

COWIB Policy on

Priority of Service

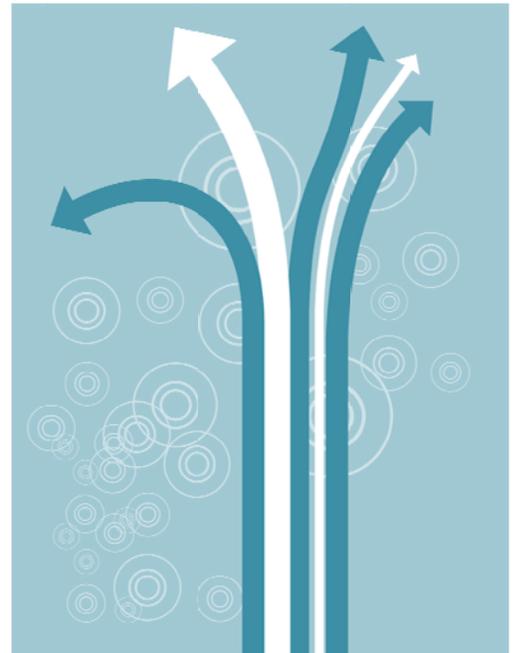
for Participants in the WIA Adult Program

Pursuant to Section 134(d)(4)(E) of the Workforce Investment Act

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Revised: June 15, 2012

(First approved by the COWIB ... August 20, 2008)

COWIB Policy on Priority of Service for Participants in the WIA Adult Program

Pursuant to Section 134(d)(4)(E) of the Workforce Investment Act

Revised: June 15, 2012

(First approved by the COWIB ... August 20, 2008)

PURPOSE: To establish a local policy on the priority of service for participants receiving workforce development services through the WIA Adult program in the Central Oklahoma workforce investment area.

AUTHORITY: The authority for this policy derives from Section 134(d)(4)(E) of the Workforce Investment Act. This portion of the WIA law states:

“(E) Priority.--In the event that funds allocated to a local area for adult employment and training activities under paragraph (2)(A) or (3) of section 133(b) are limited, priority shall be given to recipients of public assistance and other low-income individuals for intensive services and training services. The appropriate local board and the Governor shall direct the one-stop operators in the local area with regard to making determinations related to such priority.”

~~Additional authority derives from Oklahoma Employment and Training Issuance #20-2001, Change 1, which states:~~

~~*“Each Workforce Investment Area’s Workforce Investment Board must develop a priority of service policy regarding Workforce Investment Act title I adult intensive and training services.... The LWIB shall develop instructions for One-Stop operators in the local workforce investment areas regarding the provision of services related to such priorities.”*~~

BACKGROUND: The COWIB established a policy on “Priorities for Adults Enrollments” in October, 2000. At that time, the Board made a determination that the funds that were allocated to Central Oklahoma were “...not sufficient to meet the demand that exists” for workforce development services. Consequently, the local policy described a priority system for the provision of intensive services and training services to adult participants. The local policy directed the COWIB’s One-Stop Operator to implement a system of recruitment and enrollment that gave first priority to recipients of public assistance and other low-income individuals.

STATE & FEDERAL REQUIREMENTS: In developing a policy for handling grievances and complaints, 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 requirements are described in Section 663.600 of the WIA Final Regulations. This section answers the question, “What priority must be given to low-income adults and public assistance recipients served with adult funds under title I?”

This section suggests, but does not mandate, that priority should be given to low-income adults. Paragraph (b) of this section directs local workforce investment areas to establish criteria for determining a service priority system:

“(b) Since funding is generally limited, States and local areas must establish criteria by which local areas can determine the availability of funds and the process by which any priority will be applied under WIA section 134(d)(2)(E). Such criteria may include the availability of other funds for providing employment and training-related services in the local area, the needs of the specific groups within the local area, and other appropriate factors.”

However, Paragraph (c) of this section provides an exception:

“(c) States and local areas must give priority for adult intensive and training services to recipients of public assistance and other low-income individuals, unless the local area has determined that funds are not limited under the criteria established under paragraph (b) of this section.” (Emphasis added).

Additionally, the Preamble portion of the Regulations makes this statement:

“We assume that adult funding is generally limited because there are not enough adult funds available to provide services to all of the adults who could benefit from such services. However, we also recognize that conditions are different from one area to another and funds might not be limited in all areas. Because of this, the regulation requires that all Local Boards must consider the availability of funds in their area....”

State Policy: ~~Oklahoma Employment and Training Issuance #20-2001, Change 1, offers basic guidance on the questions of: (1) Availability of funds and (2) Priority of service. This statement of policy, which was issued in November, 2001, is still in effect. The OETI includes the following statement—~~

~~*“...The State of Oklahoma feels that funds to serve recipients of public assistance and other low-income individuals is not insufficient.”*~~

~~The OETI goes on to provide a reference to the State of Oklahoma’s Strategic Five Year State Workforce Investment Plan, which states: “If a determination is made that WIA funds are sufficient, the LWIBs [local workforce investment boards] shall provide services to any eligible participants.”~~

Additionally, the State Policy provides that, “A local area determination of insufficient funds will require appropriate additional documentation.”

