

- to individuals who are participating in career or training services, as defined in WIOA Sec. 134(c)(2)-(3);
- when supportive services are necessary to enable individuals to participate in career services or training activities; and
- when adults and dislocated workers are unable to obtain supportive services through other programs.

It's important to remember that Title IB programs are the "funding source of last resort", in accordance with Section IV(b) below pertaining to coordination of services.

(b) Types of supportive services

Supportive services that may be provided to individuals participating in career services and/or training services may include, but are not limited to:[33]

1. linkages to community services;
2. assistance with transportation;
3. assistance with child care and dependent care;
4. assistance with housing;
5. assistance with educational testing;
6. reasonable accommodations for individuals with disabilities;
7. legal aid services;
8. referrals to health care;
9. assistance with uniforms or other appropriate work attire and work-related tools, including such items as eyeglasses and protective eye gear;
10. assistance with books, fees, school supplies, and other necessary items for students enrolled in postsecondary education classes;

[32] 20 CFR § 680.910(a)-(b)
[33] 20 CFR § 680.900(a)(l)

11. payments and fees for employment and training-related applications, tests, and certifications; and

12. needs-related payments, subject to the requirements listed in subsection (1) below.

(1) Needs-related payments

Needs-related payments provide financial assistance to adults and dislocated workers for the purpose of enabling them to participate in training and are a supportive service authorized by WIOA Sec. 134(d)(3). Unlike other supportive services, in order to qualify for needs-related payments a adults and dislocated workers must be enrolled in training.[34] Eligibility requirements for needs-related payments for adult and dislocated workers are defined in subsections (A) and (B) below.

(A) Adult eligibility for needs-related payments

Adults must meet all three criteria listed below in order to receive needs-related payments:[35]

1. unemployed;

2. not qualified for or have ceased to qualify for unemployment compensation; and

3. enrolled in Title I adult program funded training services.

(B) Dislocated worker eligibility

Dislocated workers must meet all of criterion 1 *or* criterion 2 below in order to receive needs-related payments:[36]

1. unemployed and:

    a. are no longer qualified for unemployment compensation or Trade Readjustment Allowance under TAA; *and*

    b. enrolled in a Title I dislocated worker program funded program training services by:

        i. the end of the 13th week after the most recent layoff that resulted in a determination of eligibility as a Title I dislocated worker; or

        ii. if later, by the end of the 8th week after the worker is informed that a short-term layoff will exceed six months;

2. unemployed and did not qualify for unemployment compensation or Trade Readjustment Allowance under TAA *and* are enrolled in Title I dislocated worker program funded training services.

[34] 20 CFR § 680.930
[35] 20 CFR § 680.940
[36] 20 CFR § 680.950

(c) Local policies on supportive services

Local boards and local administrative entities, in consultation with one-stop partners and other community service providers, must establish new or revised supportive services policies that ensure resource and service coordination in their local areas.[37] Local policies and procedures on supportive services must:[38]

1. comply with the requirements of 20 CFR Part 680 Subpart G;

2. be developed in consultation with one-stop partners and other community service providers in local areas, as stated above;

3. require resource and supportive service coordination within local areas;

4. include descriptions of how supportive services will be funded by Title I adult or dislocated worker programs when supportive services are not otherwise available from other sources *and* address procedures for referral to such services, including how such services will be funded when they are not otherwise available from partners or other sources; and

5. require accurate information be provided to adults and dislocated workers in usable and understandable formats and languages concerning the availability of supportive services in local one-stop delivery systems, including referrals to supportive services.

Local policies and procedures on supportive services *may*:[39]

1. establish limits on the provision of supportive services;

2. provide one-stop centers with authority to establish limits on the provision of supportive services to adults or dislocated workers, including the maximum amount of funding and maximum duration of funding; and

3. allow individual one-stop centers to grant exceptions to established limits on supportive services.

Section IV. Coenrollment and coordination of services

(a) Coenrollment

Adults and dislocated workers must be coenrolled in partner programs whenever eligibility permits, in accordance with the State's performance accountability policy.

[37] 20 CFR § 680.900
[38] WIOA Sec. 134(c)(2)(A)(ix); 20 CFR §§ 678.430 and 680.900 through 680.970; TEGLs 16-16 and 19-16
[39] 20 CFR § 680.920

(b) Coordination of services

(1) General requirements

Local boards and local administrative entities must ensure that Title IB adult and dislocated worker programs:[40]

- coordinate the provision of services to coenrolled participants, 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 coenrolled participants; and
- ensure no duplication of services across programs.

(2) Training services

Funding for training services under Title I adult and dislocated workers is limited to participants who:[41]

- are unable to obtain grant assistance from other sources to pay the costs of their training; or
- require assistance beyond that available under assistance from other sources to cover the costs of training services.

Further, local one-stop delivery system partners, including Title IB adult and dislocated worker programs, must coordinate available training funds and make funding arrangements with local one-stop delivery system partners and other entities pertaining to the requirements stated directly above.[42] Also, local one-stop delivery system partners, including Title IB adult and dislocated worker programs, must consider the availability of other funding sources to pay for the costs of training, such as Temporary Assistance for Needy Families, state-funded training, and Federal Pell Grants, so that Title IB adult and dislocated worker program funds are supplemental to other sources of funding sources.[43]

(3) Pell Grants[44]

(A) Pell Grants awarded

If adult or dislocated worker program participants have been awarded Federal Pell Grants, Pell Grant funding must be applied against the costs of training and education fees the training provider charges to attend training before Title IB adult and dislocated worker program funds are utilized for the costs of training and education fees.

If adult or dislocated worker program participants have been awarded Pell Grants that include assistance for costs of education-related expenses, that assistance must not be used to offset or

[40] 20 CFR § 681.430(b)
[41] 20 CFR § 680.230(a)
[42] 20 CFR § 680.230(b)
[43] Ibid.
[44] 20 CFR § 680.230(c)

reduce available Title IB adult and dislocated worker program funding for costs of training and education fees. In other words, Pell Grant assistance disbursed to adult and dislocated worker participants for education-related expenses belongs solely to participants. Title IB adult and dislocated worker programs are still permitted to provide supportive services to supplement Pell Grant assistance for education-related expenses if Pell Grant assistance for education-related expenses are insufficient.

(B) Pell Grants pending

Adult and dislocated worker program participants may enroll in training funded by Title IB adult and dislocated worker programs while applications for Pell Grants are pending as long as the Title IB adult and dislocated worker programs have made arrangements with training providers and participants regarding allocation of Pell Grant assistance in the event that Pell Grants are subsequently awarded. In other words, training providers must reimburse Title IB adult and dislocated worker programs for funds used to underwrite costs of training and education fees whenever such costs are subsequently covered by Pell Grants. As stated above, Pell Grant assistance disbursed on behalf of adult and dislocated worker participants for education-related expenses belongs solely to participants; and Title IB adult and dislocated worker programs are still permitted to provide supportive services to supplement Pell Grant assistance for education-related expenses if Pell Grant assistance for education-related expenses is insufficient.

(C) Mandatory disclosure and notification to ETPs and participants pertaining to Pell Grants

Prior to establishment of ITAs and enrollment in training services, ETPs and adult and dislocated worker program participants must be advised of the requirements described above in Sections IV(b)(3)(A) and IV(b)(3)(B). This mandatory disclosure and notification requirement also applies to adult and dislocated worker program participants who are enrolled in Title IB adult and dislocated worker programs based on reverse referrals from training providers.

(c) Local policies on coenrollment and coordination of services

Local boards and local administrative entities must establish new or revised policies, processes, and procedures for local Title IB adult and dislocated worker programs that ensure resource and service coordination in their local areas, which must:[45]

- adhere to coenrollment requirements for adults and dislocated workers established under the State's performance accountability policy;
- require coordination of services for coenrolled participants with one-stop partners and other entities, including career, training, and supportive services;
- require identification and tracking of funding streams that pay the costs of services provided to coenrolled participants;
- ensure no duplication of services across one-stop delivery system partner programs; and

[45] 20 CFR § 680.900

- require compliance with Section IV(b)(3) concerning Pell grant assistance and mandatory disclosure and notification to ETPs and participants.

Section V. Follow-up services

(a) Requirements

Follow-up services must be available for a minimum of 12 months to adults and dislocated workers who are placed in unsubsidized employment, beginning on the first day of unsubsidized employment, unless participants decline follow-up services or cannot be located or contacted.

(b) Types of follow up services

Types of follow-up services must be based on the needs of adults and dislocated workers following placement in unsubsidized employment and may differ in order to assist with retention of unsubsidized employment. Follow-up services for adults and dislocated workers include but are not limited to:[46]

- counseling about the workplace, including counseling pertaining to maintenance or advancement in unsubsidized employment, consistent with individual strengths, resources, priorities, concerns, abilities, capabilities, and interests;
- counseling on resolving work-related issues following placement in unsubsidized employment;
- provision of referrals to other programs, services, and community resources to support retention in unsubsidized employment; and
- provision of other forms of support pertaining to needs directly relating to retention in unsubsidized employment, such as assistance with costs of tools and uniforms and other types of services described above in Section III(b), excluding needs-related payments.

During follow-up, case managers should obtain information and acceptable source documentation when necessary to support performance reporting for adult and dislocated worker program outcomes. Refer to the State's policy on performance accountability for information on adult and dislocated worker program performance indicators.

(1) Policy clarification: Follow-up services v. supportive services[47]

Supportive services may be provided only to participants who are receiving participant-level services (i.e., career and training services) and are provided to enable individuals to participate in and receive adult and dislocated worker program services prior to exiting.

Follow-up services are provided after a participant is placed in unsubsidized employment and no longer needs participant-level services. In other words, follow-up services are designed to help

[46] 20 CFR § 678.430(c); TEGL 16-16
[47] Gerardo Lara, email to USDOL Region V states pertaining to follow-up services [accessed September 28, 2023]

adult and dislocated workers retain unsubsidized employment, earn wage gains, or advance within their occupation or career pathway.

There are two distinctions to be understood when it comes supportive services and follow-up services: purpose and timing. While there may not be a difference in the nature of these services, there may be a difference relating to recording and reporting of such services. For example, transportation-related services like a bus pass can be a supportive service and follow-up service but must be recorded and documented differently.

- Bus passes provided to enable individuals to participate in career or training services must be recorded and documented as supportive services.

- Bus passes provided as follow-up services to enable individuals to travel and from to worksites to assist them with retention of their unsubsidized employment must be recorded and documented as follow up services.

(c) Documenting follow-up services

Case managers must document provision of follow-up services and attempts to provide follow-up services in NEworks as follows.

1. Activity codes for actual follow-up services provided must be recorded.

2. Case notes for actual follow-up services provided must be recorded.

3. Acceptable source documentation for actual follow-up services provided must be uploaded.

4. When participants decline follow-up services or cannot be located or contacted:

    a. case notes documenting the decline must be recorded;

    b. supporting documentation must be uploaded whenever available; and

    c. attempts to provide follow-up services must continue during the mandatory 12-month follow-up period and be documented, preferably monthly but no less frequently than quarterly, unless the participants have declined follow-up services.

In addition to the requirements listed above, documenting follow-up services must also comply with Section VII of this policy.

(d) Local policies on follow-up services

Local boards and local administrative entities must establish new or revised policies, processes, and procedures for Title IB adult and dislocated worker program follow-up services that ensure resource and service coordination in their local areas, which must comply with the requirements of Section V(a)-(c) of this policy, including:

- required and permitted types of follow-up services;

- duration and scope of follow-up services; and

- requirements that Title IB adult and dislocated worker program staff adhere to new or revised local policies, processes, and procedures pertaining to follow-up services.

Section VI. Privacy

Local boards and local administrative entities must ensure that Title IB adult and dislocated worker programs and staff adhere to the confidentiality requirements of the Family Educational Rights and Privacy Act, established under Section 444 of the General Education Provisions Act,[48] including requirements regarding circumstances requiring written consent for disclosure of personally identifiable information from education records. Further, local boards and local administrative entities must ensure that Title IB adult and dislocated worker programs and staff adhere to requirements established in applicable State policies addressing protection of personally identifiable information.

(a) Local policies on privacy and personally identifiable information (PII)

Local boards and local administrative entities *must* establish new or revised policies, processes, and procedures for local Title IB adult and dislocated worker programs that require Title IB adult and dislocated worker programs comply with requirements of:

- the Family Educational Rights and Privacy Act, established under Section 444 of the General Education Provisions Act; and

- applicable State policies addressing protection of personally identifiable information.

Section VII. Documentation of adult and dislocated worker program services

In accordance with WIOA Sec. 185(a), all Title I adult and dislocated worker participant case files must include accurate, concise, and timely documentation of services provided by case managers, including activities recorded in NEworks, supporting case notes, and acceptable source documentation. This documentation is not only mandatory pursuant to WIOA Sec. 185(a) but is essential to accurate performance reporting for the State and local areas.

