

**Kansas Department of Commerce
Workforce Services
Policy and Procedures Manual**

Policy Number: #5-05-00

Originating Office: Workforce Services

Subject: WIOA Eligibility Determination and Documentation

Issued: January 2, 2008

Revised: July 12, 2016 January XX, 2015

Programs: WIOA Youth, Adult and Dislocated Worker

Purpose: To more clearly define eligibility.

Reference: WIOA Sections 3(2), 3(15), 3(16), 3(18), 3(24), 3(27), 3(36) 3(38), 3(46), 3(50), 3(52), 3(54), 3(55), 132(V)(1), 129(A)(1)(B), 129(a)1(C);; 20 CFR Parts 681.120, 681.130, 681.210, and 681 subpart B (200-310);

Background: This document defines and describes participant eligibility criteria for WIOA-funded activities. State policy provides detailed guidance for WIOA eligibility determination and documentation.

Action: This policy shall be utilized when determining if individuals are eligible to participate in WIOA-funded activities. Local areas shall design forms for accurate eligibility determination and maintain documentation that supports the key elements of a participant's eligibility for WIOA.

Contact: Questions should be directed to WIOA Administrator, (785) 296-0607, TTY: 711
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Summary of Changes: Updates policy consistent with WIOA.

Attachment: None

WIOA Eligibility Determination

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WIOA Eligibility Determination

Policy Statement

Ensuring that performance measures or targets will not be used to exclude an individual from services for which he or she is otherwise eligible is one of the Kansas Workforce State Board's Values and Goals for the Workforce System ((2)c).

Work Authorization

A potential job seeker's ability to legally participate in the workforce is essential.

Youth service and adult and dislocated worker career services shall be limited to:

- A. Citizens, nationals and other individuals authorized to work in the United States, or
- B. Those individuals seeking authorization to work in the United States.

Adults and dislocated workers training services funded under Title IB of WIOA in Kansas shall be limited to those individuals who are citizens and nationals of the United States or lawfully admitted permanent resident aliens, refugees, asylees, parolees and other immigrants authorized by the Attorney General to work in the United States.

1.

Additional Considerations in Determining Eligibility for Dislocated Workers

Civilian Spouses

The same rationale of serving military spouses as dislocated workers as mentioned in TEGL 22-04, Change 1, page 3, applies to any spouse affected by a dislocation due to following their spouse because of a reassignment or loss of job.

Likely to Return

Dislocated workers do not include workers who are likely to remain with or return to their layoff employer, industry or occupation. A determination of whether an individual is likely to return will be based upon the best available information from the worker, employer and labor market data at the time the layoff notice or closure is received.

Look-Back Period

A look-back period of five years will be used to establish the previous occupation for workers who may have accepted stopgap employment. The predominant occupation during that time, or the occupation of initial dislocation, may be considered the previous occupation.

2.

Retirement

Dislocated workers do not include workers who are likely to retire and leave the labor market. However, an involuntarily separated worker who is eligible for retirement benefits due to tenure with an employer, but who will remain in the labor force at a level comparable to their pre-dislocation employment may be eligible.

Stopgap Employment

Stopgap employment means work an individual accepts only because they have lost the customary work for which their training, experience or work history qualifies them. Employment would be considered stopgap if the salary were substantially below the salary of the individual's previous occupation and if they are working substantially under the skill level of their previous occupation.

Definitions

In addition to those terms defined at Section 3 of the Workforce Innovation and Opportunity Act and 20 CFR Part 675, §675.300, the following terms are defined as:

[WIOA, Section 3(5),

Family - two or more persons related by blood, marriage, or decree of court, who are living in a single residence

Homeless Individual - the terms "homeless," "homeless individual," or "homeless person" include: 1. An individual who lacks a fixed, regular and adequate nighttime residence; and

2. An individual who has a primary nighttime residence that is:

- A. A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);
- B. An institution that provides a temporary residence for individuals intended to be institutionalized; or
- C. A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings."

[McKinney-Vento Homeless Assistance Act (42 U.S.C. § 12102(1) (2009))]

Military Spouse – An individual who is married to an active duty service member including National Guard or Reserve personnel on active duty. The surviving spouse of an active duty service member who lost his/her life while on active duty service in Afghanistan, Iraq or other combat-related areas.