The State of Oklahoma’s Strategic Two-year State Workforce Investment System Plan provides that: "If the funds received by the State and allocated to the boards for adult services are determined by the Governor to be limited, priority of service will be given to public assistance recipients and other low-income individuals."¹

This statement is expanded in OSWDI #02-2012, which provides:

“If the local board determines funds for the WIA Adult program are limited, then intensive and/or training services must be prioritized for current recipients of public assistance and other low-income individuals.”²

LOCAL POLICY:

It shall be the policy of the Central Oklahoma Workforce Investment Board (COWIB) and its Board of Local Elected Officials (LEO) that all Workforce Investment Act Title I-funded services shall be delivered in a manner that fully complies with the WIA law and regulations.

It is the COWIB’s position that, in normal circumstances, WIA Adult funds are generally sufficient to serve the needs of the area. This determination pre-supposes that the Central Oklahoma labor market is expanding, economic growth is evident, and the COWIB’s annual allotment of WIA Adult formula funds has not suffered a year-to-year decline.

In these circumstances, it is the COWIB’s policy that our service providers should provide appropriate WIA services to all eligible Adult participants consistent with the Act, the WIA Regulations, and other local COWIB policies.

The COWIB recognizes, however, that – from time to time – the capacity of our workforce development system may be challenged by funding cuts, an unexpected increase in the demand for services, and/or other circumstances that may not have been reasonably foreseen in our Two-Year Plan.

Therefore, in order to respond to unusual stresses and strains on our local workforce development system, the COWIB shall permit the establishment of necessary and reasonable procedures to ration or limit the delivery of Intensive Services and Training Services.

The COWIB’s policy on the rationing of services in the WIA Adult program is described as follows:

¹ Page 123 of the Two-Year Plan (dated July 1, 2007) downloaded from the Oklahoma Department of Commerce website: www.okcommerce.gov/Libraries/Documents/State-Plan-2007-2009-1_3463.pdf

² OSWDI #02-2012, “Data Validation, Program Eligibility and Document Uploader Requirements for Adult programs,” published May 16, 2012. See Attachment A, page 13.

(1) Determination of Insufficient Funds.

On an annual basis (or more frequently, if necessary), the COWIB’s Chief Executive Officer shall review the capacity of the WIA Adult program to provide services to eligible customers. This review shall be subject to the oversight of the COWIB’s Executive Committee.

Criteria. In making a determination of insufficient funds, the CEO shall take into consideration the following factors:

- Input from the COWIB’s One-Stop Operator, center managers, and center staff;
- Budget information, including actual and projected funding levels for the COWIB and its One-Stop Partners;
- The availability of other funds for providing employment and training-related services in the local area;
- Cost information, including the cost of delivering intensive services and training services;
- Expected demand for intensive and training services;
- The needs of specific groups within the local areas; and
- General economic conditions in the metropolitan area.

Documentation. If the CEO decides that WIA Title I Adult funds are limited (i.e., not sufficient to provide services to all of the adults who could benefit from such services), then this determination shall be documented in the following manner:

- a) A written policy statement shall be prepared.
- b) The statement will describe the decision of the CEO to invoke the Priority of Service framework for participants in the WIA Adult program.
- c) The rationale for this decision shall be described.
- d) The written statement shall be published on the COWIB’s website.
- e) The COWIB’s One-Stop Operator will be instructed to make the statement available to all appropriate managers and staff in the COWIB’s local workforce development system.

(2) Priority of Service Guidelines for Intensive Services.

In the event that WIA Title I Adult funds are limited, then the COWIB’s CEO shall establish procedures to limit the availability of Intensive Services using the following guidelines:

| <u>Type of Service</u> | <u>Enrollment Priority</u> |
|-----------------------------------------------------|---------------------------------------|
| Comprehensive and specialized assessments | ... <i>All Participants with Need</i> |
| Development of the Individual Employment Plan (IEP) | ... <i>All Participants with Need</i> |
| Group counseling | ... <i>All Participants with Need</i> |

| | |
|----------------------------------------------------------|------------------------------------|
| Individual Counseling and Career Planning | ... All Participants with Need |
| Case management for customers seeking training | ... Low Income / Public Assistance |
| Supportive Services | ... Low Income / Public Assistance |
| Short-term prevocational services | ... All Participants with Need |
| Out-of-Area Job Search Assistance | ... Not Available |
| Literacy Activities related to basic workforce readiness | ... All Participants with Need |
| Relocation Assistance | ... Not Available |
| Work Experience Activities | ... Low Income / Public Assistance |

Within this framework, the term “All Participants with Need” shall refer to customers who have met the general eligibility criteria for participation in an Intensive Service activity (as described in the COWIB’s Policy on Sequencing of Services).

The procedures to limit the availability of Intensive Services shall include written instructions describing a process to identify public assistance recipients and other low-income individuals. (See Part (4), below).