Local boards and local administrative entities must establish new or revised policies, processes, and procedures for local Title IB adult and dislocated worker programs that require the programs comply with requirements of this Section VII, as well as Section II(b)(2).

Section VIII.Technical assistance

Technical assistance on this policy is available to all local boards and local administrative entities. Requests for technical assistance must be sent to the policy mailbox at ndol.wioa_policy@nebraska.gov.

[48] 20 USC § 1232g; 34 CFR Part 99

DISCLAIMER

This policy is based on NDOL's reading of the applicable laws, rules, regulations, and guidance released by the Federal 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

Definitions in this appendix are provided as supplemental information that supports the provisions of the policy. 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.[49]

2. comprehensive American Job Center (American Job Center or AJC)

A comprehensive American Job Center is a physical location where jobseekers, workers, and employers can access programs, services, and activities from all required one-stop partners.

3. education fees

Education fees refers to fees that are assessed by ETPs as part of the cost of attending training services, such as laboratory, library, and other fees, including drug-testing and exam fees.[50] Education fees does not include education-related expenses.

4. education-related expenses

Education-related expenses refers to expenses students may incur independent of costs of training services, such as housing, food, transportation, etc.

5. Eligible Training Provider (ETP)

An ETP is a training provider that meets the eligibility criteria defined in the State's policy on ETPs and is therefore included on the State's ETPL.

6. Eligible Training Provider List (ETPL)

ETPL refers the State's list of ETPs who are authorized to receive funding through ITAs for the provision of programs of training services.

7. in-demand industry sectors or occupations

The term in-demand industry sectors or occupations refers to:[51]

- in-demand industry sectors that have substantial current or potential impact (including jobs that lead to economic self-sufficiency and opportunities for advancement) on the state, regional, or local economies, as applicable, and contribute to the growth or stability of other supporting businesses or growth of other industry sectors; or

[49] WIOA Sec. 3(10)
[50] 20 CFR § 680.230(c)
[51] WIOA Sec. 3(23)

- in-demand occupations that currently have or are projected to have a number of positions (including positions that lead to economic self-sufficiency and opportunities for advancement) in industry sectors that have a significant impact on the state, regional, or local economies.

8. institution of higher education

Institution of higher education means an educational institution that:[52]

a. admits, as regular students, only persons having a certificate of graduation from a school providing secondary education (or 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;

b. is legally authorized within the state to provide a program of education beyond secondary education;

c. 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);

d. is a public nonprofit or other nonprofit institution; and

e. 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 within a reasonable time.

9. program of training services

The term program of training services refers to programs that are included on the State's ETPL and means one or more courses or classes or a structured regimen that leads to one of the following:[53]

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 GED earned in conjunction with occupational skills training;

[52] WIOA Sec. 3(28); 20 USC §§ 1001, 1002(a)(1), and 1091(d)
[53] 20 CFR § 680.420

f. employment; or

g. measurable skills gains toward employment.

10. supportive services

The term *supportive services* refers to services such as transportation, child care, dependent care, housing, and needs-related payments, that are necessary to enable an individual to participate in career and/or training services authorized under WIOA.[54]

11. underemployed

In addition to individuals who are unemployed, a significant number of job seekers are *underemployed*. Examples of individuals who are *underemployed*[55] include those who:

a. meet the definition of low-income individual in WIOA Sec. 3(36);

b. are employed less than full-time and are seeking full-time employment;

c. are employed in a position that is inadequate with respect to their skills and training;

d. have current job earnings are not sufficient compared to their job earnings from previous employment;

e. were laid off from a job two years ago and has been unemployed since they were laid off;

f. were laid off over a year ago but have not been able to find comparable work and have struggled to find stability; and

g. were laid off but have been working multiple jobs in order to obtain wages comparable to their previous income through the combination of the multiple jobs.

The list above is not all inclusive of circumstances that may contribute to underemployment.

[54] WIOA Secs. 3(59)

[55] TEGL 19-16; Dawn Carrillo, email confirming meeting with Chris Mendoza (USDOL Region V Federal Project Officer) pertaining to the definition of *underemployed* [accessed July 14, 2023]

State Policy **Workforce Innovation and Opportunity Act (WIOA)**

Nebraska Department of Labor (NDOL)
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Policy category
Adult, Dislocated Worker, and Youth

Effective
May 3, 2023

Supersedes
Youth Program, Change 2
(effective March 15, 2023)

Youth Program, Change 3

REFERENCE

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

BACKGROUND

Local WIOA Title I youth programs must provide 14 high quality services for youth (aka youth program elements) that lead to a job along a career pathway or enrollment in postsecondary education.

CHANGES

Under this Change 3, footnotes have been revised for clarity and links have been updated, where necessary. In addition, this policy establishes the following material changes to the superseded and cancelled policy.

- Section II(a) clarifies, pursuant to TEGL 9-22, that use of previous basis skills assessment results that are older than six months may be used if deemed appropriate, provided there is local policy in place that allows the use of such assessments.

- Section II(d) has been revised, pursuant to TEGL 9-22, to stress the importance of involving youth as partners in making decisions that strengthen youth programs and improve youth outcomes.

- Section II(i)(2)(A) has been revised to generalize information on potential exceptions to the OSY 75 percent expenditure requirement based on Federally approved waivers.

- Section II(i)(3) has been revised to clarify, pursuant to TEGL 9-22, that supportive services can be counted toward the 20 percent work experience expenditure requirement.

- Section III.3 now states that remote (virtual) work experiences are allowable when possible and practical.

- Section III.4.a.i. has been added regarding potential exceptions to the ISY ITA prohibition based on Federally approved waivers.

- Section III.7.a. has been added as clarification concerning the provision of food as a supportive services, pursuant to TEGL 9-22.

- Section III.9. has been revised to clarify requirements and conditions of delivery of comprehensive guidance and counseling.

- Section III.14. has been revised to stress the importance of certain requirements pertaining to follow-up services.

ACTION

This policy supersedes and cancels the State's policy titled Youth Program, Change 2 (effective March 15, 2023). Questions and comments on this policy may be submitted in writing to the policy mailbox at ndol.wioa_policy@nebraska.gov.

Local boards 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;

- local youth program design complies with the requirements described in Section II, including how all 14 program elements described in Section III are made available within that programmatic design;

- local youth program policies and procedures are established that:

    - define methods for determining when an objective assessment or individual service strategy (ISS) is not required (Section II(a));

    - define circumstances when results an objective assessments older that six months may be used (Section II(a));

    - provide safeguards to protect the personally identifiable information of youth participants (Section II(h));

    - govern compensation to youth participants (Section II(i));

- 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.).

POLICY

This policy identifies requirements for selection and procurement of youth service providers, program design, and program elements that must be made available through local youth programs.

This policy has three sections and one appendix.

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Section I. Service provider selection and procurement

Local boards (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.[1] 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:[2]

    a. Federal principles of competitive procurement defined in 2 CFR Parts 200 and 2 CFR Part 180; and

    b. state and local procurement policies and procedures and applicable state, and local procurement laws

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 non-competitive basis.[3] Non-competitive procurement must be conducted in accordance with:[4]

    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, including 2 CFR Part 180.

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 total youth program funds allocated annually to the local area for pay-for-performance contract strategies.[5]

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,[6] which are described in detail in the State's performance accountability policy.[7]

[1] WIOA Sec. 123(a); 20 CFR § 681.400(a)
[2] WIOA Sec. 123(a); 2 CFR § 200.213; 20 CFR § 681.400(b)(2); TEGL 21-16
[3] WIOA Sec. 123(b); 20 CFR § 681.400(b)(4); TEGL 21-16
[4] 2 CFR § 200.213; 20 CFR § 681.400(b)(4); TEGL 21-16
[5] 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 by sending an email to ndol.wioa_policy@nebraska.gov.
[6] 20 CFR § 681.400(b)(1)
[7] The State policy manual is accessible at https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies.

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.[8]

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.[9]

    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 Eligible Training Providers (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.[10] 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 pursuant to the requirements of the Nebraska Private Postsecondary Career School Act.[11]

    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-

[8] 20 CFR § 681.400(b)(3); TEGL 8-15. The State's policy on workforce development boards and chief elected officials provides information on standing youth committees and is included in the State policy manual, which is accessible at https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies.
[9] 20 CFR § 680.320(a)
[10] The State's policy on regional and local plans provides information on plan content requirements and is included in the State policy manual, which is accessible at https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies.
[11] Neb. Rev. Stat. §§ 85-1601 – 85-1658

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.[12]

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[13]

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.

3. ITA costs are paid by the local youth program or adult or dislocated worker programs for ISY who are co-enrolled in either of those programs.

4. The local board, through the one-stop center, may coordinate funding for ITAs with funding from other Federal, state, local, private job training programs, or other sources to assist the individual in obtaining training services.

5. Priority consideration must be given to programs that lead to recognized postsecondary credentials[14] 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.[15] The following requirements and timelines apply to youth service provider lists.

- Local boards, or its designee, must submit a list of its youth service providers to NDOL by July 1 of each program year.

[12] Neb. Rev. Stat. §§ 85-1601 – 85-1658
[13] 20 CFR § 680.340(a)-(f)
[14] The State's performance accountability policy provides information on what does and does not constitute a Title I recognized postsecondary credential and is included in State policy manual, which is accessible at https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies..
[15] TEGL 21-16

- 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 in APPENDIX II and submitted by email to ndol.wioa_policy@nebraska.gov.[16]

- The lists are published annually by NDOL on the WIOA Youth Program page[17] and revised lists will be published as needed.

Section II. Program design

(a) Framework

The design framework of the local youth program must include the following components:[18]

- 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;

- 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.[19] TEGL 21-16 states that local programs may use previous basic skills assessment results if such previous assessments have been conducted within the past six months. While this continues to be true, local youth programs may use previous assessments older than six months if they deem appropriate if there is local policy in place that allows the use of such assessments.[20] It is important that assessments do not serve as a deterrent to program enrollment. In addition, it is critical that local youth programs incorporate the results of the objective assessment into the participant's ISS and service delivery, such as career counseling. Methods for making such determinations must be established in local policy.

[16] The APPENDIX II form is available upon written request submitted to ndol.wioa_policy@nebraska.gov.
[17] Accessible at https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/YouthProgram2.
[18] 20 CFR § 681.420(a)(1)-(3)
[19] 20 CFR § 681.420(h); TEGL 21-16
[20] TEGL 9-22

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:[21]

- 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.

(c) Referral requirements[22]

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.

[21] 20 CFR § 681.420(c)
[22] WIOA Sec. 129(c)(3)(A)(i)-(ii); 20 CFR 681.420(d)-(f)

(d) Community involvement

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.[23] 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.

Youth play an important role in strengthening programs and improving youth outcomes. Empowering youth to identify and respond to community needs helps them become leaders and assist them in civic engagement. Finding ways to incorporate youth in program development, recruitment strategies, and execution of activities is pivotal.[24] Involving youth as partners in making decisions that affect them increases the likelihood the decisions will be accepted and adopted. Further, providing participants a safe platform to express their ideas, opinions, and advice to others is pivotal in developing leadership skills, which is a requirement of the WIOA Youth program.

(e) Co-enrollment

As required under the State's performance accountability policy:[25]

- 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.[26]

(f) Coordination of services

Local boards 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 of services across programs and youth service providers,[27] 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

[23] 20 CFR §§ 681.420(g) and 681.650
[24] TEGL 9-22
[25] The State's performance accountability is included in the State policy manual, which is accessible at https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies.
[26] TEGL 21-16
[27] 20 CFR § 681.430(b)

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[28]

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.

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.

[28] 20 CFR § 680.230(a)-(c)

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[29]

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 participants' 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[30]

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[31]

There are two limited instances where youth funds may be expended on costs related to individuals who *are not* participants in the youth 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 to individuals who are not participants.

(2) OSY expenditure requirement[32]

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.

[29] 20 CFR § 681.450; TEGL 15-16
[30] 20 CFR § 683.220; 20 USC § 1232g; 34 CFR Part 99
[31] TEGL 21-16
[32] 20 CFR § 681.410

(A) Exception to the OSY expenditure requirement

In the event that the State obtains a waiver of the 75 percent OSY expenditure requirement, NDOL will notify local areas and provide local areas with technical assistance regarding implementation of the waiver.

(3) Work experience priority

Local boards must ensure that local youth programs:[33]

- expend at least 20 percent of allocated youth funds on paid and unpaid work experiences;[34] and
- track expenditures for paid and unpaid work experiences, including funds spent on:
    - wages, stipends, and incentives paid to youth in work experience;
    - staff time identifying potential work experience opportunities;
    - staff time working with employers to develop work experience opportunities;
    - staff time working with employers to ensure successful work experience opportunities;
    - staff time evaluating work experience opportunities;
    - costs associated with participant and employer work experience orientation sessions;
    - classroom training or the required academic education component directly related to the work experience; and
    - supportive services that assist youth participants taking part in work experiences.