[TEGL 22-04 and 22-04, Change 1]

Underemployed - an individual who is working part time but desires full time employment, or who is working in employment not commensurate with the individual's demonstrated level of educational and/ or skill achievement.

3.

4.

Eligibility Requirements

Selective Service

Males who are subject to, but have not complied with, the registration requirements of the Military Selective Service Act (MSSA), as amended, are not eligible for participation in WIOA-funded programs and services. Section 189(h), of WIOA and 20 CFR Part 667.250 of the Regulations require the Secretary of Labor to insure that each individual participating in any WIOA program, or receiving any assistance under the Act, has not violated the requirement of the MSSA (50 App. U.S.C. § 453(a) and(b)). This requires that every male citizen, and every other male residing in the United States, who is 18 through 25 years of age must be registered with the Selective Service System (SSS). There are exceptions, which include obvious disqualifying handicaps, individuals who have been honorably discharged from the armed services, aliens entering the United States on or after 26 years of age, etc. A determination must be made as to whether or not the requirement for selective service registration has been fully met. Local areas have the responsibility for deciding and determining whether services should be provided. This determination must be made on a case-by-case basis. A non-registrant may not be denied any federal benefit if he can demonstrate that his failure to register was not knowing or not willful.

For more information about requirements for Selective Service registration refer to the Selective Service Registration policy contained in the State Policy #2-03-00 or visit the Selective Service Web site at <http://www.sss.gov/>.

Work Authorization

Statutory requirements at Section 188(a)(5) of WIOA are a non-discrimination provision, not an eligibility provision. Thus, WIOA does not forbid the state or local areas from servicing individuals outside of the designated categories.

However, a participant's ability to legally participate in the workforce is essential. Individualized Career and Training services for adults and dislocated workers funded under Title IB of WIOA in Kansas are limited to those individuals who are citizens and nationals of the United States or lawfully admitted permanent resident aliens, refugees, asylees, parolees and other immigrants authorized by the Attorney General to work in the United States.

Youth service and adult and dislocated worker career services shall be limited to:

- Citizens, nationals and other individuals authorized to work in the United States, or
- Those individuals seeking authorization to work in the United States.

Adult Eligibility

To be eligible for the Adult Program an individual must be 18 years of age or older on the date of registration [WIOA Sec. 3(2)].

Dislocated Worker Eligibility

To be eligible for the Dislocated Worker Program an individual must meet any one of the following five definitions:

Terminated or Laid Off

- A. Has been terminated or laid off, or has received a notice of termination (without cause) or layoff from employment; AND
- B. Is eligible for or has exhausted entitlement to unemployment compensation; OR has been employed for a duration sufficient to demonstrate attachment to the workforce, but is not eligible for unemployment compensation due to insufficient earnings or having performed services for an employer that was not covered under a state unemployment compensation law; AND
- C. Is unlikely to return to a previous industry or occupation.

NOTE: must meet all three conditions above.

SPECIAL NOTE re: Veterans. Being discharged or released (under other than dishonorable conditions) either voluntarily or involuntarily terminates an employment relationship between an individual and the military and thus falls within the scope of the termination or notice of termination component of the WIOA definition of dislocated worker (ref. §680.660(a)). A separating veteran meets the criteria on eligibility for or exhaustion of unemployment compensation (§680.660(b)) and is unlikely to return to a previous occupation or industry (§680.600(c)). Under the priority of service provisions of the Jobs for Veterans Act, separating service members who, meet the eligibility criteria for DOL funded programs would be afforded priority over non-veterans.

Plant Closure or Substantial Layoff

- A. Has been terminated or laid off, or has received a notice of termination or layoff, from employment as a result of any permanent closure of, or any substantial layoff at a plant, facility or enterprise; OR
- B. Is employed at a facility where the employer has made a general announcement that such facility will close within 180 days; OR
- C. For purposes of eligibility to receive services other than training services described in WIOA Section 134(c)(3), career services described in WIOA Section 134(c)(2)(xii), or supportive services; is employed at a facility at which the employer has made a general announcement that such facility will close.
 - a. *NOTE:* this definition provides for the provision of career services only when a date of closure is not specified or is expected to occur in more than 180 days.

Self-Employed

1. Self-employed (including employment as a farmer, rancher or fisherman), but unemployed as a result of a natural disaster or "general economic conditions" in the community where the individual resides. The Local Workforce Investment Development Board (local board) must establish a definition for "general economic conditions."