(3) Priority of Service Guidelines for WIA-Funded Training Services.

In times of limited resources, the COWIB’s CEO shall establish procedures to limit the availability of WIA-funded Training Services.

All WIA-funded training shall be offered on a priority basis to participants who are recipients of public assistance or who meet the definition of “low-income individual” as described in Part (4), below.

The term “WIA-funded training” shall refer to any training activity described in Section 134(d)(4)(D) of the Workforce Investment Act, whether paid for through an ITA or a contract. WIA-funded training includes Occupational Skills Training, On-the-Job Training activities, Customized Training, etc.

WIA-funded training *does not include* any training activity that is paid for through a non-WIA Title I funding source. For example, the COWIB’s Priority of Service limitations would not apply to customers who receive educational assistance through a Pell Grant, SEOG, tuition waiver, etc.

Funds allocated for dislocated workers are not subject to this restriction.

(4) ~~Documentation of~~ Defining “Low Income” and “Public Assistance” Status.

In order to implement the requirements of this Priority of Service policy, the COWIB’s CEO shall develop procedures for identifying public assistance recipients and other low-income individuals.

Low-Income Individual. The term “low-income individual” is defined in Section 101 of the Workforce Investment Act, as follows:

(25) Low-income individual.--The term “low-income individual” means an individual who--

(A) receives, or is a member of a family that receives, cash payments under a Federal, State, or local income-based public assistance program;

(B) received an income, or is a member of a family that received a total family income, for the 6-month period prior to application for the program involved (exclusive of unemployment compensation, child support payments, payments described in subparagraph (A), and old-age and survivors insurance benefits received under section 202 of the Social Security Act (42 U.S.C. 402)) that, in relation to family size, does not exceed the higher of--

(i) the poverty line, for an equivalent period; or

(ii) 70 percent of the lower living standard income level, for an equivalent period;

(C) is a member of a household that receives (or has been determined within the 6-month period prior to application for the program involved to be eligible to receive) food stamps pursuant to the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.);

(D) qualifies as a homeless individual, as defined in subsections (a) and (c) of section 103 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11302);

(E) is a foster child on behalf of whom State or local government payments are made; or

(F) in cases permitted by regulations promulgated by the Secretary of Labor, is an individual with a disability whose own income meets the requirements of a program described in subparagraph (A) or of subparagraph (B), but who is a member of a family whose income does not meet such requirements.

To document that a participant meets the definition of a “low-income individual,” the COWIB’s service providers shall generally use the Eligibility / Validation Criteria that are given in Attachment A of ~~OETI #06-2006, “Program Eligibility and Data Element Validation Policy,”~~ as published by the Oklahoma Employment Security Commission. OSWDI #02-2012, “Data Validation, Program Eligibility and Document Uploader Requirements for Adult programs,” as published by the Oklahoma Department of Commerce.

However, in order to assure that low-income individuals in Central Oklahoma have the same advantage as low-income individuals elsewhere in the nation, COWIB will also permit the use of any source documentation that is allowed in Training and Employment Guidance Letter (TEGL) No. 28-11, “Program Year 2011 / Fiscal Year 2012 Performance Reporting and Data Validation Timelines,” Attachment A.

For example, OSWDI #02-2012 specifies the completion of an Adult Family Size / Low Income Eligibility Form – including a source document for each family member and each income source during a 6-month eligibility determination period.

In contrast, TEGL 28-11 allows a more extensive list of options for documenting the participant's status as a low-income individual – including the option of using a simple applicant statement. TEGL 28-11 also permits the use of a court award letter (which OSWDI #02-2012 does not address).

COWIB will support the use of any source document that is allowed by the Employment and Training Administration of the U.S. Department of Labor – unless there is a state law or agency rule that requires our participants to meet a higher standard.

Public Assistance Recipient. In the context of this policy, the term “recipient of public assistance” shall conform to the definition given in Section 101 of the Workforce Investment Act, as follows:

(37) Public assistance.--The term “public assistance” means Federal, State, or local government cash payments for which eligibility is determined by a needs or income test.

To document that a participant meets the definition of a “public assistance recipient,” the COWIB’s service providers shall use the Eligibility / Validation Criteria that are given in Attachment A of ~~OETI #06-2006, “Program Eligibility and Data Element Validation Policy,” as published by the Oklahoma Employment Security Commission.~~ OSWDI #02-2012, “Data Validation, Program Eligibility and Document Uploader Requirements for Adult programs,” as published by the Oklahoma Department of Commerce. Refer to the criteria for:

- Temporary Assistance for Needy Families (TANF); and
- Other Public Assistance / General Assistance.

For additional guidance on the documentation required to validate a participant’s status as a low-income individual or public assistance recipient, please see Policy Addendum #2.

(5) Flexible Framework.

