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DATE: January 9, 2020

TO: WIOA Subrecipients of the Orange County Workforce Development Area

FROM: Carma Lacy
Director of Workforce Development

SUBJECT: WIOA Underemployed Eligibility Policy Information Notice No. 20-OCWDB-02

PURPOSE

Individuals who are underemployed represent a significant number of job seekers. In addition to providing career and training services to individuals who are unemployed, those who are underemployed and meet the definition of a low-income individual may also receive the same services under the Adult program on a priority basis as defined in the TRAINING AND EMPLOYMENT GUIDANCE LETTER WIOA NO. 1916 OPERATING GUIDANCE for the Workforce Innovation and Opportunity Act Section 10. Individuals who are underemployed may include those who are:

- Employed less than full-time and are seeking full-time employment;
- Employed in a position that is inadequate with respect to their skills and training;
- Employed and meet the definition of a low-income individual
- Employed, but whose current job's earnings are not sufficient compared to their previous job's earnings from their former employment, per State and/or local policy.

Individuals who meet the definition of an individual with a barrier to employment (see WIOA sec. 3(24)) who are underemployed may also be served in the Adult program; however, unless they are a recipient of public assistance, a low-income individual, or are basic skills deficient, they are not eligible for service on a priority basis. Individuals who are determined by State and/or local policies to be underemployed, and deemed eligible for the Dislocated Worker program, may still be considered eligible to receive services. For instance, an individual that is dislocated from a full-time job who has found part-time employment may still be considered a dislocated worker by State and/or local policies.

EFFECTIVE DATE

This policy is effective immediately upon issuance.

REFERENCES

- WIOA sec. 3(36)
- 20 CFR 680.600



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- Training and Employment Guidance Letter (TEGL) 3-15
- WIOA sec. 3(24)
- 20 CFR 680.640
- TEGL 10-09
- WIOA sec. 134(c)(3)(A)
- 20 CFR 680.780
- TEGL 22-04

BACKGROUND

Workforce Innovation Opportunity Act (WIOA) of 2014 provides for a workforce system that is accessible to all job seekers, customer centered, and training that is job-driven. The Adult, Dislocated Worker, and Youth programs provide training and employment services in the American Job Center network, and are required partners under the law. Under WIOA, partner programs and entities that are jointly responsible for workforce and economic development, educational, and other human resource programs, collaborate to create a seamless customer-focused American Job Center network that integrates service delivery across all programs to make it easier for workers to access the services they need to obtain skills and employment.

POLICIES AND PROCEDURES

Under WIOA regulations, training services may be made available to employed and unemployed adults and dislocated workers who, among other criteria, are:

1. 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, and
2. Are in need of training services to obtain or retain employment leading to economic self-sufficiency or wages comparable to or higher than wages from previous employment.

WIOA program Service Provider staff may enroll employed adults and dislocated workers when:

1. An applicant's current wage/income does not provide for self-sufficiency as defined by OCDB Self-Sufficiency Policy;
2. It is determined that WIOA services may assist the applicant in obtaining/progressing to a self-sufficient wage; and
3. An individual 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 (underemployed). Also includes individuals who fall below the dislocated worker self-sufficiency threshold, as defined by the local WDB.

The Workforce Investment and Opportunity Act allows enrollment of employed adults and dislocated workers who are not earning a self-sufficient wage. WIOA requires that local Workforce Development Boards (WDBs) set the criteria for determining whether an employed applicant needs WIOA Title 1 funded adult or dislocated worker services to obtain or retain employment leading to self-sufficiency. The regulation provides maximum flexibility, with the requirement that self-sufficiency is defined as employment which pays at least the lower living standard income level. The regulation allows self-sufficiency for a dislocated worker to be defined in relation to a percentage of the lay-off wage.

Priority of Services

Priority selection is established, and local areas must target certain populations in accordance with WIOA Section 134(c)(3)(E) and proposed 20 CFR 680.600 and 20 CFR 680.640. These targeted populations must first meet the eligibility requirements for the Adult program.

The matrix below describes the order and rationale for prioritization based on the requirements in WIOA Section 134(c)(3)(E), proposed 20 CFR 680.600, proposed 20 CFR 680.640, and TEGL 10- 09. For purposes of this section, the term “covered person(s)” refers to veterans and eligible spouses per priority of service for veterans. According to 20 CFR 680.120, 680.130, and 680.210, the priority requirements referenced in the chart below do not necessarily mean that only the recipients of public assistance and other low-income individuals can receive WIOA adult funded career and training services.

Priority requirements for the WIOA Title I adult program are as follows:

Priority	Mandatory Priority Group
1	Veterans and eligible spouses who meet the programs statutory priority requirement (e.g., veterans and eligible spouses who are also recipients of public assistance, other low-income individuals, or individuals who are basic skills deficient).
2	Non-covered persons who meet the programs statutory priority requirement (e.g., non-covered persons who are recipients of public assistance, other low-income individuals, or individuals who are basic skills deficient). The mandatory priority criteria (low-income/public assistance recipients /basic skills deficient) have preference over covered persons (veterans and eligible spouses) who do not meet the mandatory priority criteria.
3	Veterans and eligible spouses who do not meet the programs statutory priority requirement. Priority of Service apply in the third category (individuals who are not low-income / public assistance recipients / basic skills deficient).
4 (optional)	Priority populations established by the Governor and/or Local Workforce Development Board.
5 (optional)	Non-covered persons outside the programs statutory priority requirement.

With respect to funds allocated to a local area for adult employment and training activities, WIOA section 133(b)(2)(A) and (3)(A), states that priority shall be given to recipients of public assistance and other low-income individuals, and individuals who are basic skills deficient for receipt of career services described in paragraph (2)(A)(xii) and training services.

In the OCWDB, Service Provider staff may also serve other eligible individuals, including those who are not recipients of public assistance, low-income individuals, or those who are basic skills deficient. Service to these individuals who be done after first serving eligible individuals who meet the established priority selection criteria.

Employed Adult Participants

Employed individuals who do not meet the other priority for services criteria may be enrolled under this priority if:

1. They have a family income that does not exceed the Self-Sufficiency Guidelines set by OCWDB;
2. They are determined by the program operator to be in need of and be able to benefit from services; and
3. The program operator documents that they have a barrier to employment.

Employed Adults shall be defined as family wages before deductions (gross wages) that total 266% or more of the OMB Poverty Guidelines in the six months previous to application for WIOA Adult funded services. The 266% guideline can be found in the OCWDB Self-Sufficiency policy which is updated once a year and viewable on the OCWDB website. If an employed adult applicant meets priority 1 or 2, must identify and enroll based on appropriate priority. Priority 4 & 5 – Self-sufficiency for Employed Adults is to be used when the employed adult is not low income and is not a veteran (use Priority 3 for non-low-income veterans whether they are unemployed or employed).

Limitation for Funding for Underemployed Adults and Dislocated Workers

Service providers cannot exceed more than 10% of Adult and Dislocated Worker funding serving underemployed adults and dislocated workers.

If the OCWDB policy with falls below minimum federal and state provisions due to current or future revisions, this policy, will default to the current minimum federal and state regulations and guidance available. OCDB policy may set forth stricter requirements than provided by federal and state guidance, but in no case will OCDB policy not meet minimum federal and state policy.

ACTION

Bring this policy to the attention of all staff.

INQUIRIES

If you have any questions regarding this policy, please contact your Contract Administrator at 714-480-6500.