

COWIB Policy on Individual Eligibility for Dislocated Worker Program Services

Pursuant to Section 101(9) and Section 185(a) of the Workforce Investment Act

Revised: April, 2013

(First approved by the COWIB December 19, 2012)

PURPOSE: To establish a local policy interpreting the definition of “dislocated worker” and establishing local guidelines for validating an individual’s status as a dislocated worker, consistent with federal guidance and state policy.

AUTHORITY: The authority for this policy derives from Section 661.120 of the Final Regulations for the Workforce Investment Act as published by the U.S. Department of Labor. The WIA Final Regulations include this:

“Sec. 661.120 What are the roles of the local and State governmental partner in the governance of the workforce investment system?”

(a) Local areas should establish policies, interpretations, guidelines and definitions to implement provisions of title I of WIA to the extent that such policies, interpretations, guidelines and definitions are not inconsistent with the Act and the regulations issued under the Act, Federal statutes and regulations governing One-Stop partner programs, and with State policies.”

BACKGROUND: Pursuant to Section 133(b) of the Workforce Investment Act, the Central Oklahoma workforce investment area receives an annual allocation of funds for dislocated worker employment and training activities. The activities that may be supported with these funds include any of the services described in Section 134(b) of the Act, “Local Employment and Training Activities.”

In November, 2009, the COWIB adopted a local definition of the term “Substantial Layoff” for the purpose of defining an individual’s eligibility to receive services through the WIA Dislocated Worker program. The COWIB’s November ’09 Definition of “Substantial Layoff” is incorporated into this Policy on Dislocated Worker Eligibility.

STATE & FEDERAL REQUIREMENTS: In developing a local policy on dislocated worker eligibility, the Central Oklahoma Workforce Investment Board, its One-Stop Operator, and One-Stop Center staff must be mindful of the requirements of our State and Federal funding sources.

Federal Policy: The federal definition of “dislocated worker” is given in Section 101(9) of the Workforce Investment Act:

(9) Dislocated worker.--The term "dislocated worker" means an individual who--

(A) (i) has been terminated or laid off, or who has received a notice of termination or layoff, from employment;

(ii) (I) is eligible for or has exhausted entitlement to unemployment compensation; or

(II) has been employed for a duration sufficient to demonstrate, to the appropriate entity at a one-stop center referred to in section 134(c), 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

(iii) is unlikely to return to a previous industry or occupation;

(B) (i) 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;

(ii) is employed at a facility at which the employer has made a general announcement that such facility will close within 180 days; or

(iii) for purposes of eligibility to receive services other than training services described in section 134(d)(4), intensive services described in section 134(d)(3), or supportive services, is employed at a facility at which the employer has made a general announcement that such facility will close;

(C) was self-employed (including employment as a farmer, a 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; or

(D) is a displaced homemaker.

Additionally, the WIA law provides a definition of the term "displaced homemaker," as follows:

(10) Displaced homemaker.--The term "displaced homemaker" 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; and

(B) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

The preceding definitions are widely accepted, and the Employment & Training Administration has provided additional guidance in the WIA Final Regulations. For example, these two sections serve to describe the eligibility criteria for dislocated workers:

Sec. 663.110 What are the eligibility criteria for core services for adults in the adult and dislocated worker program?

To be eligible to receive core services as an adult in the adult and dislocated worker programs, an individual must be 18 years of age or older. To be eligible for the dislocated worker programs, an eligible adult must meet the criteria of Sec. 663.115. Eligibility criteria for intensive and training services are found at Secs. 663.220 and 663.310.

663.115 What are the eligibility criteria for core services for dislocated workers in the adult and dislocated worker programs?

(a) To be eligible to receive core services as a dislocated worker in the adult and dislocated worker programs, an individual must meet the definition of "dislocated worker" at WIA section 101(9). Eligibility criteria for intensive and training services are found at Secs. 663.220 and 663.310.

(b) Governors and Local Boards may establish policies and procedures for One-Stop operators to use in determining an individual's eligibility as a dislocated worker, consistent with the definition at WIA section 101(9).