As described in the Central Oklahoma’s Two-Year Plan (October 1, 2007), the COWIB intends to meet the Priority of Service requirements of the Workforce Investment Act in a manner that offers a flexible framework for service delivery:

“The COWIB’s Priority of Service policy provides a flexible framework within which the COWIB’s One-Stop Operator may deliver services in a manner that will meet the needs of the maximum number of job-seeking customers, without neglecting the needs of impoverished workers who are most-in-need of workforce development services. Within this policy framework, the One-Stop Operator can serve many ‘mainstream’ job-seekers, including incumbent workers, when capacity exists in the system. This will allow the One-Stop Centers to meet the needs of many area’s employers who are struggling to develop a more skilled, more highly productive workforce.”

In this regard, it should be noted that the term “priority of service” refers to a preferential ranking. It conveys that idea that *higher consideration* should be given to recipients of public assistance and low-income individuals. Even so, the limits established by this

policy are not meant to grant *exclusive access* to the prioritized groups. This concept is recognized in Section 663.600(d) of the WIA Final Regulations:

“(d) The process for determining whether to apply the priority established under paragraph (b) of this section does not necessarily mean that only the recipients of public assistance and other low income individuals may receive WIA adult funded intensive and training services when funds are determined to be limited in a local area. The Local Board and the Governor may establish a process that gives priority for services to the recipients of public assistance and other low income individuals and that also serves other individuals meeting eligibility requirements.”

Therefore, the procedures that are established to implement this policy should not arbitrarily restrict a customer’s access to services without regard to the capacity of our workforce development system to deliver those services. At times, it may be possible to deliver services to ‘mainstream’ job-seekers on a case-by-case basis. The COWIB’s CEO is directed to develop procedures that provide a flexible framework for service delivery. To the extent possible, our local One-Stop system should continue to deliver services in a manner that will meet the needs of the maximum number of job-seeking customers.

(6) Compliance with the Jobs for Veterans Act.

In developing procedures to implement this policy, the COWIB’s CEO and One-Stop Operator shall take positive steps to ensure compliance with the requirements of state policies, including:

- Oklahoma Employment and Training Issuance #12-2003, “Implementing the Veterans’ Priority Provisions of the Jobs for Veterans Act (PL 107-228),” dated November 26, 2003.
- OETI #25-2009, “Policy for Priority of Service for Veterans and Eligible Spouses,” dated December 4, 2009.
- M-07-2010, “Priority of Service for Veterans and Eligible Spouses,” July 2, 2010.

The Jobs for Veterans Act creates a priority of service for veterans (and some spouses) who otherwise meet the eligibility requirements for participation in DOL-funded training programs.

POLICY ADDENDA: The COWIB Chief Executive Officer is authorized to issue additional instructions, guidance, forms, etc., to further implement the requirements of this policy.

Inquiries about this policy should be directed to the COWIB’s Program Operations Manager at (405) 622-2030.

Policy Addendum #1

Definition of “Homeless Individual”

June 15, 2012

Question: What is the definition of a “homeless individual” for the purposes of the WIA Adult program?

Within the WIA definition of “low-income individual,” we find the following:

(25) Low-income individual.--The term “low-income individual” means an individual who...

(D) qualifies as a homeless individual, as defined in subsections (a) and (c) of section 103 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11302).

The following excerpt from the Stewart B. McKinney Homeless Assistance Act includes the relevant definition of “homeless individual.”

42 USC § 11302 – General definition of homeless individual

(a) In general

For purposes of this chapter, the terms “homeless”, “homeless individual”, and “homeless person” means—

- (1) an individual or family who lacks a fixed, regular, and adequate nighttime residence;
- (2) an individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground;
- (3) an individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including hotels and motels paid for by Federal, State, or local government programs for low-income individuals or by charitable organizations, congregate shelters, and transitional housing);
- (4) an individual who resided in a shelter or place not meant for human habitation and who is exiting an institution where he or she temporarily resided;
- (5) an individual or family who—
 - (A) will imminently lose their housing, including housing they own, rent, or live in without paying rent, are sharing with others, and rooms in hotels or motels not paid for by Federal, State, or local government

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programs for low-income individuals or by charitable organizations, as evidenced by—

- (i) a court order resulting from an eviction action that notifies the individual or family that they must leave within 14 days;
 - (ii) the individual or family having a primary nighttime residence that is a room in a hotel or motel and where they lack the resources necessary to reside there for more than 14 days; or
 - (iii) credible evidence indicating that the owner or renter of the housing will not allow the individual or family to stay for more than 14 days, and any oral statement from an individual or family seeking homeless assistance that is found to be credible shall be considered credible evidence for purposes of this clause;
- (B) has no subsequent residence identified; and
- (C) lacks the resources or support networks needed to obtain other permanent housing; and
- (6) unaccompanied youth and homeless families with children and youth defined as homeless under other Federal statutes who—
- (A) have experienced a long term period without living independently in permanent housing,
 - (B) have experienced persistent instability as measured by frequent moves over such period, and
 - (C) can be expected to continue in such status for an extended period of time because of chronic disabilities, chronic physical health or mental health conditions, substance addiction, histories of domestic violence or childhood abuse, the presence of a child or youth with a disability, or multiple barriers to employment....

