



October 1, 2020

**Workforce Innovation and Opportunity Act Policy Letter No. 15-02.1**

To: Workforce Innovation and Opportunity Act (WIOA) Local Workforce Development Boards (WDBs), Fiscal Agents, and OhioMeansJobs Center Operators

From: Kimberly Hall, Director

Subject: Adult and Dislocated Worker Eligibility

**I. Purpose**

The purpose of this policy is to communicate guidance and parameters for determining eligibility requirements for individuals who are seeking to participate in Workforce Innovation and Opportunity Act (WIOA)-funded adult and dislocated worker employment and training programs.

**II. Effective Date**

Immediately

**III. Rescission**

ODJFS, Workforce Innovation and Opportunity Act Policy Letter No. 15-02, Adult and Dislocated Worker Eligibility, (July 15, 2015).

**IV. Background**

WIOA requires states to assist local workforce development areas with the implementation of employment and training activities for adults and dislocated workers. The WIOA program is designed to provide employment and training opportunities to those who can benefit from, and who are in need of, such opportunities. Meeting the eligibility criteria for a WIOA-funded program does not entitle an adult or dislocated worker to receive certain employment and training services. Local decisions on whether to provide specific services must be based upon additional state and local policy considerations, including, but not necessarily limited to, the appropriateness of services.

**Statutory Eligibility Requirements for Adult and Dislocated Workers**

Individuals wishing to receive employment and training services funded through the adult and dislocated worker programs must meet all of the following requirements:

1. Be legally authorized to work in the United States;
2. Be 18 years of age or older;
3. Be properly registered for selective service (refer to WIOAPL No. 15-04, Selective Service Registration, for details, including the list of exceptions to this requirement).

There are no additional eligibility criteria for the adult program. However, WIOA requires that priority for adult services must be given to recipients of public assistance and other low-income individuals, and individuals who are basic skills deficient for receipt of career and training services necessary for an individual to obtain or retain employment.

### **Additional Statutory Eligibility Requirements for Dislocated Workers**

In addition to the requirements listed above, an individual must also fall into one or more of the following eligibility categories as outlined in section 3(15) (A-E) of WIOA, P.L. 113-128 to be eligible for the dislocated worker program

#### **Category A: Terminated or Laid Off, or Received a Notice of Termination or Layoff, from Employment**

- Has been terminated or laid off, or has received a notice of termination or layoff, from employment; **AND**
- 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 were not covered under a state unemployment compensation law; **AND**
- Is unlikely to return to a previous industry or occupation.

#### **Category B: Plant Closure or Substantial Layoff**

- 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**
- Is employed at a facility where the employer has made a general announcement that such facility will close within 180 days; **OR**
- For purposes of eligibility to receive services under WIOA (P.L. 113-128), other than training services described in section 134(c)(3), career services described in section 134(c)(2)(A)(xii), or supportive services, is employed at a facility at which the employer has made a general announcement that such facility will close.

### Category C: Self-Employed Individual

- Was self-employed (including employment as a farmer, rancher, or fisherman) but is unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters.

### Category D: Displaced Homemaker

- Is a displaced homemaker.

### Category E: Military Spouse

- Is married to a member of the Armed Forces on active duty (as defined in section 101(d)(1) of title 10, United States Code), and has experienced a loss of employment as a direct result of relocation to accommodate a permanent change in duty station of such member;  
**OR**
- Is married to a member of the Armed Forces on active duty and meets the criteria of a displaced homemaker who is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

## **Special Eligibility Conditions for Dislocated Workers**

The following are special circumstances that, when met, allow the worker to be determined eligible for the dislocated worker program, provided that the applicant is authorized to work in the United States, is 18 years of age or older, and is properly registered for selective service.