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[35] must not be used to fulfill any part of the 20 percent minimum expenditure requirement.

(4) Participant compensation

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)

[33] WIOA Sec. 129(c)(4); 20 CFR § 681.590; TEGLs 8-15, 21-16, and 9-22
[34] Section III.3. defines types of paid and unpaid work experience.
[35] Leveraged resources are resources that are acquired without expenditure of youth program funds. The State's procurement policy provides information on procurement of leveraged resources and is included in the State policy manual, which is accessible at https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies.

guidelines.[36] Understanding the difference between a stipend and wage has specific implications in relation to IRS deductions. 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. Other related factors which impact payments in the form of wages or stipends associated with work experience are that they are counted as earnings when a participant is currently collecting Unemployment Insurance (UI). The income from these wages or stipends may affect the amount and duration of a participant's UI claim in the same manner as regular wages. Compensation may include the following, as described in the following subsections:

- wages;
- stipends;
- incentive payments; and
- withholdings.

(A) Wages[37]

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 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 15th Street, Suite 504A, Omaha, NE 68102, phone 402.221.4682 or 866.487.9243.

(B) Stipends[38]

A stipend is an allowable payment for participation in activities such as work experience or classroom activities, including work readiness or employability skills training. Local youth programs much have written policies and procedures guiding the payment of classroom-based stipends, according to on local program design and participant needs. Local policies on stipends must ensure that payments align with the requirements of 2 CFR Part 200.

(C) Incentive payments[39]

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

[36] Resources pertaining to IRS guidelines and participant compensation are available on the WorkforceGPS Our Journey Together: Work Experience Activities Brief page which is accessible at https://youth.workforcegps.org/resources/2018/10/30/15/56/Work-Experience-Activities.
[37] Resources on wages pertaining to participant compensation are available on the WorkforceGPS Our Journey Together: Work Experience Activities Brief page, accessible at https://youth.workforcegps.org/resources/2018/10/30/15/56/Work-Experience-Activities.
[38] Ibid.
[39] Ibid.; 20 CFR § 681.640; TEGL 21-16

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.

It is also allowable to provide incentives post-exit or during follow-up if the local board has established written to address the purpose of offering such incentives, specifically to induce behavior toward achievement of a specific goal. In order for a post-exit or follow-up incentive to be effective, participants must:

- be aware of the existence of such incentive; and
- understand the terms and standards of the incentive to improve the likelihood of success and lead to a successful outcome or achievement of grant performance measures.

(D) Withholdings

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.[40] IRS publication 525 provides information on taxable and non-taxable income.[41]

Section III. Program elements

The 14 program elements described in this section must be made available to all youth participants.[42] 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.[43]

1. Tutoring, study skills training, instruction, and dropout prevention[44]

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

[40] Resources on wages pertaining to participant compensation are available on the WorkforceGPS Our Journey Together: Work Experience Activities Brief page, which is accessible at https://youth.workforcegps.org/resources/2018/10/30/15/56/Work-Experience-Activities
[41] Accessible at https://www.irs.gov/forms-pubs/about-publication-525.
[42] 20 CFR § 681.460(a)(1)-(14); TEGL 21-16
[43] 20 CFR § 681.460(b); TEGL 21-16
[44] 20 CFR § 681.460(a)(1); TEGL 21-16

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.[45]

2. Alternative secondary school and dropout recovery

Alternative secondary school services are services that assist youth who have struggled in traditional secondary education.[46] 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.[47]

3. Paid and unpaid work experience

Work experience is a planned, structured learning experience that takes place in a workplace for a limited period.[48] 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.

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[45] Accessible at https://youth.workforcegps.org/resources/2017/03/22/09/55/~/~/link.aspx?_id=7A130C085B9A4107B518BD8F76B71AA4&_z=z.
[46] 20 CFR § 681.460(a)(2); TEGL 21-16
[47] Accessible at https://youth.workforcegps.org/resources/2017/03/22/09/55/~/~/link.aspx?_id=CF083691CA7C498F8BCE4DFA88ECB894&_z=z.
[48] 20 CFR §§ 681.460(a)(3) and 681.600; TEGLs 21-16

Types of work experiences include:

- summer employment opportunities and other employment opportunities available throughout the year;
- pre-apprenticeship programs;
- Registered Apprenticeship programs;[49]
- internships and job shadowing; and
- on-the-job training.

While 20 CFR § 681.600 states that youth work experiences must take place in a workplace, this includes a virtual workplace when remote work experiences are possible and practical.[50] Virtual work experiences can offer more flexibility and broaden work experience opportunities, particularly in rural areas. They can also promote equity and access for youth that might not otherwise have the opportunity for certain types of work experiences. And while WIOA section 681.600 states that work experiences must take place in a workplace, this includes a virtual workplace when remote work experiences are possible and practical.

Resources on paid and unpaid work experience are available on the WorkforceGPS Paid and Unpaid Work Experience page.[51] In addition, resources on virtual engagement are available on the WorkforceGPS Part One – Staying Connected: Resources on Virtual Engagement page[52] and WorkforceGPS Part Two – Staying Connected: Resources on Virtual Engagement page.[53]

a. Academic and occupational education component[54]

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.

[49] TEGL 9-22
[50] TEGL 9-22
[51] Accessible at https://youth.workforcegps.org/resources/2017/03/22/09/55/~/~/link.aspx?_id=EEC93A0B4208405D9F877C2FC7800911&_z=z.
[52] Accessible at https://youth.workforcegps.org/resources/2020/06/18/13/10/Resources-on-Virtual-Engagement
[53] Accessible at https://youth.workforcegps.org/resources/2020/06/18/13/10/~/link.aspx?_id=B001FBF625834A93AE58BE2F85528FAA&_z=z.
[54] TEGL 21-16

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[55]

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.

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:[56]

    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.[57]

[55] 20 CFR §§ 681.460(a)(4) and 681.540; TEGL 21-16
[56] 20 CFR §§ 681.400 and 681.550
[57] Accessible at https://youth.workforcegps.org/resources/2017/03/22/09/55/~/~/link.aspx?_id=3F1E4CB2E25B434BA98C936AFAD427F2&_z=z.

a. ITAs[58]

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;
- 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.

i. Exception to the ISY ITA prohibition

In the event that the State obtains a waiver of the ISY ITA prohibition, NDOL will notify local areas and provide local areas with technical assistance regarding implementation of the waiver.

[58] 20 CFR §§ 680.300, 680.310(b)-(d), and 681.550; TEGL 21-16

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.[59]

Resources on education offered concurrently with workforce preparation and training are available on the WorkforceGPS Education offered Concurrently with Workforce Preparation and Training page.[60]

6. Leadership development opportunities[61]

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.[62]

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[59] 20 CFR §§ 681.460(a)(5) and 681.630; TEGL 21-16
[60] Accessible at https://youth.workforcegps.org/resources/2017/03/22/09/55/~/~/link.aspx?_id=314ABCBCF78E4EAEAA3C215AA0EAA43D&_z=z.
[61] 20 CFR §§ 681.460(a)(6) and 681.520; TEGL 21-16
[62] Accessible at https://youth.workforcegps.org/resources/2017/03/22/09/55/~/~/link.aspx?_id=24458C5FD35544AB87F9DCA3F7AEFF02&_z=z.

7. Supportive services[63]

Supportive services are services that enable youth participants 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 assistant 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;
- payments and fees for employment and training-related applications, tests, and certifications; and
- food on a limited basis and in certain situations as described below in subsection a.[64]

The local board must develop policies and procedures regarding the provision and coordination of supportive services for all youth participants, which:[65]

- 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;

[63] WOA Sec. 3(59); 20 CFR §§ 681.460(a)(7) and 681.570; TEGL 21-16
[64] TEGL 9-22
[65] 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.

For the avoidance of doubt, supportive services must be made available to all youth participants.[66] The only requirement is youth be enrolled and participating in a Title I youth program, subject to the requirements and limitations described below in subsection a. Further, other resources do not need to be exhausted prior to using Title I youth program funds for youth supportive services; and youth are not required to be in training activities in order to receive support services.

Resources on supportive services are available at WorkforceGPS Supportive Services (Part One) page[67] and WorkforceGPS Supportive Services (Part Two) page.[68]

a. Provision of food as a supportive service

Food may be provided to eligible youth participants when it will assist or enable participants to participate in allowable youth program activities and to reach their employment and training goals, thereby achieving the program's overall performance goals.[69] The use of Title I youth funds for food should be limited to reasonable and necessary purchases that are coordinated, whenever possible, with other community, state, or Federal services that provide food for low-income individuals. Local areas must have written policies and procedures in place for purchasing and distributing food to ensure consistent treatment of these types of expenses. When developing written policies and procedures, local boards must ensure local youth programs comply with this policy, Federal and state laws, rules, and regulations, including 2 CFR § 200.403.

8. Adult mentoring[70]

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.

[66] 20 CFR § 681.460(a)(7)
[67] Accessible at https://youth.workforcegps.org/resources/2017/01/24/16/00/Supportive-Services-part-one.
[68] Accessible at https://youth.workforcegps.org/resources/2018/06/18/15/49/Supportive-Services-part-two.
[69] TEGL 9-22
[70] 20 CFR §§ 681.460(a)(8) and 681.490; TEGL 21-16

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.[71]

9. Comprehensive guidance and counseling[72]

Comprehensive guidance and counseling provides individualized counseling to participants that includes substance and alcohol abuse counseling, mental health counseling, and referral to qualified partner programs. When referring youth program 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 comprehensive guidance and counseling services exist within the local youth program or its service providers, it is allowable to provide comprehensive guidance and counseling services directly to participants rather than referring youth to partner programs.

It is important to note that, while youth program staff are not expected to be experts in mental health, there are many ways to assess mental health needs at program enrollment and throughout youth participation in the program and that mental health assessments are an allowable cost under WIOA. USDOL strongly encourages integrating mental health assessments into the objective assessment process to identify potential mental health needs that must be addressed through mental health services or through referrals to mental health professionals for youth to be successful in the youth program.

Additionally, professional development for youth program staff is essential for ensuring staff have the appropriate skills, knowledge, and abilities to effectively serve youth program participants. Professional development is an allowable cost under WIOA. USDOL strongly encourages local boards to offer professional development training to all staff that work with youth.

Comprehensive guidance and counseling must not be confused with the provision of 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 (i.e., youth program element 12).[73]

Resources on comprehensive guidance and counseling are available on the WorkforceGPS Comprehensive Guidance and Counseling page.[74]

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[71] Accessible at https://youth.workforcegps.org/resources/2017/03/22/09/55/~/~/link.aspx?_id=1D201FB7BEAA404EA16918E772D45F68&_z=z.
[73] TEGL 9-22
[73] TEGL 9-22
[74] Accessible at https://youth.workforcegps.org/resources/2017/03/22/09/55/~/~/link.aspx?_id=E98DB3B477814B1DAD1754299248AE86&_z=z.

10. Financial literacy education[75]

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;
- 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.[76]

[75] 20 CFR §§ 681.460(a)(11) and 681.500; TEGL 21-16

[76] Accessible at https://youth.workforcegps.org/resources/2017/03/22/09/55/~/~/link.aspx?_id=55159195426B434E90566520178C2DE2&_z=z

11. Entrepreneurial skills training[77]

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;
- 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.[78]

12. Labor market information services[79]

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.[80]

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[77] 20 CFR §§ 681.460(a)(12) and 681.560; TEGL 21-16
[78] Accessible at https://youth.workforcegps.org/resources/2017/03/22/09/55/~/~/link.aspx?_id=071526710B6445B5A6EFCEA496C067F0&_z=z.
[79] 20 CFR § 681.460(a)(13); TEGL 21-16
[80] Accessible at https://youth.workforcegps.org/resources/2017/03/22/09/55/~/~/link.aspx?_id=043FDCFB3A0C4212A6661465CE63B5D8&_z=z.

13. Postsecondary preparation and transition activities[81]

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.[82]

14. Follow-up services[83]

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;
    - 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.[84]

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.

[81] 20 CFR § 681.460(a)(14); TEGL 21-16
[82] Accessible at https://youth.workforcegps.org/resources/2017/03/22/09/55/~/~/link.aspx?_id=44C24B863EC540F385F4DB3FB38FA4A1&_z=z.
[83] 20 CFR §§ 681.460(a)(9) and 681.580(a)-(b)
[84] 20 CFR § 681.580(c); TEGL 21-16

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. **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; and 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,[85] unless the participant declines to receive follow-up services or the participant cannot be located or contacted. **Local programs must 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;

    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.

[85] 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, which is included in the State policy manual. The State policy manual is accessible at https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies.

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.[86]

DISCLAIMER

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

[86] Accessible at https://youth.workforcegps.org/resources/2017/03/22/09/55/~/~/link.aspx?_id=C8899A818F794561941389237DF746CC&_z=z.

