

NORTH CENTRAL ARKANSAS WORKFORCE DEVELOPMENT BOARD

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SUBJECT Public Health Emergency Policy

PURPOSE

The purpose of this policy is to describe and detail the regulations concerning Public Health Emergencies in accordance with the rules and regulations of Workforce Innovation and Opportunity Act of 2014 (WIOA), the WIOA Final Rule, Training and Employment Guidance Letters (TEGLs) published by the Employment and Training Administration of the U.S. Department of Labor (ETA), Issuances from the Arkansas Division of Workforce Services (ADWS), WIOA Title I-B Policy Manual, and local workforce development board policy.

Under section 319 of the Public Health Service (PHS) Act, the Secretary of the Department of Health and Human Services can declare a Public Health Emergency (PHE) if he/she determines, after consulting with such public health officials as may be necessary, that 1) a disease or disorder presents a PHE, or 2) a PHE, including significant outbreaks of infectious diseases or bioterrorist attacks, otherwise exists.

Once a public health emergency is declared, the following policy must be implemented.

REFERENCES

Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Training and Employment Guidance Letter (TEGL) 19-16, TEGL 21-16, TEGL 12-19

PROGRAM ELIGIBILITY:

Documentation

Grantees are encouraged to use as much flexibility in their documentation requirements as possible during the public health emergency. Grantees should gather whatever sources of documentation are currently available (such as potentially expired IDs) and ensure that, once business operations resume, grantees ensure they update the participants' documentation records as necessary.

Income

Under WIOA, there is no exclusion of payments for unemployment compensation from the income calculations for determining if an individual is low-income. This includes any extra payments that may be available through unemployment. However, stimulus payments issued to individuals are considered tax credits and should not be considered in determining income level.

Youth

States and local areas **cannot** consider in-school youth whose school is physically closed and where no virtual learning is available, as out-of-school youth for the purposes of the WIOA out-of-school youth expenditure requirement.

Continued Services

A Career Specialist must continue to offer services in accordance with regulation and local policy when the participant cannot participate in training due to the public health emergency, as long as the participant intends to return to training when the provider resumes training.

WORK EXPERIENCES:

During a public health emergency, Local Areas can use maximum flexibility to provide individuals with work experience, transitional jobs, or work-based learning activities that are either performed remotely or established with essential service employers.

Work experience participants may continue to work if the worksite will allow and safety measures are followed. North Central WIOA will follow CDC, state, and local government guidance in making determinations related to whether individuals should continue participating in work experiences, and will consider the environment in which the work is being conducted, the safety of WIOA participants, and the chance for disease transmission.

According to the U.S. Department of Labor, if the participant's work experience, transitional job, or work-based learning terms including the duration, wage or stipend, and other training or work requirements, were established prior to a National Emergency Declaration, then the Local Area can continue to pay the participant for the remainder of the term of the activity. Modifications or adjustments to the terms of the activities for the purpose of continuing to provide a wage or stipend are not allowed.

Use of Paid Special Leave

In situations where the public health emergency impacts host agencies or paid training activities, or where in-person attendance by work experience participants may expose them or others to the risk of disease transmission, grantees may use paid special leave consistent with WRPDD's personnel policies. Paid special leave may serve as a means of limiting participants' public exposure while minimizing disruption in the payment of participant wages and benefits.

In the event that the worksite does not allow the individual to continue due to the public health emergency, North Central WIOA will continue to pay the participant for the remainder of the established term as long as the participant's time commitment, stipend structure, and/or other academic or work terms were established prior to the public health emergency declaration.

The participant will receive special leave in lieu of the pay they would have received if they had continued to work, as long as they are not receiving unemployment.

Special Leave paid reduces the overall time for training. Participants will not receive pay beyond the established term, regardless of stay-at-home orders.

An average of previously worked hours determine the Special Leave hours paid. If no previous weeks have been completed, the Career Specialist will provide estimated weekly work experience hours the participant was expected to work. The participant's Career Specialists will document and track these payments in the participant's case file as public health emergency related.

Assignments in Temporary Host Agencies and/or Remote Training Opportunities

Depending on the situation in your communities, you may assign participants to perform community service training with temporary host agencies. For example, if you are in an area without broad community transmission, but one host agency must temporarily close due to suspected disease exposure, it may be appropriate to temporarily assign affected participants to an alternate host agency (note that affected participants would need to be reassigned accordingly in Arkansas Job Link and a new agreement drawn up with the new worksite).

SUPPORTIVE SERVICES

Under WIOA Title I, supportive services are available to enable individuals to participate in career or training services, with the exception of needs-related payments. Needs-related payments can only be used to enable a participant to participate in training. WIOA supportive services may not be used for general income support purposes for individuals not participating in career or training services.

The case manager or staff person must ensure fair and equitable distribution of such expenses to participants is reasonable, necessary, allowable, and allocable. WIOA funds can be used to purchase supplies or equipment to provide participants with the tools to participate in remote program services and training.

If a training institution requires that students take courses online due to the public health emergency, and the individual does not have the equipment needed to continue his or her classes, then a computer is a requirement, and that cost should be covered accordingly. Steps should be taken to set parameters around the reasonable cost of purchasing the computer.

WIOA funds can be used to pay for devices and broadband internet service that will allow a participant to create or maintain a wireless connection for distance learning, searching for jobs, and other employment and training services where such services are already allowable and must only be paid if the participant is still enrolled and active in training. The participant's needs must be reassessed on a monthly basis to ensure the participant is still in need of the support service.

Grant recipients should use safety precautions to protect personally identifiable information and use sound fiscal prudence to maximize the value of taxpayer dollars spent.