### **A. Reemployment Services and Eligibility Assessment (RESEA) and Unemployment Compensation Reemployment Services (UCRS)**

The RESEA and UCRS systems are early intervention approaches for providing dislocated workers with reemployment services to expedite their return to productive employment. The Ohio Job Insurance (OJI) system selects claimants to participate in these programs have received a first Unemployment Insurance (UI) payment, do not have a definite return to work date, are not job attached, not attending approved training, and do not utilize a union hiring hall for employment. These selected claimants are considered to be unlikely to return to their previous occupations or industries and are considered dislocated workers under WIOA (P.L. 113-128), section 3(15), **Category A: Terminated or Laid Off or Received a Notice of Termination or Layoff, from Employment.**

### **B. Trade Eligible**

The Trade Adjustment Act (TAA) is a program that assists individuals who became unemployed as a result of increased imports, with their return to suitable employment based upon an approved petition. The TAA program provides reemployment services and allowances for eligible individuals. Applicants are considered to be dislocated workers under Category A: Terminated or Laid Off, or Received a Notice of Termination or Layoff, from Employment, when the affected worker provides a copy of the petition approval letter or a screen shot from Ohio's designated case management system indicating that the individual is trade eligible.

#### C. Locked-out Workers

Locked-out workers are considered to be dislocated workers under Category A: Terminated or Laid Off, or Received a Notice of Termination or Layoff, from Employment, when an ODJFS Office of Unemployment Compensation hearing officer has issued a determination that a lockout exists.

#### D. Buyouts and Forced or Early Retirements

Workers who receive buyouts or who are forced to retire are considered dislocated workers under Category A: Terminated or Laid Off, or Received a Notice of Termination or Layoff, from Employment, when all of the following conditions are met:

- The employer has offered a buyout or early retirement, or has forced an early retirement as a means to reduce its workforce, and provides a financial incentive for long-term workers to leave their employment; and
- The participating workers would not be voluntarily leaving their positions or retiring from employment at this time; and
- The worker is eligible for Unemployment Insurance (UI); and
- They are unlikely to return to a previous industry or occupation.

Workers in the situation listed above are considered to be preserving the jobs for employees with less seniority.

#### E. Transitioning Service Members and Recently Separated Veterans

Dislocated worker funds can help transitioning service members or recently separated veterans enter or reenter the civilian labor force.

A transitioning service member or recently separated veteran qualifies for dislocated worker activities if he/she is separating from the Armed Forces with a discharge that is anything other than dishonorable, and he/she meets the following criteria:

- The individual has received a notice of separation, a DD-214 from the Department of Defense, or other documentation showing a separation or imminent separation from the Armed Forces, thus satisfying the termination or layoff part of the dislocated worker eligibility criteria;
- The individual meets the dislocated worker eligibility criteria regarding eligibility for or exhaustion of unemployment compensation; and
- The individual meets the dislocated worker eligibility criterion of being unlikely to return to a previous industry or occupation.

For eligibility-related definitions, see Attachment A: Adult and Dislocated Worker Eligibility Glossary

## **V. Local Workforce Development Area Requirements**

### Unlikely to Return to a Previous Industry or Occupation

Under 20 CFR 680.130, local areas may establish additional criteria to the “unlikely to return to a previous industry or occupation” definition.

If the local area identifies additional criteria, to the “unlikely to return to a previous industry or occupation” definition, a local policy must be developed to define “unlikely to return to a previous industry or occupation”. The local area may also identify other appropriate source documentation based on those additional criteria.

## **VI. Reporting**

As recipients of WIOA dislocated worker funds, the Ohio Department of Job and Family Services (ODJFS), Office of Workforce Development and the local workforce development areas are required to maintain and report accurate program and financial information. Pursuant to rule 5101:9-30-04 of the Ohio Administrative Code, information regarding WIOA participants and their activities and performance must be entered into Ohio’s designated case management system accurately and timely. The system may be used to assist in the determination of eligibility but cannot be used as verification of adult or dislocated worker eligibility. WIOAPL No. 15-07.2, Source Documentation for WIOA Eligibility, lists the type of acceptable documentation to verify eligibility for the WIOA adult and dislocated worker programs.

## **VII. Monitoring**

At the local level, the area must conduct oversight of the implementation of the WIOA adult and dislocated worker programs to ensure that participants enrolled in the programs are eligible and that eligibility has been properly documented.