APPENDIX I. Definitions

Definitions in this appendix are provided as supplemental information that supports the provisions of the policy. 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.[87]

2. in-demand industry sector or occupation

The term in-demand industry sector or occupation means an:[88]

- 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:[89]

- 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;

[87] WIOA Sec. 3(10)
[88] WIOA Sec. 3(23)
[89] 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).[90]

4. institution of higher education[91]

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.

[90] TEGL 19-16
[91] WIOA Sec. 3(28); 20 USC § 1001(a)(1)

5. objective assessment[92]

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.

[92] WIOA Sec. 129(c)(1)(A); 20 CFR § 681.420(a)(1)

APPENDIX II. Youth service provider list form

Nebraska's WIOA youth program

The Workforce Innovation and Opportunity Act of 2014 (WIOA) affirms the Nation's commitment to providing high quality services for youth, beginning with career exploration and guidance; continuing support for educational attainment, opportunities for skills training in in-demand industries and occupations; and culminating with a good job along a career pathway or enrollment in postsecondary education. Under WIOA, local youth programs offer access to 14 services designed to prepare young people for the workforce and are described below. WIOA youth program services are available throughout the State of Nebraska. If you are interested in learning more about WIOA youth program services, please contact the youth program service provider for your county.

- For **Lancaster** and **Saunders Counties**, contact <replace with name of primary contact for LA youth program> at <replace with phone for primary contact> or <replace with email address for primary contact>.
- For **Douglas**, **Sarpy**, and **Washington Counties**, contact <replace with name of primary contact for LA youth program> at <replace with phone for primary contact> or <replace with email address for primary contact>.
- For **all other Nebraska Counties**, contact <replace with name of primary contact for LA youth program> at <replace with phone for primary contact> or <replace with email address for primary contact>.

Youth program services

1. Tutoring, study skills training, instruction, and dropout prevention

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 are intended to lead to a high school diploma and include activities that keep youth in school and engaged in a formal learning or training setting. Strategies include tutoring, literacy development, active learning experiences, after-school opportunities, and individualized instruction.

2. Alternative secondary school and dropout recovery

Alternative secondary school services are services that assist youth who have struggled in traditional secondary education. Dropout recovery services are designed to assist youth who have dropped out of school. Both types of services help youth re-engage in education that leads to the completion of a recognized high school equivalent. Examples of activities these services include:

- basic education skills training;
- individualized academic instruction;
- English-as-a-second-language training;
- credit recovery; and
- counseling and educational plan development.

3. Paid and unpaid work experience

Work experience is a planned, structured learning experience that takes place in a workplace for a limited time and includes academic and occupational education. Work experiences may be paid or unpaid, as appropriate, and may take place in the private for-profit sector, non-profit sector, or public sector. 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.

4. Occupational skills training

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 occupations at entry, intermediate, or advanced levels.

5. Education offered in combination with workforce preparation and training

Education offered in combination 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.

6. Leadership development opportunities

Leadership development opportunities are opportunities that encourage responsibility, confidence, employability, self-determination, and other positive social behaviors. Leadership development includes activities like:

- 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.

7. Supportive services

Supportive services are services that enable young people to take part in local youth program activities. Supportive services include:

- linkages to community services;
- assistance with transportation;
- assistance with childcare and dependent care;
- assistance with housing;
- needs-related payments that provide financial assistant 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.

8. Adult mentoring

Adult mentoring is a formal relationship between a youth program 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 lasts *at least* 12 months and may take place during program participation and following exit from the program.

9. Follow-up services

Follow-up services are critical services provided following a youth program participant's exit from the program to help ensure that the young person is successful in employment and/or postsecondary education and training. Follow-up services are provided for *at least* 12 months after program exit and may include:

- regular contact with the youth participant's employer, including assistance in addressing work-related problems that may arise; and
- supportive services;
- adult mentoring;
- financial literacy education;
- 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 the youth participant prepare for and transition to postsecondary education and training.

10. Comprehensive guidance and counseling

Comprehensive guidance and counseling means individualized counseling for the youth program participant provided by licensed practitioners. This service includes substance and alcohol abuse counseling, mental health counseling, and referral to qualified partner programs.

11. Financial literacy education

Financial literacy education refers to activities that provide youth with the knowledge and skills they need to achieve long-term financial stability, including activities that:

- support the ability of youth program participants to create budgets, initiate checking and savings accounts at banks, and make informed financial decisions;
- supports youth program participants in learning how to effectively manage spending, credit, and debt, including student loans, consumer credit, and credit cards;
- teach youth program 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 youth program participant's ability to understand, evaluate, and compare financial products, services, and opportunities and to make informed financial decisions;
- educate youth program 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 financial literacy needs of non-English speakers, including providing support through the development and distribution of multilingual financial literacy and education materials;
- support activities that address the 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 youth program participants gain the knowledge, skills, and confidence to make informed financial decisions that enable them to attain greater financial health and stability through use of high quality, age-appropriate, and relevant strategies and channels.

12. Entrepreneurial skills training

Entrepreneurial skills training provides training on the basics of starting and operating a small business and develops skills associated with entrepreneurship, such as:

- taking initiative;
- creatively seeking out and identifying business opportunities;
- developing budgets and forecasting resource needs;
- understanding various options for acquiring capital and the trade-offs associated with each option; and
- communicating effectively and marketing oneself and one's ideas.

13. Labor market information services

Labor market information services are services that provide labor market and employment information about in-demand industry sectors or occupations available locally and include career awareness, career counseling, and career exploration services. Labor market services also help youth program participants identify employment opportunities and provide knowledge of job market expectations, including education and skill requirements and potential earnings.

14. Postsecondary preparation and transition activities

Postsecondary preparation and transition activities are activities that help youth program participants prepare for and transition to postsecondary education and training. These activities include helping youth program participants 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:

- assisting youth with preparation for SAT/ACT testing;
- assisting with college admission applications;
- searching and applying for scholarships and grants;
- filling out the proper financial aid applications and adhering to changing guidelines; and
- connecting youth to postsecondary education programs.

5.2. Training

State Policy **Workforce Innovation and Opportunity Act (WIOA)**

Nebraska Department of Labor (NDOL)
Division of Reemployment Services
550 South 16th Street
Lincoln, NE 68508
402.471.9000
ndol.wioa_policy@nebraska.gov

Policy category
Adult, Dislocated Worker, and Youth

Effective
May 24, 2024

Supersedes
Eligible Training Providers, Change 4

Eligible Training Providers, Change 5

REFERENCE

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

BACKGROUND

Nebraska's Eligible Training Provider List (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.[1]

CHANGES

Under this policy, Section VII(b)(2) has been added concerning local board and administrative entity obligation to ensure payments to ETPs for training services and materials provided to Title IB program participants.

[1] Nebraska's ETPL is accessible on NEworks at https://neworks.nebraska.gov. On the NEworks homepage under the Job Seekers column, click on *Training Services*, then click on *ETPL Approved Programs* on the next page.

ACTION

This policy supersedes and cancels Eligible Training Providers, Change 4. Questions and comments on this policy may be submitted in writing to the policy mailbox at ndol.wioa_policy@nebraska.gov.[2]

POLICY

This policy defines:

- eligibility criteria and procedures for training providers, ETPs, non-sponsoring intermediaries of Registered Apprenticeship programs, and their respective programs of training services;
- eligibility procedures for Registered Apprenticeship sponsors and their programs;
- criteria and procedures concerning denial or termination of ETPL eligibility for training providers, ETPs, and Registered Apprenticeship sponsors and their programs;
- ETP performance reporting requirements;
- information on ETP program performance calculations;
- record retention and access requirements applying to Eligible Training Providers (ETPs);
- requirements pertaining to Title IB program participants who are enrolled in programs that are no longer included on the ETPL; and
- roles and responsibilities of NDOL and local boards in relation to the ETPL, including local consumer choice and consultation requirements, as well as payment requirements.

This policy has eight sections.

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[2] NDOL policies referenced within this policy are included in the state policy manual, which is accessible at https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies

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Section I. Eligibility criteria

Eligibility for inclusion on Nebraska's ETPL is determined based on characteristics of training providers and programs, as described in below.

(a) Training provider eligibility

(1) Training providers who *are not* sponsors of Registered Apprenticeship programs

Training providers who *are not* sponsors of Registered Apprenticeship programs are subject to eligibility criteria listed below, all of which must be met to be considered for inclusion on Nebraska's ETPL.[3]

1. Providers must provide information about their organizations and primary representatives.

2. Providers must be accredited or authorized by applicable governing authorities to provide training services to Nebraska residents.

    a. Governing authorities for four-year universities and colleges and community colleges are higher education authorities providing accreditation.

    b. Governing authorities for private postsecondary career schools operating in or outside of Nebraska are, at a minimum, the Nebraska Department of Education and the Nebraska Department of Motor Vehicles in the case of driver training programs.

3. Providers must have been in operation for at least 12 months as training providers accredited or authorized to provide training services to Nebraska residents by applicable governing authorities.[4]

4. Providers must provide information about their participation or non-participation in the Federal Pell Grant Program.

[3] WIOA Secs. 122(a)-(b) ; 20 CFR § 677.230; 20 CFR Part 680 Subpart D; TEGLs 03-18 Change 2 and 8-19; Nebraska Administrative Code, Title 29, Chapter 41

[4] This is a requirement established by NDOL, as permitted under WIOA Sec. 122(b)(1)(J).

5. Providers must not be debarred, suspended, or otherwise excluded from or ineligible for participation in Federal programs or activities.

6. Providers must:

    a. comply with the requirements of 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;

    b. comply with the requirements of the Americans with Disabilities Act, as amended:

    c. indicate physical and programmatic accessibility of their programs by individuals who are employed *and* individuals with barriers to employment, including individuals with disabilities;

    d. report program performance data annually to NDOL as required under Section IV(b); and

    e. retain and provide access to provider records pertaining to their inclusion on the ETPL as required under Section V(a).

7. Providers must provide all additional information and documentation requested by NDOL pertaining to provider eligibility.

(2) Non-sponsoring intermediaries of Registered Apprenticeship programs

The term *non-sponsoring intermediaries* refers to entities that provide related technical instruction (i.e., occupational skills training) on behalf of sponsors of Registered Apprenticeship programs but *are not the sponsors of the programs*. Entities acting as non-sponsoring intermediaries *are not* automatically eligible for inclusion on Nebraska's ETPL and are subject to eligibility criteria and requirements, procedures, performance reporting requirements, and record retention and access requirements described in this policy.

(3) Sponsors of Registered Apprenticeship programs

Registered Apprenticeship sponsors and their programs *are automatically eligible for inclusion on Nebraska's ETPL* and *exempt* from:

- eligibility criteria described above in subsections (1) and (2);
- eligibility procedures described below in Section II; and
- performance reporting requirements described below in Section IV(b).

Note. Employers who sign participation agreements with non-sponsoring intermediaries pursuant to non-sponsoring intermediary standards approved by the Omaha US Department of Labor Office of Apprenticeship *are* automatically eligible for inclusion on Nebraska's ETPL, as those employers become sponsors of the Registered Apprenticeship programs upon execution of participation agreements.

(b) Program eligibility

(1) Programs provided by training providers who are not sponsors of Registered Apprenticeship programs

(A) Initial eligibility

Requirements listed below for new programs must be met for determination of initial eligibility.[5]

1. Programs must provide one or more courses or classes through that lead to one or more of the following outcomes:
    a. industry recognized certificates or certifications;
    b. licenses recognized by the Federal government, State of Nebraska, or other states;
    c. associate or baccalaureate degrees;
    d. postsecondary certificates or diplomas;
    e. high school diplomas or GEDs *earned in conjunction with occupational skills training*; or
    f. employment.
2. Providers must submit complete program applications[6] through NEworks that include:[7]
    a. thorough program descriptions;
    b. information about business partnerships pertaining to programs;
    c. current cost information for programs;
    d. identification of all locations where programs are offered;
    e. information concerning alignment of programs with in-demand occupations in Nebraska;[8] and
    f. other information required in the program application.
3. Providers must provide all additional information and documentation requested by NDOL pertaining to initial eligibility.

[5] 20 CFR §§ 680.450(e) and 680.490; TEGL 8-19
[6] Program applications are available in NEworks (https://neworks.nebraska.gov/) within provider accounts.
[7] TEGL 08-19
[8] Data on in-demand occupations in Nebraska are accessible at https://neworks.nebraska.gov/vosnet/gsipub/documentView.aspx?enc=oduMpwMRTIQnt7W7WO2/Ew==.