2. Self-employed farmer, rancher or family member who derived 50 percent or more of his/her income from farming or ranching and is losing, or has lost, the primary source of income as a result of economic conditions over a period of two years or via natural disaster.

Displaced Homemaker

A displaced homemaker is an individual who has been providing unpaid services to family members in the home and who has been dependent on the income of another family member, but is no longer supported by that income; AND is unemployed or underemployed and is experiencing difficulty obtaining or upgrading employment. (WIOA Section 3(16).The definition of "displaced homemaker" includes only those individuals who were dependent on a family member's income. Those individuals who have been dependent on public assistance may be served in the adult program. To be considered "dependent on the income of another family member," at least 50 percent of the individual's support must come from a family member. "No longer supported by that income," means any reason for that income loss, not just by legal separation, divorce or death.

Military Spouse

- a. Is the spouse of a member of the Armed Forces on active duty (as defined in section 101(d)(1) of title 10 USC) and has experienced a loss of employment as a direct result of relocation to accommodate a permanent change of duty station, or**
- b. Is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.**
- c. Is the spouse of a member of the Armed Forces on active duty and the criteria described below:**
 - i. Is the dependent spouse of a member of the Armed Forces on active duty and whose family income has been significantly reduced because of deployment, a call or order to active duty, or the service connected death or disability of the member**

Additional Considerations in Determining Eligibility for Dislocated Workers

Civilian Spouses

The same rationale for serving military spouses as dislocated workers as mentioned in TEGl 22-04, Change 1, page 3, applies to any spouse affected by a dislocation due to following their spouse because of a reassignment or loss of job.

Retirement

Dislocated workers do not include workers who are likely to retire and leave the labor market. However, an involuntarily separated worker who is eligible for retirement benefits due to tenure with an employer, but who will remain in the labor force at a level comparable to their pre-dislocation employment may be eligible.

Likely to Return

Dislocated workers do not include workers who are likely to remain with or return to their layoff employer, industry or occupation. A determination of whether an individual is likely to return will be based upon the best available information from the worker, employer and labor market data at the time the layoff notice or closure is received.

Stopgap Employment

Stopgap employment means work an individual accepts only because they have lost the customary work for which their training, experience or work history qualifies them. Employment would be considered stopgap if the salary were substantially below the salary of the individual's previous occupation and if they are working substantially under the skill level of their previous occupation.

Look-Back Period

A look-back period of five years will be used to establish the previous occupation for workers who may have accepted stopgap employment. The predominant occupation during that time, or the occupation of initial dislocation, may be considered the previous occupation.

Youth Eligibility

In-School Youth (ISY)

An In-School Youth (ISY) must not be younger than 14 or (unless an individual with a disability attending school under state law) older than 21 years of age on the date of registration AND (except as provided in the Youth Eligibility Exception) be low-income; AND exhibit at least one of the following barriers:

- 5.
6. OR
- 7.
1. Basic skills deficient
2. English language learner
3. Offender
4. Homeless individual, homeless child or youth, runaway, either in or aged out of the foster care system, eligible for assistance under section 477 of the Social Security Act , or in an out-of-home placement
5. Pregnant or a parenting

- 6. individual with a disability
- 7. Requires additional assistance to complete an education program or to secure and hold employment *
- 8. *Note re: “requires additional assistance”: For ISY enrollment ONLY – when “requires additional assistance is the only barrier documented for an ISY eligibility, not more than five percent (5%) of the ISY assisted in the local area may be eligible based solely on this criteria.

Out-of-School Youth (OSY)

An Out-of-School Youth (OSY) must not be younger than 16 or older than 24 years of age on the date of registration AND not attending any school (as defined under state law); AND exhibit at least one of the following characteristics:

- 1. A school dropout
- 2. A youth who is within the age of compulsory attendance, but has not attended any school* for at least the most recent complete school year calendar quarter based on the local school district’s definition of school year quarters
- 3. A recipient of a secondary diploma or its recognized equivalent who is a low income individual AND, either:
 - a. Basic skills deficient
 - i. OR
 - b. An English language learner
- 4. An individual subject to the juvenile or adult justice system
- 5. A homeless individual, homeless child or youth, runaway, either in or aged out of the foster care system, eligible for assistance under section 477 of the Social Security Act , or in an out-of-home placement
- 6. An individual who is pregnant or parenting
- 7. An individual with a disability
- 8. A low income individual who requires additional assistance to:
 - a. enter an education program, OR
 - b. complete an education program, OR
 - c. secure employment, OR
 - d. hold employment