During an annual onsite assessment of compliance with federal and state laws and regulations, the state's program monitors will evaluate the area's determination of eligibility for adult and dislocated worker services, by means that include a review of participant files. Any issues of concern will be handled through the state's monitoring resolution process.

### **VIII. Technical Assistance**

For additional information, you may send your questions to the Office of Workforce Development: [OWDPOLICY@jfs.ohio.gov](mailto:OWDPOLICY@jfs.ohio.gov).

For technical assistance, you may send your request to the Office of Workforce Development: [WIOAQNA@jfs.ohio.gov](mailto:WIOAQNA@jfs.ohio.gov).

### **IX. Reference**

Workforce Innovation and Opportunity Act, Pub. L. 113-128

20 C.F.R Parts 603, 680, et al

29 U.S.C. 3101 et seq.

Ohio Admin. Code 5101:9-30-04.

ODJFS, Workforce Innovation and Opportunity Act Policy Letter No. 15-07.2, Source Documentation for WIOA Eligibility, (February 20, 2019).

ODJFS, Workforce Innovation and Opportunity Act Policy Letter No. 15-04, Selective Service Registration, (July 1, 2015).

ODJFS, Workforce Innovation and Opportunity Act Policy Letter No. 15-09.1, Training Services for Adult and Dislocated Worker, (January 8, 2018).

### **X. Rescission**

ODJFS, Workforce Innovation and Opportunity Act Policy Letter No. 15-02, Adult and Dislocated Worker Eligibility, (July 15, 2015).

Term	Definition
Attachment to workforce	An individual who, at the time of application for WIOA services, worked at the same company or in the same occupation for 15 out of the last 26 weeks.
Basic skills deficient	An individual 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.
Disability	Any person who has a physical, sensory, or mental impairment, which substantially limits one or more major life activities per the American Disabilities Act of 1990 (42 U.S.C. 12102) and has record of such impairment or is regarded as having such impairment.
Displaced homemaker	<p>An individual who has been providing unpaid services to family members in the home and who:</p> <ul style="list-style-type: none"> <li>• Is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment; AND</li> <li>• Has been dependent on the income of another family member, but is no longer supported by that income; OR</li> <li>• 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 a service-connected (as defined in section 101(16) of title 38, United States Code) death or disability.</li> </ul>
Eligible for or has exhausted unemployment insurance	An individual who has been determined to be eligible for benefit payments under one or more State or Federal unemployment compensation programs whether or not he or she has exhausted his/her benefit rights. An individual need not actually receive benefits to be eligible.
Farmer, ranch worker or fisherman	An individual who is self-employed or employed by another, on a farm, ranch, or boat, which produces agricultural or food products with annual sales of

**Attachment A: Adult and Dislocated Worker Eligibility Glossary**

	\$1,000 or more, or who receives at least 50 percent of their family or individual income from agricultural or food production.
General announcement	A communication by an employer stating intent to close a business within 180 days.
Laid-off or layoff	A separation due to the lack of work or other factor(s) not related to the behavior of the employee.
Natural disaster	Events that may include a hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mud-slide, snowstorm, ice storm, drought, fire, explosion, or other catastrophe.
Notice of termination from employment	A written notice from an employer concerning the layoff or termination of an employee. Such written notice of layoff or termination may consist of: <ul style="list-style-type: none"> <li>• A final letter from an employer laying off or terminating the employee (which includes the layoff or termination date); or</li> <li>• A public announcement by an employer about an upcoming lay-off or termination affecting groups of employees, provided that the announcement makes clear that the applicant is a member of that group.</li> </ul>
Occupation	An individual's usual or principal work, business, profession, or trade used as a means of earning a living.
Permanent closure	The permanent shutdown of a plant, facility or enterprise.
Public assistance	As defined in section (3)(50) of WIOA, federal, state, or local government case payments for which eligibility is determined by a needs or income test. This includes temporary assistance for needy families (TANF), supplemental nutrition assistance program (SNAP), or supplemental security income (SSI).
Plant, facility or enterprise	A distinct unit of business or industry; for example the closure of a division of a corporation, the entire facility at a specific site or location, or the closure of a functional unit, such as a warehouse.
Recently separated veteran	Any veteran who applies for participation under WIOA within 48 months after the discharge or release from active military, naval, or air service.
Self-employed	Persons who work for profit or fees in their own business, profession, trade, or farm.