4. Providers must provide program performance information as required under Section IV(b)(1).

Initial program eligibility may be granted for one year.[9]

(B) Continued eligibility

Requirements listed below for previously-approved programs must be met for determination of continued eligibility.[10]

1. Programs must continue to provide one or more courses or classes through that lead to one or more of the following outcomes:
    a. industry recognized certificates or certifications;
    b. licenses recognized by the Federal government, State of Nebraska, or other states;
    c. postsecondary certificates or diplomas;
    d. associate or baccalaureate degrees;
    e. high school diplomas or GEDs *earned in conjunction with occupational skills training*; or
    f. employment.
2. Providers must resubmit program applications through NEworks that include:[11]
    a. updated program descriptions;
    b. updated information about business partnerships pertaining to programs;
    c. current cost information for programs;
    d. identification of all locations where programs are currently offered;
    e. information concerning alignment of programs with in-demand occupations in Nebraska; and
    f. other information required in the program application.
3. Providers must provide all information and documentation requested by NDOL pertaining to continued eligibility.

[9] WIOA Sec. 122(b)(4)(B)
[10] 20 CFR §§ 680.450(e) and 680.490; TEGL 8-19
[11] TEGL 08-19

4. Providers must provide program performance information as required under Section IV(b)(2).

Continued program eligibility may be granted for up to two years.[12]

(C) Additional eligibility factors that may be considered

In addition to eligibility requirements described above, NDOL may also consider the following factors when determining training provider and program eligibility:[13]

1. NDOL's obligation to ensure access to training services throughout Nebraska and through the use of technology;

2. information reported to state agencies regarding Federal and state training programs other than those authorized under WIOA Title IB;

3. programs that result in industry-recognized certificates and credentials;

4. quality of programs and ability of providers to offer programs leading to postsecondary credentials; and

5. other factors NDOL may determine appropriate.

(2) Programs provided by sponsors of Registered Apprenticeship programs

(A) Nebraska Registered Apprenticeship programs

Registered Apprenticeship programs registered by the Omaha US Department of Labor Office of Apprenticeship are automatically eligible for inclusion on Nebraska's ETPL[14] and *are not* subject to:

- eligibility requirements defined above; or

- performance reporting requirements defined in Section IV(b).

Outreach to Nebraska Registered Apprenticeship programs

On an annual basis, NDOL contacts the Omaha US Department of Labor Office of Apprenticeship to obtain contact information for sponsors of active Registered Apprenticeship programs in Nebraska, in accordance with TEGL 13-16. NDOL then contacts the sponsors of those programs that are not on Nebraska's ETPL to:

- promote and provide information on the benefits of ETPL participation; and

- explain that all that is required to be included on the ETPL is submission of a PDF version of the Federally approved program standards (including all attachments) to the ETPL mailbox at ndol.etpl@nebraska.gov.

[12] TEGL 08-19, Attachment II
[13] WIOA Secs. 122(b)(1)(B) – (C) and (F)-(H); 20 CFR § 680.460(f)
[14] 20 CFR §§ 680.450(b) and 680.470(a)

(B) National Registered Apprenticeship programs

Registered Apprenticeship programs registered by the national US Department of Labor Office of Apprenticeship are automatically eligible for inclusion on Nebraska's ETPL,[15] provided they have an operational presence in Nebraska *or* provide on-line instruction that is available to Nebraska residents.

National Registered Apprenticeship sponsors and programs are not subject to:

- eligibility requirements defined above; or
- performance reporting requirements defined in Section IV(b).

Outreach to National Registered Apprenticeship programs[16]

Sponsors of national Registered Apprenticeship programs are not contacted directly by NDOL to promote participation in Nebraska's ETPL. However, if national sponsors contact NDOL directly requesting inclusion in Nebraska's ETPL, NDOL contacts the Omaha US Department of Labor Office of Apprenticeship and requests confirmation of registration status of national sponsors and programs. If national sponsor and program status is confirmed as active by the Omaha US Department of Labor Office of Apprenticeship *and* the sponsors have operational presence in Nebraska *or* provide on-line instruction that is available to Nebraska residents, NDOL explains that all that is required to be included on the ETPL is submission of a PDF version of the Federally approved program standards (including all attachments) to the ETPL mailbox at ndol.etpl@nebraska.gov.

When the national US Department of Labor Office of Apprenticeship contacts NDOL on behalf of sponsors of national Registered Apprenticeship programs who are 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 to Nebraska residents. If the national US Department of Labor Office of Apprenticeship confirms operational presence in Nebraska *or* availability of on-line instruction to Nebraska residents, NDOL explains that all that is required to be included on the ETPL is submission of a PDF version of the Federally approved program standards (including all attachments) to the ETPL mailbox at ndol.etpl@nebraska.gov.

(C) Addition and maintenance of Registered Apprenticeship program records on Nebraska's ETPL

NDOL is responsible for addition of all eligible Registered Apprenticeship programs to Nebraska's ETPL, as well as maintenance of the program records on Nebraska's ETPL.[17] Registered Apprenticeship programs on the ETPL will remain on the ETPL:[18]

1. as long as the programs remain registered with the Omaha US Department of Labor Office of Apprenticeship *or* the national US Department of Labor Office of Apprenticeship *and* the sponsors confirm biennially that the programs should remain on Nebraska's ETPL;

[15] 20 CFR § 680.470(a); TEGL 8-19 Change 1
[16] TEGL 8-19 Change 1
[17] This is a State established procedure that ensures minimal burden on sponsors of Registered Apprenticeship programs that want to be included on Nebraska's ETPL, in accordance with TEGL 13-16.
[18] 20 CFR §§ 680.460(j) and 680.470(b)

2. until sponsors contact NDOL by email at ndol.etpl@nebraska.gov and request to be removed from Nebraska's ETPL; or

3. until sponsor or program eligibility is terminated by the registering authority *or* as required under Section III(a).

(c) Ineligible programs

Programs that are not linked to in-demand occupations in Nebraska *and* programs associated solely with occupations resulting in commission-only earnings are not eligible for inclusion on Nebraska's ETPL.[19]

(d) Training provider use of third parties for training services

If training providers contract with third parties to provide training services *and* those third parties are the entities that award the resulting credentials, the third parties must be authorized by governing authorities to provide training services to Nebraska residents.[20]

(e) Training services excluded from inclusion on the ETPL

The following training services funded with Title IB program funds are excluded from inclusion on Nebraska's ETPL:[21]

1. on-the-job training;

2. customized training;

3. incumbent worker training;

4. internships;

5. paid and unpaid work experiences; and

6. transitional jobs.

Section II. Eligibility procedures

(a) Eligibility procedures: New training providers

New training providers applying for provider eligibility must register for provider accounts.[22]

[19] These restrictions have been established by NDOL, as permitted under WIOA Sec. 122(b)(1)(J).
[20] WIOA Sec. 122(b)(1)(E); 20 CFR § 680.460(f)(5)
[21] 20 CFR § 680.530(a)
[22] Email ndol.etpl@nebraska.gov to request a video on how to register for a training provider account.

(b) Eligibility procedures: Initial eligibility for new programs

ETPs applying for initial eligibility for new programs must submit program applications for eligibility determination *and* provide program performance information as described in Section IV(b)(1).

(c) Eligibility procedures: Continued eligibility for previously-approved programs

During the 30-day period preceding the expiration date of program eligibility, ETPs applying for continued eligibility for programs must resubmit updated program applications *and* provide program performance information as described in Section IV(b)(2).

(d) Eligibility determination procedures

(1) Training providers

(A) New training providers

During review of new training provider applications, NDOL verifies the providers meet eligibility requirements described in described in Section I(a). Absent extenuating circumstances, NDOL issues eligibility determinations for new providers by email within 15 calendar days.

(B) Approved training providers

NDOL reviews ETPs biennially to ensure they continue to meet provider eligibility requirements described in Section I(a). If NDOL determines providers no longer meet eligibility requirements, NDOL notifies the providers by email within 15 calendar days, absent extenuating circumstances.

(2) Training programs

(A) Initial eligibility

Applications for initial eligibility are reviewed by NDOL based on eligibility criteria described in Section I(b)(1)(A). Initial eligibility determinations will not be completed until:

- submitted program applications are complete; and
- program performance data has been submitted as required under Section IV(b)(1).

Absent extenuating circumstances, NDOL issues program eligibility determinations within 30 calendar days of NDOL's receipt of complete applications and required program performance data concerning initial eligibility. Failure to submit required program performance data may result in delayed initial eligibility determinations or denial of eligibility.

(B) Continued eligibility

Applications for continued eligibility are reviewed by NDOL based on applicable eligibility criteria. Continued eligibility determinations will not be completed until:

1. provider eligibility has been reverified;
2. submitted program applications are complete;

3. program performance data has been submitted as required under Section IV(b)(2); and

4. evaluation of calculated program performance has been completed based on minimum program performance standards stated in Section IV(b)(3)(A).

Absent extenuating circumstances, NDOL issues continued eligibility determinations within 30 calendar days of NDOL's receipt of complete applications for continued eligibility and required annual program performance data. Failure to submit required program performance data may result in delayed continued eligibility determinations or denial of eligibility.

Section III. Denial or termination of eligibility

(a) Denial or termination by NDOL

NDOL is solely responsible for making determinations on denial or termination of eligibility for inclusion on Nebraska's ETPL and does so based on:[23]

1. provisions of WIOA and its implementing regulations, rules, and guidance; applicable laws, rules, regulations, and guidance; and this policy;

2. eligibility documentation; and

3. compliant supplemental criteria, information, and performance requirements established by local boards under local policies, when applicable.

(1) Reasons for denial or termination

1. NDOL must deny or terminate ETPL participation when training providers or programs:

    a. do not meet applicable eligibility requirements described in Sections I and II;[24] or

    b. fail to submit required program performance data or meet minimum performance standards as required under Section IV(b).

2. NDOL must deny or terminate ETPL participation of sponsors of Registered Apprenticeships and their respective programs on the ETPL when it is determined that sponsors or programs are no longer registered with the Omaha US Department of Labor Office of Apprenticeship or national US Department of Labor Office of Apprenticeship, based on confirmation from the applicable registering authority. (In the event that sponsors have more than one program on the ETPL, sponsors will remain on the ETPL along with their programs that are still actively registered with applicable registering authorities.)

3. NDOL must terminate eligibility of ETPs, including sponsors of Registered Apprenticeship programs, for a period of not less than two years *and* require repayment of Title IB funds received by ETPs and sponsors during any period of noncompliance, when it is

[23] 20 CFR §§ 680.470(c) and 680.480
[24] 20 CFR § 680.480(c)

determined through investigation by the Commissioner of Labor, NDOL Office of the General Counsel, and NDOL Reemployment Services Division Director that ETPs or sponsors:[25]

a. intentionally supplied inaccurate information *or* individuals supplying information on behalf of ETPs or sponsors intentionally supplied inaccurate information;

b. substantially violated any provision of WIOA Title I, including WIOA Sec. 188, 29 CFR Part 38, or the Americans with Disabilities Act, as amended;[26]

c. refused to submit timely and accurate program performance data as required under applicable provisions of Section IV(b) (does not apply to sponsors of Registered Apprenticeship programs); or

d. intentionally failed to retain or provide access to program documentation, as required in this policy.

4. NDOL must terminate the eligibility of ETPs, including sponsors of Registered Apprenticeship programs, for other substantial violations relating to applicable provisions WIOA and its implementing regulations, rules, and guidance; other applicable laws, regulations, rules, and guidance; this policy; compliant supplemental criteria, information; and performance requirements established by local boards under local policies, when applicable.

The remedies and penalties prescribed under applicable provisions of WIOA and its implementing regulations, rules, and guidance; other applicable laws, regulations, rules, and guidance; and this policy, supplement but do not supplant other civil and criminal remedies and penalties available under other provisions of law.[27]

(2) Denial or termination process based on ineligibility

In the event that NDOL determines that training providers, ETPs, and sponsors of Registered Apprenticeship programs are not eligible for inclusion on Nebraska's ETPL based on conditions described in Section III(a)(1), NDOL will notify training providers, ETPs, and sponsors by email that eligibility has been denied or terminated and provide:

1. reasons for denial or termination;

2. a copy of this policy; and

[25] 20 CFR §§ 680.460(l), 680.470(c), and 680.480(b)
[26] When determining substantial violations, NDOL must take into account exceptional circumstances beyond training provider or sponsor control, such as natural disasters, unexpected personnel transitions, and unexpected technology-related issues, in accordance with 20 CFR §§ 680.460(l).
[27] WIOA Sec. 122(f)(2)

3. in the case of sponsors, supporting documentation provided to NDOL by the Omaha US Department of Labor Office of Apprenticeship or the national US Department of Labor Office of Apprenticeship.

Training providers, ETPs, and sponsors may appeal decisions to deny or terminate inclusion on Nebraska's ETPL, in accordance with Section III(a)(4).

(3) Removal process based on substantial violations

The Commissioner of Labor, NDOL Office of the General Counsel, and NDOL Reemployment Services Division Director (collectively, the Review Panel) investigates allegations of substantial violations based on conditions described in Section III(a) by:

- reviewing all available documentation allegedly supporting allegations of substantial violations, including applicable Federal laws, regulations, rules, and guidance, and applicable provisions of NDOL policies, along with the submitted complaint and its accompanying supporting documentation; and

- interviewing involved program staff and complainants, when possible.