(c) Income eligibility

- (1) In general
A homeless individual shall be eligible for assistance under any program provided by this chapter, only if the individual complies with the income eligibility requirements otherwise applicable to such program.
- (2) Exception
Notwithstanding paragraph (1), a homeless individual shall be eligible for assistance under title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.].

Source:
Cornell University Law School
Legal Information Institute
<http://www.law.cornell.edu/uscode/text/42/11302>
(retrieved May 10, 2012)

Policy Addendum #2

Documentation of “Low Income” and “Public Assistance”

June 15, 2012

Question: What documentation is required to validate a participant’s status as a low-income individual or public assistance recipient?

As noted on pages 6 and 7 of this policy, when a participant is in need of certain Intensive Services and WIA-funded Training Services, the COWIB’s priority guidelines must be applied. Documentation is required to validate a participant’s status as a low-income individual or public assistance recipient.

To complete the documentation process, the COWIB’s service providers are generally instructed to use the Eligibility / Validation Criteria that are given in Attachment A of OSWDI #02-2012, “Data Validation, Program Eligibility and Document Uploader Requirements for Adult programs,” as published by the Oklahoma Department of Commerce.

OSWDI #02-2012 provides a list of "Acceptable Source Documents" that may be used to "support" the determination that an individual participant properly meets the criteria for low income / public assistance.

As given in OSWDI #02-2012, the following documents may be used in this data validation process:

Intensive/Training Service Requirement

Supporting Document(s) from list below

Housing Authority Verification records

Verification of Current Receipt of Food Stamps/SNAP or TANF

Verification from Social Service Agency

Telephone Verification Form documenting Current Homelessness or receipt of SNAP or TANF

OR

Low Income/Family Size Form (Attachment D)

AND

Supporting document(s) from list below to establish the family income.

Alimony Agreement,

Award Letter from Veterans Administration

Bank Statements

Compensation Award Letter

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Employer Statement
Family or Business Financial records
Pay stubs
Pension Statement
Quarterly Estimated Tax for Self-Employed Persons
Current Unemployment Insurance Verification
Social Security Disability Insurance (SSDI)
Social Security Benefits (SSI)

* Required only when “priority of service” for low income individuals has been established.

As indicated in Section (4)¹ of this policy statement, COWIB recognizes that OSWDI #02-2012 is not the sole source of guidance on data validation, and therefore we regard it as helpful and instructive -- but not definitive.

For example, we accept the OSWDI’s list of “Acceptable Source Documents,” but we don’t regard it as limiting. The OSWDI does not specifically prohibit the use of other documentation sources. And, in fact, the Department of Labor has issued guidance that permits the use of carefully defined alternative source documents.

To provide further guidance on the proper use of documentation sources, the following guidelines have been developed by the COWIB for use by our WIA service providers.

**Local Guidance on Data Validation --
Adult Priority of Service**

(1) Public Assistance Recipient. As given in the WIA law, there are several ways to define the term “low-income individual.” One meaning is an individual who--

(A) receives, or is a member of a family that receives, cash payments under a Federal, State, or local income-based public assistance program;

Within this definition, the phrase “cash payments” is crucial. Many forms of public assistance are delivered in the form of subsidies and other non-cash assistance. Examples are SNAP benefits (food stamps) and public housing assistance. Properly speaking, these types of assistance do not meet the WIA definition of “public assistance” because they do not involve a cash payment.

¹ “Defining ‘Low Income’ and ‘Public Assistance’ Status,” page 5.

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Cash assistance, practically speaking, is limited to a few special purpose programs:²

- Temporary Assistance for Needy Families (TANF);
- Refugee Cash Assistance; and
- Supplemental Security Income (SSI-SSA Title XVI).

To document that a participant meets the definition of a “public assistance recipient,” the COWIB’s service providers shall use the Eligibility / Validation Criteria that are given in Attachment A of OSWDI #02-2012, “Data Validation, Program Eligibility and Document Uploader Requirements for Adult programs,” as published by the Oklahoma Department of Commerce. Refer to the criteria for:

- Low Income;
- Temporary Assistance for Needy Families (TANF); and
- Other Public Assistance / General Assistance.

The acceptable source documents are described on pages 13, 14 and 15 of OSWDI #02-2012, Attachment A.

COWIB Policy Interpretations:

- (a) The documentation used to validate receipt of “public assistance” must show that the individual (or his / her family) currently receives the assistance.
- (b) To validate “current” receipt of assistance, a contemporary document (dated within the past 30 days) must be used.
- (c) A Housing Authority record should not be used to validate receipt of “public assistance.” However, such records may be used as supporting documentation regarding an individual’s 6-month family income. (See section (2), below).
- (d) Current receipt of Food Stamps / SNAP benefits does not satisfy the WIA definition of “public assistance.” However, an individual who receives SNAP benefits may nevertheless be regarded as a “low income” individual for WIA purposes. (See section (3), below).
- (e) To validate that an individual is currently receiving TANF assistance, appropriate documentation may include:
 - A TW-3 form;
 - A TANF assistance record generated from a DHS³ online database; or
 - A telephone verification form validating receipt of TANF.