<p>Substantial layoff</p>	<p>Any reduction in force that is not the result of a total plant/branch/office closing, but still results in an employment loss at a single site of employment during any 60-day period for:</p> <ol style="list-style-type: none"> <li>1. At least 25 percent of employees, or</li> <li>2. At least 50 employees.</li> </ol>
<p>Termination of employment</p>	<p>Separation from employment due to reasons other than discharge for cause, voluntary departure or retirement; OR individuals who accept early or forced retirement as part of a reduction in workforce; OR an individual who has been dismissed but is still eligible for unemployment compensation.</p>
<p>Transitioning service member</p>	<p>An individual in active duty status (including separation leave) who registers for employment services and is within 24 months of retirement or 12 months of separation.</p>
<p>Underemployment</p>	<p>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. Also, includes individuals who fall below the dislocated worker self-sufficiency threshold, as defined by the local WDB.</p>
<p>Unemployed individual</p>	<p>An individual who is without a job, who is able to work, and who is available for work. The determination of whether an individual is without a job is made in accordance with the criteria used by the Bureau of Labor Statistics in defining individuals as unemployed.</p>
<p>Unemployed as a result of general economic conditions or natural disaster</p>	<p>Business lost due to one of the following reasons:</p> <ol style="list-style-type: none"> <li>1. The closure or substantial lay-off of a primary supplier or customer affecting the self employed applicant's products or services;</li> <li>2. Less demand for the occupation or product within the community;</li> <li>3. A decline in profits significant enough to lead to closure, documented by most recent tax return or other company documents showing negative gains/losses statement;</li> <li>4. Natural disaster, as defined by State or Federal declaration; or</li> <li>5. Self-employed individuals, including contractors and those working in the gig economy, who are unable to work due to the COVID-19 pandemic.</li> </ol>

<p>Unlikely to return to previous industry or occupation</p>	<p>An individual who is laid off and falls into one of the following categories or another category identified by the local WDB.</p> <ol style="list-style-type: none"> <li>1. The number of jobs in the applicant's previous industry/occupation is declining based on Labor Market Information (LMI) data;</li> <li>2. The projected annual increase in employment growth within the local area based on LMI or O*Net is fewer than 100 jobs in the previous industry (including replacements) or the projected annual increase in growth openings is fewer than 30 jobs in the previous occupation;</li> <li>3. The applicant is dislocated from a job not found on the most recent local or state list of demand occupations (if applicable).</li> </ol> <p>The following list identifies <b>some</b> additional factors local WDBs may consider when deciding if an individual is unlikely to return to a previous industry or occupation.</p> <ol style="list-style-type: none"> <li>1. The applicant has conducted a dedicated but unsuccessful job search in the previous industry/occupation, as evidenced by employer rejection letters or employer contact logs;</li> <li>2. Evidence, preferably from several sources including OhioMeansJobs.com, professional journals, etc., of few openings in the previous industry or occupation; or</li> <li>3. The applicant is unable to perform the duties of the previous job due to age, ability, or disability (as defined in this section).</li> <li>4. The applicant has been either permanently or temporarily dislocated from a job as a result of a COVID-19 related shutdown or layoff.</li> </ol> <p>Local WDBs must develop a local policy to define unlikely to return should the WDB identify additional criteria to the definition. The WDB may also identify other appropriate source documentation based on that additional criteria.</p>
<p>Veteran</p>	<p>An individual who served in the active military, naval, or air service, and who was discharged or released from such service under conditions other than dishonorable, which may include National Guard or Reserve personnel.</p>

**Attachment A: Adult and Dislocated Worker Eligibility Glossary**