When the Review Panel reasonably determines the allegations of substantial violations are valid, NDOL issues written notice to the applicable ETP or Registered Apprenticeship program sponsor of NDOL's intent to:

- remove the effected training provider or sponsor and/or their programs from Nebraska's ETPL; and

- impose applicable time-based and financial sanctions described in Section III(a).

In its written notice, NDOL will advise the provider or sponsor of its right to appeal, as described in Section III(a)(4).

(4) Appeal process

Training providers, ETPs, and sponsors of Registered Apprenticeship programs may appeal denials or terminations of eligibility, including denials or terminations of local eligibility by local boards.[28] To appeal, training providers, ETPs, and sponsors must submit written requests for hearings to the Commissioner of Labor at the following address within 30 calendar days of notification of denial or termination.

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

[28] 20 CFR §§ 680.480(d) and 683.630(b)

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 the:

1. statement of the reason(s) why training provider or sponsor eligibility was denied or terminated; and

2. 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 training provider, ETPs, or sponsors remain ineligible, financial sanctions to be imposed, and conditions under which reinstatement of eligibility are justified.

Decisions issued under this appeal process are not eligible for appeal to the Secretary of Labor.[29]

(b) Denial or termination by local boards

If local boards have established compliant and supplemental criteria, information, or performance requirements higher than those required by NDOL under Section IV(b)(3)(A), as permitted under Section VII(b), local boards may deny or terminate local ETP eligibility based on failure to meet the supplemental criteria, information, or performance requirements.[30] ETPs may appeal local board denials or terminations of local eligibility, according to the procedures described in Section IV(a)(4).

As stated in Section VII(b), local boards are not permitted impose additional requirements upon Registered Apprenticeship programs on Nebraska's ETPL beyond those established under WIOA and its implementing regulations, rules, and guidance, and this policy.[31]

Section IV. Performance reporting[32]

(a) NDOL performance reporting

WIOA Secs. 116(d)(4) and (d)(6)(B), 20 CFR § 677.230, and TEN 24-19 require states to report performance information relating to outcomes for individuals served by each approved program of training services on their respective ETPLs. States report this information annually to the US Department of Labor, as described in TEGL 03-18 Change 2. The US Department of Labor publishes results of annual ETPL performance reports on the searchable Training Provider Results website (https://www.trainingproviderresults.gov/#!/).

[29] 20 CFR § 683.630(b)
[30] 20 CFR § 680.480(e)
[31] 20 CFR § 680.510(a)
[32] 20 CFR §§ 680.460(h)(1) and 680.490

(b) Training provider performance reporting

(1) Requirements for performance reporting for initial eligibility

Training providers and ETPs applying for initial eligibility for new programs must submit program performance data. Types of acceptable performance data for initial eligibility purposes include:[33]

- academic research suggesting the selected training strategy for the program is effective in relation to employment, earnings, and credential attainment; or
- other data relating to employment, earnings, or credential attainment for participants with the program or provider.

When applying for initial eligibility for new programs, training providers and ETPs must submit the performance data by email to the ETPL mailbox at ndol.etpl@nebraska.gov.

(2) Requirements for performance reporting for continued eligibility

To establish continued eligibility for approved programs on the ETPL, ETPs must have submitted annual program performance data, in accordance with Section IV(b)(2), for approved programs during the 12-month period beginning July 1 of the previous calendar year. This 12-month period is the "reporting period". Program performance data must be submitted no later than August 31 of each calendar year using the performance reporting tool provided by NDOL, which is described directly below in subsection (A).

(A) Program performance reporting tool

NDOL provides a program performance reporting tool through NEworks for ETP annual program performance reporting purposes. The tool is provided as an .xlsx file that can be downloaded by ETPs, populated with the required program performance data, and then uploaded to NEworks. Within the tool, the following data elements must be reported for all students enrolled[34] in or exiting programs during the reporting period.

1. *Social Security Numbers (SSNs)*

ETPs must enter SSNs. Missing SSNs will result in error messages and upload failures. If SSNs are not available, ETPs must enter *unique*, *nine-digit, all-numeric* student identifiers. Use of invalid SSNs and unique student identifiers will affect ETP employment and median wage performance outcomes.

2. *Start date*

ETPs must enter start dates. Start dates must be provided in MM/DD/YYYY format and cannot be future dates. Missing or invalid start dates will result in error messages and upload failures.

3. *Status*

[33] TEGL 8-19, Attachment III
[34] Enrollment is determined by each ETP in accordance with their organizational standards.

ETPs must select program status (selection options: completed, withdrew, transferred). If status is not selected, status will default to *enrolled*.

4. *Exit date*

ETPs must enter exit dates (selection options: completed, withdrew, transferred). Exit dates must be provided in MM/DD/YYYY format and cannot be future dates or earlier than start dates. Missing or invalid exit dates will result in error messages and upload failures.

5. *Credential*

ETPs must select credential status (selection options: yes, no, unknown). Credential status is required for all students enrolled in or exiting programs during the reporting period.

(3) Program performance calculations

Calculation of annual ETPL program performance outcomes for:

- indicators 1 through 4 listed below are based on data reported to NDOL by ETPs; and
- indicators 5 through 7 listed below are based on data obtained through NDOL wage matching systems.

Program performance outcomes are calculated based on the following performance indicators:

1. total number of students enrolled;
2. total number of students exited;
3. total number of program completers;
4. credential rate;
5. employment rate 6 months after program exit;
6. employment rate 12 months after program exit; and
7. median earnings 6 months after program exit.

Program performance outcomes are reported to the US Department of Labor (USDOL) in aggregate. No student-level data appears within NEworks ETP program records *or* ETP program performance reports submitted to USDOL, in compliance with requirements established under the Family Educational Rights and Privacy Act (FERPA), as well as other applicable Federal laws, regulations, and rules concerning protection of personally identifiable information.

(A) Minimum performance standards for continued eligibility

To establish continued eligibility for inclusion on Nebraska's ETPL, programs must meet the following minimum performance standards for all students for each reporting period:

1. 50 percent or more of all students who enrolled[35] in and exited programs attained a credential;

2. 50 percent or more of all students who enrolled in programs are employed 6 months after program exit;

3. 50 percent or more of all students who enrolled in programs are employed 12 months after program exit; and

4. median earnings 6 months after program exit for all students who exited programs are at least 50 percent or more of the average of the Nebraska's Federally-negotiated levels of performance for median earnings second quarter after exit for all Title I adult, dislocated worker, and youth programs, which are determined as described below.

    a. NDOL levels of performance for median earnings for Title IB adult, dislocated worker, and youth programs are negotiated and approved biennially by USDOL.

    b. NDOL will biennially publish the averaged negotiated level of performance for Title I programs as it relates to median earnings and continued eligibility for programs.

Section V. Records retention and access requirements

(a) ETP record retention and access requirements

ETPs must collect and retain all documentation pertaining to inclusion of their programs on Nebraska's ETPL, in accordance with 2 CFR §§ 200.334 and 200.337 and this policy. Documentation must be retained for a minimum period of three years for each reporting period following conclusion of the applicable reporting periods. Extended retention requirements apply under the following circumstances.

- If any litigation, claim, or audit relating to ETPs and their programs starts before the expiration of the three-year retention period, records must be retained until all litigation, claims, or audit findings have been resolved and final is action taken.

- When ETPs are notified in writing by Federal agencies or NDOL to extend the retention period, ETP documentation must be retained during the periods of time designated by Federal agencies or NDOL, as applicable.

[35] 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 Change 2 and 08-19 Attachment I]. Refer to APPENDIX I for the definition of *enrolled*.

USDOL, NDOL, and any of their authorized representatives, have rights of access to all ETP documentation pertaining to ETP programs on Nebraska's ETPL, in order to make audits, examinations, excerpts, and transcripts.

- Rights of access also include timely and reasonable access to ETP personnel for the purpose of interview and discussion related to ETP documentation.

- Rights of access are not limited to the required retention period described above, as rights of access last as long as ETP documentation is retained.

Section VI. Participants enrolled in programs no longer eligible for ETPL inclusion

There are two circumstances case managers must consider concerning participants who are enrolled in programs that are no longer included on Nebraska's ETPL.

1. When ETP programs are removed from Nebraska's ETPL pursuant to requirements described in Section III(a) concerning denial or termination of eligibility due to substantial violations, Title IB program participants are not permitted to use ITAs to continue participation in those programs. If participants wish to continue receiving training services funded by ITAs, case managers must *immediately* assist participants with transition to other appropriate programs on the ETPL.

2. When ETP programs are removed from the ETPL for reasons *other than* substantial violations, including voluntary withdrawal from the ETPL, participants already enrolled and participating in those programs may complete training through those programs using established ITAs; but, those ITAs cannot be modified or extended as they relate to the removed programs. If participants participating removed programs wish to transition to other programs on the ETPL, case managers must *immediately* assist participants with transition to other participant-selected programs.

Section VII. ETPL roles and responsibilities[36]

(a) NDOL

NDOL 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 programs to Nebraska's ETPL
5. Ensuring development, maintenance, and dissemination of Nebraska's ETPL
6. Biennial verification of registration status of Registered Apprenticeship programs on the ETPL

[36] 20 CFR §§ 680.430(b)(1) – (5), 680.450, 680.460, 680.470, and 680.500(d)

Description
7. Providing opportunities for local boards and interested members of the public to make recommendations and submit comments regarding eligibility criteria and processes and performance reporting requirements
8. Ensuring training providers and training programs meet established eligibility criteria and adhere to established eligibility processes and performance reporting requirements
9. Receiving and reviewing training provider and program applications and making eligibility determinations pertaining to training provider and program eligibility
10. Removing training providers and programs from Nebraska's ETPL
11. Taking enforcement actions against training providers, as required under WIOA and its implementing regulations, rules, and guidance; other applicable Federal laws, regulations, and rules; and this policy
12. Establishing an appeals process for denied or terminated training provider and program eligibility
13. Publication of program performance outcomes for Nebraska ETPL programs within Nebraska's ETPL and through USDOL on the Training Provider Results website

(b) Local boards

Responsibilities of local boards regarding Nebraska's ETPL are listed in Table 2.[37]

Table 2. Responsibilities of local boards regarding Nebraska's ETPL

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 dissemination and appropriate use of Nebraska's ETPL in and throughout local area one-stop delivery systems
4. Ensuring adherence to consumer choice and consultation requirements described Section VII(b)(1)
5. Ensuring payment to ETPs as described in Section VII(b)(2)

Local boards are permitted take actions described in Table 3 regarding the ETPL.[38]

Table 3. Permitted actions of local boards regarding Nebraska's ETPL

Description
1. Making recommendations to NDOL on the process used when determining ETPL eligibility of training providers and programs
2. Establishing supplemental (not alternative) criteria and information from ETPs operating in their respective local areas in order to become or remain eligible in their local areas
3. Setting local levels of ETP program performance for ETPs that are higher than the minimum performance standards established by NDOL in Section IV(b)(3)(A)
4. Supplementing criteria and information requirements established under Federal law, rules, regulations, and guidance and this policy to support of informed consumer choice requirements and achievement of locally established performance indicators, including: a. information on training programs that are linked to in-demand occupations in the local area; b. performance and cost information, including program performance and cost information, for local area outlets of multi-site ETPs; c. information that shows how ETP programs are responsive to local requirements; and d. other appropriate information related to the objectives of WIOA

[37] 20 CFR §§ 680.340 and 680.430(c)
[38] 20 CFR §§ 680.430(d)-(e) and 680.510

Local boards *are prohibited* from imposing requirements, including eligibility criteria, upon Registered Apprenticeship sponsors and programs beyond those established under WIOA and its implementing regulations, rules, and guidance, and this policy.[39]

(1) Consumer choice and consultation requirements[40]

Training services must be provided in a manner *that* maximizes informed consumer choice *and* meets consultation requirements, as described below.

1. Local boards must make Nebraska's ETPL available to local one-stop delivery system customers.

2. Title IB program participants may select programs of training services from Nebraska's ETPL *only* after consultation with case managers. Case manager consultations with participants must include:[41]

    a. interviews, evaluations, or assessments; career planning informed by local labor market information; and review of ETP program performance information;

    b. appraisal of participant eligibility for training services based on:

        i. conducted interviews, evaluations, or assessments and career planning informed by local labor market;

        ii. review of ETP program performance information; and

        iii. other career service provided to participants;

    c. thorough case manager documentation of consultations in participant case files, including documentation of participant eligibility for training services.

3. There is not requirements that career services be provided as a condition for receipt of training services. However, if career services *are not* provided before authorizing training services, case managers must *thoroughly* document in participant case files the circumstances that justify decisions to authorize training services without first providing career services.