² State and Federal guidance on this topic sometimes includes “general assistance” in the category of Other Cash Assistance. “General assistance,” in this regard, would include cash payments to low-income individuals provided by a state or local government. We are not aware of any cash payment programs like this in the COWIB’s four-county area.

³ Oklahoma Department of Human Services.

(2) Family Income Below the Poverty Line (or 70% LLSIL Level). A second meaning of the term “low income individual” is given in the WIA law, as follows--

(B) received an income, or is a member of a family that received a total family income, for the 6-month period prior to application for the program involved (exclusive of unemployment compensation, child support payments, payments described in subparagraph (A), and old-age and survivors insurance benefits received under section 202 of the Social Security Act (42 U.S.C. 402)) that, in relation to family size, does not exceed the higher of--

(i) the poverty line, for an equivalent period; or

(ii) 70 percent of the lower living standard income level, for an equivalent period;

To document that a participant has a family income below the poverty level, the COWIB’s service providers should generally use the Eligibility / Validation Criteria that are given in Attachment A of OSWDI #02-2012, “Data Validation, Program Eligibility and Document Uploader Requirements for Adult programs,” as published by the Oklahoma Department of Commerce.

As described in OSWDI #02-2012, the list of "Acceptable Source Documents" for low income status is intended to "support" the determination that a participant properly meets the definition of poverty level income.

In this context, the word "support" means the documentation will provide reasonably sufficient evidence to validate the accuracy of the determination -- but it doesn't necessarily prove or establish the exact amount of the participant's 6-month family income. In other words, the aim of the documentation process is to reasonably validate the participant’s status rather than to definitively establish the amount of their countable income. In this regard, the validation standard shall be considered to be met when a “reasonable person” is satisfied that the correct determination has probably been made. It is not necessary to prove the participant’s status beyond all doubt.

Use of an Applicant Statement. As pointed out on page 7 of this policy, COWIB will permit the use of additional documentation sources – beyond those given in OSWDI #02-2012 -- including a written Applicant Statement, when appropriate.

When an Applicant Statement is used to validate a participant’s Poverty Level income status, the statement should include the following elements (at a minimum):

- Date of the statement;

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- An affirmation that the participant is “a member of a family that received a total family income, for the six-month period prior to program participation that, in relation to family size, does not exceed the higher of (a) the poverty line, for an equivalent period, or (b) 70 percent of the lower living standard income level, for an equivalent period;”
- The participant’s family size;⁴
- A statement attesting “to the best of my knowledge the above information is true and correct;”
- The participant’s signature.

The Applicant Statement may be used in conjunction with the “Adult Low Income / Family Size Guidelines” form that is given in OSWDI #02-2012, Attachment E.

Use of “Housing Authority Verification” to validate Low-Income Status. In both guidance from the Department of Labor (TEGL 28-11) and the Oklahoma Department of Commerce (OSWDI #02-2012), the use of “housing authority verification records” is allowed to validate a participant’s low-income status.

It should be noted that Housing Authority records provide a general indication of an individual’s low-income status. However, in most cases, local housing authorities do not maintain a month-by-month itemization of the income levels of the individuals and families who receive assistance. (An annual review of the tenant’s income is typical). So, the purpose of using a “Housing Authority Verification” is not to definitively calculate or establish the participant’s family income for the past six months. Rather, it is to provide evidence that supports a determination that the participant is a low-income individual.

It is the COWIB’s interpretation that a Housing Authority Verification record may be used in combination with an Applicant Statement in order to validate that a participant has a 6-month income that is below the Poverty Line or 70% LLSIL.

(3) Member of a Household that Receives Food Stamps. A third meaning of the term “low income individual” refers to a person who--

(C) is a member of a household that receives (or has been determined within the 6-month period prior to application for the

⁴ Pursuant to Section 101(15) of the Workforce Investment Act, the term "family" means two or more persons related by blood, marriage, or decree of court, who are living in a single residence, and are included in one or more of the following categories:

- (A) A husband, wife, and dependent children.
- (B) A parent or guardian and dependent children.
- (C) A husband and wife.

program involved to be eligible to receive) food stamps pursuant to the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.);⁵

To validate that a participant is a member of a household that receives food stamps, refer to OSWDI #02-2012 and follow the Eligibility / Validation Criteria guidance for Low Income. An appropriate source document would be a DHS award letter or other record that verifies that the participant is a beneficiary of the SNAP program.

(4) Homeless Individual. A fourth meaning of the term “low income individual” is given in the WIA law, as follows--

(D) qualifies as a homeless individual, as defined in subsections (a) and (c) of section 103 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11302);

To validate that a participant is a homeless individual, an Applicant Statement may be used. When an Applicant Statement is used to validate a participant's low-income status, the statement should include the following elements (at a minimum):

- Date of the statement;
- An affirmation that the participant qualifies as a homeless individual as defined in the Stewart B. McKinney Homeless Assistance Act, section 103, subsections (a) and (c).⁶
- A statement attesting “to the best of my knowledge the above information is true and correct;”
- The participant's signature.

