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Governor

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June 29, 2011

WIA GUIDANCE LETTER 02-08, Change 2

SUBJECT: WIA Title IB Dislocated Worker Program Eligibility

REFERENCE: Workforce Investment Act (WIA) of 1998, P.L. 105-220, Section 101(9)(10), Section 134(d), Section 189; WIA Regulations 20 CFR Part 663; Military Selective Service Act, Section 3; TEGL 22-04; TEGL 22-04, Change 1

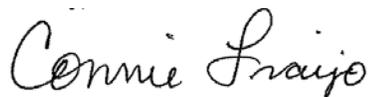
BACKGROUND: To clarify eligibility criteria for the Dislocated Worker (DW) program and inform local areas that individuals certified for Trade Adjustment Assistance (TAA) must be co-enrolled in the DW Program. *Eligibility criteria for the DW program have changed with regard to the timeframe a participant is considered eligible as a DW. There is no longer a time limit after a client's date of dislocation in order to be considered for the DW program.*

Note: It is the intention of the state to provide significant latitude to Local Workforce Investment Areas (LWIAs) in determining eligibility for the DW program. Beyond the eligibility criteria in this guidance document, the state encourages local areas to make their eligibility determinations on factors such as industry or occupational strength and the skills of the potential enrollee. However, it is the responsibility of the local service provider to document: (a) what criteria, in addition to federal policy and state guidance, were used; and (b) how those criteria applied to a given individual when making a decision on eligibility.

ACTION REQUIRED: Effective November 13, 2008, LWIAs and all other certified program operators are required to implement the program according to the law and guidance outlined in this section. To be eligible for services under the DW program, an individual must meet the eligibility criteria for the program. *The change in the timeframe for eligibility is effective June 10, 2011.*

If you have any questions, please contact your assigned WIA Field Operations Liaison at (602) 542-3957.

Sincerely,



Connie Fraijo
WIA Field Operations Supervisor
Employment Administration

Attachment

ELIGIBILITY DETERMINATION FOR THE DISLOCATED WORKER PROGRAM

INTRODUCTION

To be eligible for the WIA Title IB Dislocated Worker Program services, an individual must meet the following eligibility criteria:

I. GENERAL REQUIREMENTS

- A. Eligibility of a dislocated worker is determined at the time of application. This determination remains intact for the period of program participation.
- B. The DW program is intended for individuals with an attachment to the labor force who are permanently laid off or terminated through no fault of their own. They must fall into one of four categories to be determined eligible as a dislocated worker.

Category I: Terminated from employment or U.S. Veterans and Military Spouses; or

Category II: Terminated due to plant closure; or

Category III: Self-employed; or

Category IV: Displaced homemaker.

- C. An individual who is dislocated from a firm that is certified for TAA **must** be co-enrolled in the DW Program. The benefits of co-enrolling TAA certified individuals include the following:
 - Increase in training funds, supportive services, and placement options;
 - Better access to partner services leading to improved retention rates and outcomes;
 - Offsetting costs;
 - Reducing competition for clients;
 - Preventing duplication of services; and
 - Both programs get credit for successful outcomes.
- D. All applicants must be citizens or nationals of the United States, lawfully admitted permanent residents, lawfully admitted refugees and parolees, or other individuals authorized by the Attorney General to work in the United States.
- E. All participants must be in compliance with Section 3 of the Military Selective Service Act: all male citizens age 18–26 must be registered with Selective Service.

II. SPECIFIC CRITERIA

Category I: Terminated from employment or U.S. Veterans and Military Spouses

- An individual who has been terminated, laid off, or who received a notice of termination; *and*
- Is eligible for or has exhausted entitlement to unemployment insurance; *or*
- Has been employed for a duration sufficient to demonstrate attachment to the workforce, but is not eligible to receive UI because of insufficient earnings or having performed work for an employer not covered under a State unemployment compensation law; *and*
- Is unlikely to return to previous industry/occupation.

Definitions:

- U.S. Veterans is an individual who served in active military, naval, or air service, and who were discharged or released from such service under conditions other than dishonorable, which may include National Guard or Reserve personnel. The separating military personnel must also satisfy the other criteria for DW eligibility, including the requirement “unlikely to return” (to the military) at the date of registration.
- In the case of military spouses, TEGL 22-04, Change 1, clarifies that a spouse’s cessation of employment, due to the service member’s permanent change of military station or his/her discharge from the military, may be considered to meet the “unlikely to return to a previous industry or occupation” criterion. The standard for determining the likelihood of return is a matter of judgment based on relevant circumstances.
- A National Guard or Armed Forces Reserves Veteran is an individual who is leaving active duty status of the National Guard or Armed Forces Reserves, for reasons other than dishonorable discharge, and no longer has a civilian job upon his or her return, the job still exists but is no longer appropriate because of the individual’s increased skills obtained in the military, or the civilian job still exists, but pays significantly less than the military paid during the time of active service.

Category II: Terminated due to plant closure

- An individual who has been terminated or laid off, or has received a notification 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*
- An individual who 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 for core services, an individual who is employed at a facility where the employer has made a general announcement that such facility will close.

Category III: Self-employed

An individual who was self-employed (including employment as a farmer, rancher, or a 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 IV: Displaced Homemaker

An individual who has been providing unpaid services to family members in the home 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 in obtaining or upgrading employment.