These policies and procedures may address such conditions as:

(1) What constitutes a "general announcement" of plant closing under WIA section 101(9)(B)(ii) or (iii); and

(2) What constitutes "unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters" for determining the eligibility of self-employed individuals, including family members and farm or ranch hands, under WIA section 101(9)(C).

With regard to guidelines for validating an individual's status as a dislocated worker, DOLETA¹ has published a series of Training and Employment Guidance Letters (TEGL's) that serve to describe a federal "Data Validation Policy for Employment and Training Programs."

For example, TEGL No. 3-03 (published August 20, 2003) established a data validation policy for DOLETA's state and National Program grantees. In introducing this policy, DOLETA noted that, "The accuracy and reliability of program reports submitted by states and grantees using Federal funds are fundamental elements of good public administration, and are necessary tools for maintaining and demonstrating system integrity."

In particular, TEGL No. 3-03 introduces the concept of "data element validation," which is described as validation "...performed by reviewing samples of participant records against source documentation to ensure compliance with Federal definitions."

¹ Department of Labor, Employment and Training Administration.

And, to ensure the success of the Data Validation Policy, the TEGL describes DOLETA's commitment to establish "acceptable levels for the accuracy of reports and data elements."

It should be pointed out that DOLETA's Data Validation Policy is *not* intended to be used as a method for re-defining or re-interpreting the program eligibility requirements for individual Dislocated Workers. This is made clear in the "Background" statement of TEGL No. 3-03 which relates the Guidance Letter to the data reporting requirements of WIA -- rather than to the program eligibility requirements of the law.²

Even so, DOLETA's standards for data element validation provide useful guidance for the development of a local policy on Dislocated Worker program eligibility.

Over the course of several years, DOLETA has published additional TEGL's that further elaborate on Performance Reporting and Data Validation. The latest TEGL on this topic is No. 28-11, "Program Year 2011 / Fiscal Year 2012 Performance Reporting and Data Validation Timelines." TEGL No. 28-11 includes an attachment: "Attachment A: Source Documentation Requirements for Program Year (PY) 2011 WIA Data Element Validation."

In defining our local requirements for validating an individual's status as a dislocated worker, our local policy follows closely the source documentation requirements outlined in TEGL No. 28-11, Attachment A.

State Policy: On April 9, 2013, the Oklahoma Department of Commerce published Oklahoma Workforce Development Issuance (OWDI) No. 03-2013, "Data Validation, Program Eligibility and Document Uploader Requirements for Adult Programs."

(The OWDI replaced OSWDI #01-2011).

The ~~OSWDI~~ OWDI characterizes itself as an "official state policy," but it was *not* issued through the procedures of the state's Administrative Procedures Act – so it does not carry the weight or substance of an agency rule. It includes an Attachment that describes detailed "General Eligibility and Data Validation Documentation Requirements" for several programs – including the WIA Dislocated Worker program.

As the latest state-level guidance on the subject of eligibility documentation for Dislocated Workers, ~~OSWDI No. 02-2012~~ OWDI #03-2013 provides a list of "Acceptable Source Documents" that may be used to document the eligibility of a Dislocated Worker. The list varies from DOLETA's Data Validation Policy in several respects – but it does not claim to supplant the federal guidance. So, it may be concluded that the ~~OSWDI~~ OWDI is intended to complement but not replace the guidance provided in TEGL No. 28-11.

² In particular, the TEGL refers to Section 185(a) of the Workforce Investment Act, "Reports."

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This interpretation is bolstered by the manner in which the ~~OSWDI~~ OWDI was developed and published – as an “issuance” written by staff members of the Governor’s Council³, but not as an official statement of the Council or of any state agency.

COWIB considers that the list of “Acceptable Source Documents” given in ~~OSWDI No. 02-2012~~ OWDI #03-2013 is not exhaustive or exclusive. In this local policy, consistent with our authority under Section 661.120(a) of the WIA Final Regulations, we will identify additional Acceptable Source Documents that may be used to validate the eligibility of individual Dislocated Workers.

³ The Governor’s Council on Workforce and Economic Development.