Alternately, a “WIA Telephone Verification Form for Adult Programs” may be used. A telephone verification statement may be accepted from any social service agency that serves people who are homeless.

⁵ The 2008 farm bill renamed the Food Stamp Program as the Supplemental Nutrition Assistance Program (as of October 2008), and replaced all references to “stamp” or “coupon” in federal law to “card” or “EBT.”

⁶ See the definition provided in Policy Addendum #1 – page A-1 of this policy.

Policy Addendum #3

Validation of a Participant's Disability Status

June 15, 2012

Question: For the purpose of determining the low income status of a participant who has a disability, what documentation is necessary to validate the individual's disability?

The short answer to this question is that no additional documentation of the participant's disability status is required beyond the participant's own statement that s/he is an individual with a disability.

However, it is necessary for the participant to understand the meaning of the term, "individual with a disability." It is also helpful to have additional information about WIA program requirements that deal with the delivery of services to people with disabilities.

For some background on this question, the definition of "Low Income Individual" should be considered. As noted in Section (4) of this policy, the definition includes this statement:

The term "low-income individual" means an individual who... (F) in cases permitted by regulations promulgated by the Secretary of Labor, is an individual with a disability whose own income meets the requirements of a program described in subparagraph (A) or of subparagraph (B), but who is a member of a family whose income does not meet such requirements.

This portion of the definition makes a special allowance for an individual with a disability. It allows them to be treated as a Family of One for the purpose of determining the participant's "low income" status.

(NOTE: Subparagraphs (A) and (B) refer to the part of the definition that encompasses individuals and families who receive public assistance as well as individuals and families with an income below the poverty level or 70% LLSIL).

When it is advantageous to the participant, an individual with a disability may be treated as a Family of One. For such an individual, the income of other family members would not need to be considered when determining the participant's low income status.

The crucial question is, What is the definition of "individual with a disability?"

Here's the definition as given in the WIA law:

(17) Individual with a disability.--

(A) In general.--The term "individual with a disability" means an individual with any disability (as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102)).

In the Americans with Disabilities Act, the definition is stated clearly. The EEOC.gov website gives it like this:

Statutory Definition -- With respect to an individual, the term "disability" means

(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment....

Source:

<http://www.eeoc.gov/laws/statutes/adaaa.cfm>

To determine whether a person has a disability, pursuant to this definition, the individual participant must decide if the definition fits his/her personal circumstances.

Generally speaking, it is not the responsibility of a workforce professional in the One-Stop center to make this determination. However, a One-Stop staffer may offer assistance to the participant in interpreting and understanding the definition.

Here are some additional excerpts from the ADA definition of "individual with a disability."

"(2) MAJOR LIFE ACTIVITIES.—

"(A) IN GENERAL.—For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

"(B) MAJOR BODILY FUNCTIONS.—For purposes of paragraph (1), a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

If the participant believes that s/he has a physical or mental impairment that substantially limits a major life activity, then the individual may choose to identify as an individual with a disability.

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The ADA Amendments Act of 2008 offers additional guidance:

- The definition of disability shall be construed in favor of broad coverage of individuals..., to the maximum extent permitted by the terms of this Act.
- An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.
- An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.
- The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as—
 - (I) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;
 - (II) use of assistive technology;
 - (III) reasonable accommodations or auxiliary aids or services; or
 - (IV) learned behavioral or adaptive neurological modifications.

Following this line of thought, a participant may have learned to adapt to a substantial impairment (through the use of an assistive device or a different behavior, etc.). A well-adapted individual may actually be extremely capable in terms of performing many life tasks, job duties, etc. Even so, such an individual may yet meet the definition of a person with a disability. It is the presence of the substantially limiting impairment that defines the disability, and the impairment should be presumed to persist – even though its effects may be mitigated by medication, appliances, devices, adaptive behavior, or whatever.

Pursuant to Section 188(a)(2) of the Workforce Investment Act:

“No individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with, any such program or activity because of race, color, religion, sex..., national origin, age, disability, or political affiliation or belief.”

So, if a participant discloses that s/he has a disability, then the One-Stop center has an obligation to treat that individual no differently than any other customer in terms of service delivery. For example, the customer must be allowed to register

as a participant. S/he must be allowed to seek all program services and to receive those services for which s/he is eligible. And, whereas Section 101(25)(F) provides that an individual with a disability may be treated as a Family of One for the purpose of determining their status as a low income individual, the One-Stop Center should not attempt to restrict or deny that advantage.

In OSWDI #02-2012, the Oklahoma Department of Commerce provides this guidance on validation of a participant's disability status:

"4. Disability Status – Even though OSL inquires about an individual's disability status, additional documentation/validation is not required. Customers are asked to voluntarily respond to a question about their disability status to comply with Equal Employment Opportunity programmatic eligibility requirements."