4. During case manager consultations with participants, 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.

[39] 20 CFR § 680.510(a)
[40] 20 CFR § 680.340
[41] 20 CFR § 680.220

5. Unless Title IB programs have exhausted training funds for a given program year, case managers *must* refer participants to their selected ETPL training programs and establish ITAs.

6. Costs for training services paid through ITAs must be funded using out-of-school youth, adult, or dislocated worker program funds, depending on the program in which the participant is enrolled or co-enrolled.

    a. If NDOL has a waiver approved by the US Department of Labor Employment and Training Administration that permits ITAs for in-school youth (ISY), ISY program funds may be used to fund ISY ITAs, subject to the requirements and limitations established in the waiver.

    b. Local area administrative entity staff must confirm with NDOL the existence of an approved waiver *before* authorizing use of ISY funds to establish ISY ITAs. *Requests for confirmation must be sent to the policy mailbox at ndol.wioa_policy@nebraska.gov*.

7. Local boards, through one-stop centers, may coordinate funding of 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 established under 20 CFR § 680.230.

(2) Payment to training provided by ETPs

Local boards and administrative entities must ensure that their Title IB programs pay ETPs for training services and materials provided to Title IB program participants. In addition, if participants drop out or fail to complete training services authorized under ITAs, programs *must* pay for training services provided and costs of all training materials provided by ETPs to participants. In other words, formal and informal practices established by local Title IB programs that result in non-payment to ETPs for training services and materials *are not permitted*.

Section VIII. Technical assistance

NDOL provides technical assistance to training providers, ETPs, sponsors of Registered Apprenticeship programs, and local areas upon request concerning the requirements of this policy. Requests for technical assistance must be submitted by email to ndol.etpl@nebraska.gov.

DISCLAIMER

This policy is based on NDOL's reading of the applicable laws, rules, regulations, and guidance released by the Federal 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)
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Policy category
Adult, Dislocated Worker, and Youth

Effective
May 3, 2023

Supersedes
On-the-job Training (OJT), Change 2
(effective April 10, 2019)

On-the-job Training (OJT), Change 3

REFERENCE

Federal and state laws, rules, and regulations, 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 through contracts with employers or sponsors of Registered Apprenticeship programs.[1]

CHANGES

Under this Change 4, paragraph 1 of Section I(c)(1) has been revised to clarify requirements relating to employed worker eligibility for OJT. In addition, footnotes have been revised for clarity and links have been updated, where necessary.

[1] 20 CFR § 680.700(a)

ACTION

This policy supersedes and cancels the State's On-the-job Training (OJT) policy, Change 2 (effective April 10, 2019). Questions and comments on this policy may be submitted in writing to the policy mailbox at ndol.wioa_policy@nebraska.gov.

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 or wages 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)[2] as described in Section II(a)(1).

POLICY

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.

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[2] 20 CFR § 680.730(b); TEGL 19-16

Section I. Requirements for OJT

OJT is provided under contracts with employers or sponsors of Registered Apprenticeship programs, operating in the public, private nonprofit, or private sectors. During OJT, occupational skills training is provided for participants according to the terms and conditions and training plans defined in OJT contracts. The employer is reimbursed for a portion of the participants wages to compensate for the extraordinary costs of providing training and supervision related to the OJT. 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 local OJT programs, local boards are strongly encouraged to refer to and use the *Strategies for Implementing OJT Simply and Effectively* resource guide developed by the US Department of Labor Employment and Training Administration.[3]

(a) Training requirements

(1) In-demand industry sectors and occupations

OJT must be directly linked:[4]

- to an in-demand industry sector or occupation in the local area, 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[5]

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[6]

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

[3] Accessible at https://www.workforcegps.org/events/2016/05/02/13/26/Strategies_for_Implementing_OJT-Simply_and_Effectively.
[4] WIOA Sec. 134(c)(3)(G)(iii)
[5] 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
[6] 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[7]

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[8]

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 and its implementing rules, regulations, and guidance. The pre-award review must be conducted and documented as described in APPENDIX II.

(2) Records retention[9]

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 oversight and monitoring activities described in Section I(c)(2).

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[7] For an example of an effective training plan, refer to Strategies for Implementing OJT Simply and Effectively, which is accessible at https://www.workforcegps.org/events/2016/05/02/13/26/Strategies_for_Implementing_OJT-Simply_and_Effectively.

[8] 20 CFR § 683.260(b)

[9] The State's policy on records management provides information on records retention requirements and is included in the State policy manual, which is accessible at https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies.

(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.[10]

(4) Ineligible employers[11]

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[12]

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 Section I(a).
OJT wage, benefits, and working conditions	The OJT wage, benefits, and working conditions must be defined and must comply with the requirements of Section I(a)(2).
OJT duration	The duration of the OJT must be defined and must comply with the requirements of Section I(a)(3).
Training plan	A training plan, as described in Section I(a)(4), must be included and must consist of: • comprehensive list of the occupational skills the participant will acquire during OJT, which must be directly linked to the OJT occupation; and • 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.

[10] 20 CFR § 680.530(a)
[11] WIOA Secs. 181(d) and 194(4); 20 CFR §§ 680.700(b) and 683.260
[12] 20 CFR §§ 680.700 and 680.710 and Strategies for Implementing OJT Simply and Effectively (accessible at https://www.workforcegps.org/events/2016/05/02/13/26/Strategies_for_Implementing_OJT-Simply_and_Effectively).

Element	Description
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 Section I(b)(2).
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 Section I(c)(1).
Employer reimbursement	Employer reimbursement must be defined and must comply with the requirements of Section II(a), including subsection (1).

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:[13]

1. the employed worker is not earning a self-sufficient wage or wages comparable to or higher than wages from previous employment;[14]

2. requirements for a pre-award review (Section I(b)(1)) and OJT contract requirements (Section I(c)) are met; and

3. the OJT relates to one or more of the following factors:

    a. introduction of new technologies;

    b. introduction to new production or service procedures;

    c. upgrading to a new job that requires additional skills;

    d. workplace literacy; or

    e. 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 or wages 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[15] of OJT contracts to ensure that Title I funds provided through OJT contracts are utilized to provide participants with the

[13] 20 CFR § 680.710
[14] Refer to Section I(c)(1)(i) regarding determining self-sufficient wage.
[15] 20 CFR § 683.410(a)

training necessary to successfully retain employment. At a minimum, oversight must be based on the requirements of the OJT contract, this policy, and applicable provisions of WIOA and its implementing rules and regulations 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

(a) Payments to employers[16]

Reimbursement of a portion of participant wages to employers providing OJT constitutes compensation for the extraordinary costs associated with training the participants 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 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).

Co-enrollment may assist in making additional funds available for OJT.[17] 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 program benefits.

(1) Increased employer-reimbursement rate[18]

Local boards may increase the employer percentage reimbursement rate to an amount of up to 75 percent of the wage rate of a participant for OJT if local boards approve the increase and take into account the:

1. characteristics of participants taking into consideration whether they are individuals with a barrier to employments;[19]

[16] 20 CFR § 680.720
[17] TEGL 19-16
[18] WIOA Sec. 134(c)(3)(H); 20 CFR § 680.730; TEGL 19-16
[19] The term individual with a barrier to employment is defined in WIOA Sec. 3(24) and in APPENDIX I.

2. size of the employer, with an emphasis on small businesses;

3. quality of employer-provided training and advancement opportunities (e.g., whether the OJT will lead to an industry-recognized credential); and

4. other factors local boards may determine appropriate, including the:

    a. number of participants involved in the OJT;

    b. wage and benefit levels of the participants, at the beginning of OJT and after completion; and

    c. relative benefit of the training to the competitiveness of participants.

Local boards must document factors used when deciding to increase the employer-reimbursement rate.

(b) OJT and Registered Apprenticeship programs[20]

OJT funds may be use for the OJT portion of Registered Apprenticeship programs (also known as related technical instruction). OJT contracts may be entered into with sponsors of Registered Apprenticeship programs, provided that employers meet the requirements established in Section I(b). Depending on the length of the Registered Apprenticeship programs and requirements or limitations of local board policies on OJT, OJT funds may be used for some or all OJT required under Registered Apprenticeship programs.

(c) OJT and ITA funds[21]

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[22]

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 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.[23] 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.

[20] 20 CFR § 680.740; TEGL 19-16
[21] 20 CFR §§ 680.320 and 680.750
[22] WIOA Secs. 181(d)(2) – (3) and 194(4); 20 CFR § 683.260
[23] Refer to Section I(b)(4) for additional information on this prohibition.

Section III. Appeal and grievance procedures

(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:[24]

- 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

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

[24] 20 CFR §§ 683.270 and 683.600

APPENDIX I. Definitions

Definitions in this appendix are provided as supplemental information that supports the provisions of the policy. 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. displaced homemaker

The term displaced homemaker[25] means an individual who has been providing unpaid services to family members in the home and who:

- (a) has been dependent on the income of another family member but is no longer supported by that income or (b) is the dependent spouse of a member of the Armed Forces on active duty (as defined in Section 101(d)(1) of Title 10, United States Code) and whose family income is significantly reduced because of:
    - a deployment (as defined in Section 991(b) of Title 10, United States Code, or pursuant to paragraph (4) of such section);
    - a call or order to active duty pursuant to a provision of law referred to in Section 101(a)(13)(B) of Title 10, United States Code;
    - a permanent change of station; or
    - the service-connected (as defined in Section 101(16) of Title 38, United States Code) death or disability of the member; and
- (B) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

Refer to the following States policies for additional information on displaced homemakers:

- Priority of Service; and
- Program Eligibility for Adults, Dislocated Workers, and Youth.

2. individual with a barrier to employment

The term individual with a barrier to employment[26] means a member of one or more of the following populations:

(a) displaced homemakers;

(b) low-income individuals;

[25] WIOA Sec. 3(16)
[26] WIOA Sec. 3(24)

(c) Indians, Alaska Natives, and Native Hawaiians, as such terms are defined in WIOA Sec. 166;

(d) individuals with disabilities, including youth who are individuals with disabilities;

(e) older individuals;

(f) ex-offenders;

(g) homeless individuals (as defined in section 41403(6) of the Violence Against Women Act of 1994 (42 U.S.C. 14043e–2(6))), or homeless children and youths (as defined in section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)));

(h) youth who are in or have aged out of the foster care system;

(i) individuals who are English language learners, individuals who have low levels of literacy, and individuals facing substantial cultural barriers;

(j) eligible migrant and seasonal farmworkers, as defined in WIOA Sec. 167(i);

(k) individuals within two years of exhausting lifetime eligibility under part A of Title IV of the Social Security Act (42 USC 601 et seq.);

(l) single parents (including single pregnant women);

(m) long-term unemployed individuals; and

(n) such other groups as the Governor determines to have barriers to employment.

3. on-the-job training

The term on-the-job training[27] (OJT) means training by an employer that is provided to a paid participant 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 50 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.

[27] WIOA Sec. 3(44)

4. 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.[28]

5. pre-apprenticeship program

   A pre-apprenticeship program[29] 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;
   - 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.

6. Registered Apprenticeship program

   A Registered Apprenticeship program is an apprenticeship program that is registered with the US Department of Labor Office of Apprenticeship.

7. subaward

   The term subaward[30] 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.

[28] 2 CFR § 200.74
[29] 20 CFR § 681.480. TEN 13-12 provides additional information on quality pre-apprenticeship programs and is accessible at https://www.dol.gov/agencies/eta/advisories/training-and-employment-notice-no-13-12.
[30] 2 CFR § 200.92

8. subrecipient

   The term subrecipient[31] 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.

[31] 2 CFR § 200.93

APPENDIX II. Pre-award review procedures

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.

The pre-award requirements described in this appendix must be completed and documented jointly by local area staff and the employer.[32] 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.[33] To perform this verification, local area staff must complete steps 2.a. and 2.b.

    a. Collect from the employer the:[34]

        i. names under which the employer does or has done business, including predecessors and successors in interest;[35]

        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.

[32] 20 CFR § 683.260(b)
[33] WIOA Sec. 181(d)(2). Refer to Sections I(b)(4) and II(d) of the policy for information on this restriction.
[34] 20 CFR § 683.260(b)
[35] 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.[36]

Local area staff may also consult with labor organizations and others in the local area(s) from which the business relocated.[37]

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.

[36] 20 CFR § 683.260(b)
[37] Ibid.

Employer Assurances and Certifications for On-the-job Training

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

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

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.

Signature of authorized signatory for Employer Date

Printed name of authorized signatory for Employer

Employer's business name, complete address, and phone number

State Policy **Workforce Innovation and Opportunity Act (WIOA)**

Nebraska Department of Labor (NDOL)
Division of Reemployment Services
550 South 16th Street
Lincoln, NE 68508
402.471.9000
ndol.wioa_policy@nebraska.gov

Policy category
Adult, Dislocated Worker, and Youth

Effective
May 3, 2023

Supersedes
Work-based Training
(effective April 6, 2018)

Work-based Training, 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

Work-based training is an effective training strategy that provides additional opportunities for employers and adults and dislocated worker program participants.