III. DISLOCATED WORKER PROGRAM ELIGIBILITY DEFINED

Terminated from Employment

The term “terminated” does not include workers who were terminated for cause, left voluntarily, or voluntarily retired. Individuals who accept early “forced” retirement as part of a reduction in workforce are considered dislocated. If a person is fired with cause by their employer or quits their job, they are **not** eligible for the DW program. A termination of employment is a permanent situation. For all intents and purposes, the employer does not plan to rehire the individual. If an employee is issued a written notification of termination with a possibility of recall at some future date, the individual is not eligible. However, a layoff notice for a period of twenty-six or more weeks is considered terminated for purposes of determining eligibility. Individuals who are likely to remain employed with the employer through a layoff, or those who are retiring and leaving the labor force

instead of seeking new employment, are not considered dislocated workers. The status of an individual must be determined prior to providing services.

Attachment to the Workforce

Attachment to the workforce is a local area decision; however, it should not be defined for all DWs as a specific timeframe (e.g. number of months on the job). It is recommended that it be determined on a case-by-case basis, and that the basis of the determination is duration of time sufficient to demonstrate acquisition of the knowledge, skills, and abilities to perform the job.

Unlikely to Return to Previous Industry/Occupation

- The occupation shows a zero or negative growth rate as documented by labor market information; *or*
- Employment Service confirms that in the previous sixty days there was a lack of job orders for that occupation to qualified job seekers; *or*
- The local Chamber of Commerce, Economic Development representative, or other credible sources of regional economic information confirms that the occupation or industry has shown a significant employment decline in the local labor market area; *or*
- A plant closure or substantial layoff (within the labor market area in the same industry or occupation) has occurred in the last six months; *or*
- They have been actively seeking, but unable to find employment in their previous industry or occupation for a period of ninety days or more; *or*
- They were “separated” from active military duty under conditions other than dishonorable; *or*
- The spouse of active military personnel who must leave their job in order to follow their spouse to their new permanent station and meets the definition of “unlikely to return” to previous industry/occupation; *or*
- If a person is laid off from their job due to lack of certification for the job they were laid off from.

Methods to Obtain Verification of Lay-Off

- Verification from Employer
 - 1) Have the applicant provide a letter from the employer; or
 - 2) Call the employer’s Human Resource Department to request the verification; or
 - 3) Have the applicant sign a release of information in order to obtain the information from the employer.
- To obtain WARN Notices utilize <https://www.azdes.gov/main.aspx?menu=320&id=836>; or
- Public Announcement (newspaper article) with follow-up cross-match with the Unemployment Insurance (UI) System; or
- Rapid Response list showing names of impacted employees.

IV. ELIGIBLE FOR UNEMPLOYMENT INSURANCE

Case managers should **not** use UI records as the basis for verification of layoff. The intent of including unemployment insurance terminology in DW eligibility guidance is to ensure service to those who have truly lost their job through no fault of their own, rather than those individuals voluntarily leaving employment or those discharged from employment with cause. UI records are not solely indicative of DW eligibility. The 04 Screen in GUIDE is an indicator for UI Eligibility. This screen is utilized as the claimant’s “self-declaration” of termination. Codes found on this screen may or may not be changed by UI staff. The 04 Screen may also contain a code from the employer’s response to the claim if there is an issue.

V. CO-ENROLLMENT

An individual who is dislocated from a company that is certified for TAA **must** be co-enrolled in the DW program. Both the TAA counselor and the WIA Title IB case manager should work together to ensure that co-enrollments for eligible participants is occurring, and that proper documentation is being kept both in the applicable participant case files and databases.

VI. UNDEREMPLOYED AND INTERIM EMPLOYMENT

A person is considered underemployed if they are employed either full or part-time, whose current annualized wage rate does not exceed the highest of either: 1) 80% of their wages at date of dislocation; or 2) the individual's earned wages are at or below the self-sufficiency threshold established by the LWIA.

Interim or temporary employment is defined as employment that is accepted by an individual for the purpose of transitory income prior to, and/or during participation in intensive or training services with the intention of ending such employment at the completion of the intensive or training services with entry into permanent unsubsidized employment as a result of the services. Interim employment may not exceed the higher of either: 1) 80% of lost wages at date of dislocation; or 2) the self-sufficiency threshold established by the LWIA (20 CFR 663.220 and 663.230).

VII. SELF-ATTESTATION

Self-attestation should **only** be used as a last resort when determining eligibility for the DW program. Every effort should be made by the participant to provide either verification from the employer, a rapid response list, notice of layoff, or a public announcement with follow-up cross-match with UI. The **only** time that a self-attestation without proper documentation shall be accepted is in the case of the displaced homemaker, in which none of the aforementioned verifications may exist. If a participant claims they cannot provide documentation related to their layoff, the case manager will attempt to contact the employer to obtain the information. The case manager will keep detailed case notes outlining the steps taken to obtain termination/lay-off information in the database and the case file. The detailed documentation should reflect all attempts made by the applicant as well as the case manager to obtain the required dislocated worker verification/documentation.

VIII. SHORT-TERM AND LONG-TERM TRAINING

Short-Term Training is specific to help the participant enhance current skills in a similar occupation or industry; entrepreneurial training, customized training, on-the-job training; basic and remedial education to enhance current skills; and literacy and work-related English training for non-English speakers.

Long-Term Training is training in a new occupation or industry, including occupation skills training or customized training in an accredited program recognized by one or more relevant industries. Long-term training is only to be provided to dislocated workers whose skills are obsolete and who have no other transferable skills likely to result in employment at a comparable wage. Such training is only to be provided for occupations or industries with reasonable expectations of job availability (i.e.: in demand occupations) based on the service provider's thorough assessment of local labor market information, supplied by Research Administration and by other valid sources of information, where the individual currently lives or is willing to relocate.

IX. DISLOCATED WORKER ELIGIBILITY TIMEFRAME

There is no time limit after a client's date of dislocation to be considered eligible for the DW program.