Thus, in this guidance from ODOC, there is no requirement to validate a participant's status as an individual with a disability. The participant's own statement validates itself.

ODOC's guidance is consistent with TEGL 28-11, Attachment A, which has no requirement for the documentation of disability status.

It also makes sense in terms of current guidance from the U.S. Department of Labor's Civil Rights Center (CRC), which discourages "pre-selection inquiries regarding disability."

The CRC's guidance is nuanced. The Center's statement on compliance with WIA Section 188 makes it clear that:

"Preemployment and pre-selection inquiries are permissible if they are required or necessitated by another Federal law or regulation."

Source:

<http://www.dol.gov/oasam/programs/crc/section188.htm>

So, it is permissible to inquire about a participant's disability status for the limited purpose of determining they will be treated with regard to the definition of a "low income individual."

However, pursuant to 29 CFR 32.15(a), no questions may be asked "...as to the nature or the severity of a handicap."

The guidance in 29 CFR 32.15(a) effectively limits the amount of information that can be collected to document the participant's status.

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To require any documentation above and beyond the participant's own self-statement could be regarded as a violation of Section 188 of the Workforce Investment Act.

If the participant failed to disclose the presence of a disability at the time s/he registered in OSL, a record of his/her disability status may nevertheless be maintained for the limited purpose of determining whether the participant can be given priority as a low income individual.

Policy Addendum #4

Sequencing of Services / Incumbent Workers

August 18, 2006

Question: How does this new policy relate to the COWIB's Policy on Sequencing of Services? What limitations are there on the delivery of services to individuals who are currently employed (i.e., Incumbent Workers)?

The new policy on Priority of Services does not replace or negate the Policy on Sequencing of Services. In fact, the new policy makes clear that other local COWIB policies must be complied with:

“...The COWIB's service providers are directed to provide appropriate WIA services to all eligible participants consistent with the Act, the WIA Regulations, and other local COWIB policies.”

Through the COWIB's policy on Sequencing of Services, there are restrictions on the delivery of Intensive Services and Training, particularly with regard to individuals who are already employed. For example, the Sequencing policy describes how Intensive Services and Training are limited to individuals who have a need for those types of services. The need for the services must be documented by the Service Provider, consistent with the guidelines in the COWIB's Policy.

The Sequencing policy describes how an individual assessment becomes the basis for a decision to offer Intensive Services and Training. The need for services may derive from the participant's lack of employment. Or, if the participant is already employed, the Service Provider may determine that the participant needs Intensive Services or Training in order for the customer to gain employment at a self-sufficient wage.

Here's an excerpt from that policy:

When the need for Intensive Services is based on an initial assessment of skills, abilities, etc., the One-Stop Center must determine that the individual:

- a. lacks employment history that demonstrates the ability to obtain and retain self-sufficient employment for periods of at least one (1) year; i.e., sporadic employment at low wages; or*
- b. lacks identifiable job skills that would enable the individual to obtain employment at a self-sufficient wage; or*
- c. displays one or more of the following characteristics: displaced homemaker, reading below the eighth grade level, limited language skills,*

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public assistance recipient, a single head of household, or laid off from a declining industry.

Two comments should be made on this requirement for an individual assessment of the customer's need for Intensive Services or Training.

First Comment: Paragraph (b), above, refers to "employment at a self-sufficient wage." If a WIA Adult participant is employed but not earning enough for self-sufficiency, then the customer may be considered to be in need of Intensive Services or Training.

Obviously, if the participant is already fully employed and earning wages that correspond to "self-sufficiency," then it would not be possible -- in most cases -- to determine that the customer is truly in need of Intensive Services and Training. On the other hand, if the participant is one of the many "working poor" who are employed but struggling to survive in our labor market, then Intensive Services and/or Training may be perfectly appropriate. This paragraph is designed to help the Working Poor.

A key question to be considered by the Service Provider, then, is whether or not the employed customer is at or below the COWIB's defined level of Self-Sufficiency.

For more information on Self-Sufficiency, see the COWIB's Policy on Sequencing of Services.

Second Comment: Paragraph (c), above, describes several definitive characteristics of participants who are in need of Intensive Services or Training. A customer who displays one or more of these characteristics may be presumed to be in need of Intensive Services or Training – regardless of their current earnings. This paragraph is designed to help workers who face specific barriers to self-sufficiency.

This is especially true for workers who have been laid off from a declining industry. Workers who have received a layoff notice – or who work at a facility at which the employer has made a general announcement that such facility will close within 180 days – are specifically covered by this portion of the COWIB's Sequencing of Services Policy.⁷

Such workers may be eligible for services in either the WIA Adult program or the WIA Dislocated Worker program.

⁷ This would include, for example, workers at the Dayton Tire Plant (Bridgestone Firestone) in Oklahoma City, where an announcement has been made that the facility will close by December 31, 2006.

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The COWIB's new policy on Priority of Service for Adult participants is designed to be used in tandem with the COWIB's Sequencing of Services policy in order to provide valuable workforce development services to customers in need.