CHANGES

Under this Change 1, footnotes have been revised for clarity and links have been updated, where necessary.

ACTION

This policy supersedes and cancels the State's policy title Work-based Training (effective April 6, 2018). Questions and comments on this policy may be submitted to the policy mailbox at ndol.wioa_policy@nebraska.gov.

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 prohibited activities described in Section IV.

POLICY

This policy establishes requirements concerning 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.[1]

This policy is organized into four sections.

Section I. Work-based training services for adults and dislocated workers 3
(a) Internships and work experiences 3
Section II. Work-based training services for employers 4
(a) Customized training 4
(b) Incumbent worker training 6
Section III. Registered Apprenticeship programs 8
Section IV. Prohibited activities 9

[1] The State policy manual is accessible at https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies.

Section I. Work-based training services for adults and dislocated workers

(a) Internships and work experiences

An internship or work experience:[2]

- is a planned, structured learning experience that takes place in a workplace for a limited period of time;
- may be paid or unpaid, as appropriate and consistent with laws such as the Fair Labor Standards Act (FLSA);[3] 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.[4]

(1) Transitional jobs

Transitional jobs:[5]

- 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 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.

[2] 20 CFR § 680.180
[3] Information on FLSA is accessible at https://www.dol.gov/agencies/whd/compliance-assistance/handy-reference-guide-flsa.
[4] Ibid.
[5] 20 CFR §§ 680.190 and 680.195; TEGL 19-16

(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.[6]

(B) Local policy

If a local board uses transitional jobs as part of its service delivery strategy,[7] 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);
- 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

(a) Customized training

Customized training is training:[8]

- 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:[9]

- employee or group of employees are not earning a self-sufficient wage or wages comparable to or higher than wages from previous employment;

[6] 20 CFR § 680.195
[7] 20 CFR § 680.195; TEGL 19-16
[8] WIOA Sec. 3(14); 20 CFR § 680.760
[9] 20 CFR § 680.770

- training relates to:[10]
    - 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

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:[11]

- the size of the employer or group of employers; and
- other factors, including 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.

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

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:[12]

- 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;

[10] 20 CFR § 680.710(c)
[11] TEGL 19-16
[12] Ibid.

- relation of the training to the competitiveness of the participating employees; and
- other employer-provided training and advancement opportunities.

(b) Incumbent worker training

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.[13] 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.

(1) Employer eligibility

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:[14]

- 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.

[13] 20 CFR § 680.790; TEGL 19-16
[14] WIOA Sec. 134(d)(4)(A)(ii); 20 CFR § 680.810; TEGL 19-16

(2) Worker eligibility

For an employer to receive IWT services, the workers to be trained must: [15]

- 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.

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.

(3) Funding

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.[16] 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

Employers participating in IWT must pay the non-Federal share of the cost of providing training to their incumbent workers.[17] 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.[18]

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[15] 20 CFR § 680.780; TEGL 19-16. The State's adult and dislocated worker program policy provides information on eligibility requirements for career and training services and is included in the State policy manual, which is accessible at https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies.

[16] WIOA Sec. 134(a)(3)(A)(i); 20 CFR §§ 680.790, 680.800, 682.210(b), and 682.320(b)(4); TEGL 19-16

[17] WIOA Secs. 134(d)(4)(C) and 134(d)(4)(D)(i)-(iii); 20 CFR § 680.820; TEGL 19-16

[18] The State's policy on program funding provides information pertaining to requirements for program income reporting and is included in the State policy manual which is accessible at https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies.

(4) Local policy

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:[19]

- 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
- 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

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.[20] 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.

[19] 20 CFR § 680.780; TEGL 19-16
[20] 20 CFR § 680.740; TEGL 13-16

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: ▪ the educational portion (i.e., related instruction component) of the RA for eligible apprentices, provided the RA program is included on the ETPL; and ▪ pre-apprenticeship training in preparation for formal RA, provided the pre-apprenticeship program is on the ETPL.
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 must 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 must 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.
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

Funds provided to employers for work-based training must not be used to directly or indirectly:

- assist, promote, or deter union organizing;[21] 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.[22]

[21] 20 CFR § 680.830
[22] 20 CFR § 680.840

DISCLAIMER

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

6. Rapid Response

State Policy **Workforce Innovation and Opportunity Act (WIOA)**

Nebraska Department of Labor (NDOL)
Division of Reemployment Services
550 South 16th Street
Lincoln, NE 68508
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ndol.wioa_policy@nebraska.gov

Policy category
Rapid Response

Effective
May 3, 2023

Supersedes
Rapid Response Services
(effective August 23, 2019)

Rapid Response Services, Change 1

REFERENCE

Federal and state laws, rules, and regulations 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.

CHANGES

Under this Change 4, footnotes have been revised for clarity and links have been updated, where necessary. In addition, contact information for technical assistance has been updated in Section III.

ACTION

This policy supersedes and cancels the State's policy titled Rapid Response Services (effective August 23, 2019). Questions and comments on this policy may be submitted in writing to the policy mailbox at ndol.wioa_policy@nebraska.gov.

The State's Rapid Response activities must be conducted in accordance with the requirements of this policy and the State's Rapid Response Manual.[1]

POLICY

This policy defines:

- purposes and types of Rapid Response services;
- circumstances when Rapid Response services must be delivered; and
- Rapid Response roles and responsibilities.

This policy is organized into three sections.

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(a) Purposes....2
(b) Required Rapid Response services....3
Section II. Circumstances requiring Rapid Response....5
Section III. Rapid Response roles and responsibilities....5

Section I. Rapid Response purposes and services

(a) Purposes

The purposes of Rapid Response are 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:[2]

- informational and direct reemployment services for workers, including information and support for filing unemployment insurance claims, information on the impacts of layoff on

[1] The Rapid Response Manual is accessible at https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/ManualsPlansReports.
[2] 20 CFR §§ 682.300(b)(1)-(4); TEGL 19-16

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

- strategic planning, data gathering and analysis designed to anticipate, prepare for, and manage economic change.

(b) Required Rapid Response services

Rapid Response services must include:[3]

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;

[3] 20 CFR § 682.330; TEGL 19-16

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 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

Rapid Response services must be delivered when one or more of the following circumstances occur:[4]

- 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.

A mass layoff occurs when at least one of the following conditions have been met:[5]

- layoff affects 50 or more workers;[6] or
- Worker Adjustment and Retraining Notification (WARN) Act notice has been filed, regardless of the number of workers affected by the layoff.

Section III. Rapid Response roles and responsibilities[7]

Using funds reserved by the Governor from the state's allotment of dislocated worker funds, Rapid Response activities are carried out by the State (or its designee(s)[8]) in conjunction with local boards, chief elected officials, and other workforce system shareholders. Delivery of Rapid Response services must be carried out in accordance with the State's Rapid Response Manual[9]

For Rapid Response technical assistance, send an email to ndol.rapidresponse@nebraska.gov.

DISCLAIMER

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

[4] 20 CFR § 682.302(a)-(d); TEGL 19-16
[5] 20 CFR § 682.305(b)-(c); TEGL 19-16
[6] Only the State is permitted to define mass layoff differently [20 CFR § 682.305(a)-(b); TEGL 19-16]
[7] WIOA Secs. 133(a)(2) and 134(a)(2); 20 CFR § 682.310; TEGL 19-16
[8] Designees are permitted under 20 CFR 682.310(a).
[9] The Rapid Response Manual is accessible at https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/ManualsPlansReports.

7. Trade Adjustment Assistance

State Policy **Trade Adjustment Assistance (TAA)**

Nebraska Department of Labor (NDOL)
Division of Reemployment Services
550 South 16th Street
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Policy category
Trade Adjustment Assistance

Effective
August 29, 2023

Supersedes
Trade Adjustment Assistance Program, Change 3
(effective May 3, 2023)

Trade Adjustment Assistance Program, Change 4

REFERENCE

Federal and state laws, rules, and regulations 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. 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. 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.

CHANGES

Under this Change 4, APPENDIX I has been revised to indicate that use of funding for employment services is now allowable, pursuant to TEGL 24-20 Change 1.

ACTION

This policy supersedes and cancels the policy titled Trade Adjustment Assistance Program, Change 2. Questions and comments on this policy may be submitted in writing to the Trade program mailbox at 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

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.

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Section I. TAA authorizing statutes, directives, and guidance

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.[1] 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

Participants enrolled in TAA must be co-enrolled, if eligible, in the applicable local Title I dislocated worker program.[2] 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

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.

(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.

[1] Refer to APPENDIX II for list of statutes amending the Trade Act of 1974.
[2] 20 CFR § 618.325. The State's policy on performance accountability addresses co-enrollment requirements and is included in the State policy manual, which is accessible at https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies.

(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

This policy is based on NDOL's reading of the applicable laws, rules, regulations, and guidance released by the Federal 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[3]

Benefit	2002 program	2009 program	2011/2015 programs	2021 program
Group eligibility Defines the worker group that is eligible to apply for and potentially receive benefits through the TAA program	Manufacturing sector workers ONLY 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	• Manufacturing sector workers • Service sector workers Public sector workers 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) 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	• Manufacturing sector workers • Service sector workers 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) 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	Manufacturing sector workers ONLY 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 limited countries No adversely affected incumbent workers.
Trade Readjustment Allowances (TRA) 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

[3] 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 April 28, 2023)

Benefit	2002 program	2009 program	2011/2015 programs	2021 program
Training waivers 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
Training funding 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
State administration funding 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
Job search and relocation allowances funding 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

Benefit	2002 program	2009 program	2011/2015 programs	2021 program
Case management funding Funds to states to pay for TAA case management and employment services	No funds are available for TAA Case Management and Employment Services	• At least 1/3 of these funds must be used for TAA Case Management and Employment Services • States also receive $350,000/year for TAA case management and employment services	• No less than 5% of the amount provided may be spent for TAA Case Management and Employment Services • DOL may recapture unobligated funds and redistribute funds, as needed	Use of funding for employment services is allowable.[4]
Job search allowances 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
Relocation allowances 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.
Alternative Trade Adjustment Assistance (ATAA)/Reemployment Trade Adjustment Assistance (RTAA) 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).	Alternative Trade Adjustment Assistance (ATAA) • Requires a separate group certification • Available to workers earning less than an annual salary of $50,000 • Maximum total ATAA benefit of up to $10,000 • Reemployed within 26 weeks of separation • Reemployed in full time employment • Training benefit NOT available	Reemployment Trade Adjustment Assistance (RTAA) • Does not require a separate group certification • Available to workers earning less than an annual salary of $55,000 • Maximum total income support (RTAA and TRA) benefit of $12,000 • Reemployed with no deadline • Reemployed in full-time or part-time employment in combination with approved training • Training benefit is also available	Reemployment Trade Adjustment Assistance (RTAA) • Does not require a separate group certification • Available to workers earning less than an annual salary of $50,000 • Maximum total income support (RTAA and TRA) benefit of $10,000 • Reemployed with no deadline • Reemployed in full-time or part-time employment in combination with approved training • Training benefit is also available	Alternative Trade Adjustment Assistance (ATAA) • Requires a separate group certification • Available to workers earning less than an annual salary of $50,000 • Maximum total ATAA benefit of $10,000 • Reemployed within 26 weeks of separation • Reemployed in full time employment • Training benefit NOT available

[4] TEGL 24-20 Change 1

Benefit	2002 program	2009 program	2011/2015 programs	2021 program
Health Coverage Tax Credit (HCTC) 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 http://www.irs.gov/Individuals/HCTC)	72.5% of qualifying health insurance premium costs (refer to http://www.irs.gov/Individuals/HCTC)	72.5% of qualifying health insurance premium costs (refer to http://www.irs.gov/Individuals/HCTC)	72.5% of qualifying health insurance premium costs (refer to http://www.irs.gov/Individuals/HCTC)

APPENDIX II. Trade Adjustment Assistance for Workers Programs: Amending statutes[5]

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* **Some workers covered under these petitions may receive 2011 TAA Program benefits*	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* **Some workers covered under petitions filed on or after February 15, 2011 through October 20, 2011 may be eligible for 2011 TAA Program benefits*	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 **OTAA will:* • *automatically reconsider negative determinations (denials) of petitions filed on or after January 1, 2014, and before June 29, 2015;* • *investigate petitions filed during that period for which a determination has not yet been issued; and* • *make a determination under the 2015 Program criteria.*	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.

[5] U.S. Department of Labor, "TAA Statutes," https://www.dol.gov/agencies/eta/tradeact/laws/statutes (accessed August 29, 2023)

APPENDIX III. Directives and guidance for Trade Act programs

The current listing of directives and guidance for Trade Act programs is accessible at https://www.dol.gov/agencies/eta/tradeact/law/directives.