**Note re: school. The term “school” refers to both, secondary and post-secondary schools. However, the U.S. Department of Labor does not consider providers of Adult Education under Title II of WIOA, YouthBuild programs or Job Corps programs to be “schools”. Youth attending Adult Education provided under Title II of WIOA, YouthBuild, or Job Corps may be considered OSY for purposes of WIOA youth p[program eligibility.*

Youth Eligibility Exception

Up to five percent (5%) of youth participants served by youth programs in a local area may be individuals who do not meet the income criterion for eligible youth, provided they meet one or more of the following criteria:

- 1. Basic skills deficient
- 2. Homeless
- 3. Offender

4. One or more grade levels below the grade level appropriate to the individual's age
5. Pregnant or parenting
6. Has a disability (which may be a learning disability)
7. Runaway
8. School dropout
9. Other additional barriers as defined by the local board.

Concurrent Enrollment in Adult and Youth Programs

Eligible adults are defined as individuals 18 years of age or older. Therefore, individuals who are at least 18 years of age and not yet 25 years of age may be eligible for both the adult program and the youth program, and may participate concurrently. Such individuals must be determined eligible under (both) the youth and adult eligibility criteria to receive adult and youth services concurrently. Concurrently enrolled individuals will count toward the performance measure outcomes for both programs.

Eligibility Requirements for Career Services – WIOA Adult and Dislocated Workers

There are three types of Career Services:

- A. Basic Career Services are universally available to all adults and dislocated workers provided they are otherwise eligible to receive WIOA Adult or Dislocated Services.. Basic Career Services are fully explained at §678.430(a).
- B. Individualized Career Services are available to all otherwise eligible Adults in accordance with local policy on Priority for Receipt of Individualized Career Services and all Dislocated Workers when determined appropriate for an individual to obtain or retain employment. Individualized Career Services are fully explained at §678.430(b).
 - a. Priority for Receipt of Individualized Career Services
Priority access to individualized career services funded with Title I adult funds must be given to recipients of public assistance, other low income individuals, and individuals who are basic skill deficient. Priority access must be given regardless of whether funding is limited in the local area.
- C.
- D. Please refer to State Policy 3-11-01, et. seq., Priority of Service under WIOA for further guidance.
 - a.
- E. Follow-up Services are available, as appropriate, to former Adult or Dislocated Worker participants who are placed in unsubsidized employment or have otherwise exited.

There is no required minimum number of services or “sequence of service” for receipt of Career Services. Career services are to be provided, as appropriate, according to individual customer need.

Eligibility Requirements for Training Services

In order to receive training services funded under WIOA Title I, employed or unemployed adults or dislocated workers must meet the following conditions:

1. After an interview, evaluation or assessment, and case management, determined by a one-stop operator or one-stop partner, as appropriate, to:
 - a. Be 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;
 - b. Be 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;
 - i. Need for Title I funded training should include consideration of the full cost of participating in training, including the cost of dependent care, transportation and other appropriate costs.
 - c. be in need of training services and to have the skills and qualifications to successfully participate in the selected program of training services;
2. Have selected a program of training services that is directly linked to employment opportunities either in the local area or in another area where the individual is willing to relocate;
3. Be unable to obtain grant assistance from other sources to pay the costs of training, including federal Pell Grants established under Title IV of the Higher Education Act of 1965, or require WIOA assistance in addition to other sources of grant assistance, including federal Pell Grants.
 - a. Training service may be provided to an individual while an application for a Federal Pell Grant is pending provided appropriate reimbursement is made should the Pell Grant be subsequently awarded.
4. When enrolled under Title I Adult funding, be determined eligible in accordance with the priority system in effect.
 - a. **Priority for Receipt of Training Services**
Priority access to training services funded with Title I adult funds must be given to recipients of public assistance, other low income individuals, and individuals who are basic skill deficient. Priority must be given regardless of whether funding is limited in the local area.
Please refer to State Policy 3-11-01, et. seq., Priority of Service under WIOA for further guidance.

1.

There is no required minimum number of prior Career Services or “sequence of service” for receipt of Training Services. All services are to be provided, as appropriate, according to individual customer need.