Grant recipients are expected to use sound fiscal prudence to maximize value for each taxpayer dollar spent by reaching as many participants as possible while also considering the cost and length of time remaining in the period of performance. Please note that ETA grant funds cannot be used to enhance or build the infrastructure needed to support local broadband internet service.

Local Areas can use WIOA to purchase cleaning supplies as long as the supplies are used for the benefit of the WIOA program. Local Areas should ensure that the charges are reasonable, allocable, and follow the direction of the Centers for Disease Control, state, and local government public health emergency-related guidelines.

WIOA funds cannot be used to provide general food assistance to individuals in the community, regardless of the age of the individual. Employment and training programs are not intended as and cannot be converted to income or food support programs. At times, certain supportive services and needs related payments may be issued to a participant, in general, to allow them to participate in training and employment services that will allow more of their personal funds to be used to cover food purchases.

ON-THE-JOB TRAINING (OJT)

If the program participant's time commitment, stipend structure, and/or other academic or work terms were established before the public health emergency declaration, grantees should continue to pay the employer for the remainder of the established OJT term, if the employer is at all able to continue providing OJT. Employers must agree to pay the participant's wages as described in the OJT contract in order to receive reimbursement.

If the employer is not able to provide OJT, then the grantee can provide payments to the OJT participant, but only to fulfill the duration and terms described in the OJT contract established before the public health emergency declaration.

INCUMBENT WORKER TRAINING:

Training and Employment Guidance Letter (TEGL) 19-16 contains information on the use of adult and dislocated worker (DLW) funds for incumbent worker training (IWT) (see section 13 of the TEGL). IWT can be used in several ways to help alleviate the impacts of the public health emergency by averting layoffs and upskilling workers. For example, grantees can use IWT to train workers for new roles that have arisen due to the public health emergency or to train workers on technologies that enable them to do work remotely that otherwise would be done in an office. Under WIOA Title I, IWT may be funded locally, using statewide funds, or through Rapid Response funds.

Incumbent worker training may be used for layoff aversion and/or to assist individuals to acquire the skills necessary to retain their employment or advance in their careers. WIOA statewide activities funds from the Governor's reserve may be used to provide incumbent worker training to achieve these program goals, and rapid response may be used if incumbent worker training is related to layoff aversion strategy or activity.

RAPID RESPONSE – LAYOFF AVERSION

Rapid Response provides valuable services during economic transition caused by economic events or by natural or other disasters or emergency events. The regulations at 20 CFR 682.302(c) require Rapid Response services to be delivered in cases of a “mass job dislocation resulting from a natural or other disaster.” When such “mass dislocation” occurs, the regulations require “the provision of emergency assistance adapted to the particular layoff or disaster.” (20 CFR 682.330(f)). Though states must provide this emergency assistance, how it is carried out is left to the discretion of the state and can be determined by need.

TEGL 19-16 contains information on the use of adult and dislocated worker (DLW) funds for layoff aversion activities. Section 18 of the TEGL covers the Rapid Response program and how Rapid Response funds can and should be used to conduct layoff aversion activities.

States may leverage the Governor's Reserve to conduct additional rapid response activities. At the local level, Boards may use up to 20% of their combined adult and dislocated worker funds to provide incumbent worker training, which can be used for layoff aversion. Individuals involved in layoff aversion activities who meet program eligibility requirements may be served by the adult and dislocated worker programs.

EMPLOYMENT RECOVERY DISLOCATED WORKER GRANTS

Employment Recovery Dislocated Worker Grants (DWG) provide employment and training activities for dislocated workers and other eligible populations. They are intended to expand service capacity temporarily at the State and local levels, by providing time-limited funding assistance in response to major economic dislocations or other events that affect the U.S. workforce that cannot be accommodated with WIOA formula funds or other relevant existing resources.

Layoffs caused by the spread of the disease, or other economic causes, could be eligible for Employment Recovery DWGs. WIOA limits Employment Recovery DWGs to providing only employment and training activities. As already allowed under WIOA statute and regulations, states can apply for Employment Recovery DWGs if the following events occur:

- If there are 50 or more individuals laid off by one employer.
- If there are significant layoffs that significantly increase unemployment in a given community, even if the total layoffs are fewer than 50 individuals. For example, a cancellation of a large event may qualify because several different businesses such as hotels, caterers, area restaurants may lay off workers as a result of the event's cancellation.

DISASTER RECOVERY DISLOCATED WORKER GRANTS

Under WIOA sec. 170, disaster-relief employment is limited to one of two categories: cleanup activities or humanitarian assistance. Under a public health emergency declaration such as the coronavirus, the types of disaster-relief employment allowable might include:

- **Humanitarian assistance activities:** DWG guidance in Training and Employment Guidance Letter No. 12-19 defines humanitarian assistance as follows: Humanitarian assistance generally includes actions designed to save lives, alleviate suffering, and maintain human dignity in the immediate aftermath of disasters. This assistance includes activities such as the provision of food, clothing, and shelter. The humanitarian assistance provided by disaster-relief workers must relate directly to the immediate response to the disaster situation named in the DWG application and the federal declaration. Applicants should consider this definition when proposing appropriate humanitarian assistance disaster-relief employment positions in their applications/modifications.

While each disaster is different, ETA expects that most humanitarian assistance needs will resolve within 12 months of the disaster event. When providing a justification for extending employment, grantees must demonstrate that humanitarian assistance needs remain. DWGs can also support employment and training activities such as classroom and on-the-job training for IT jobs, in addition to disaster relief employment.

WIOA's allowance for disaster-relief employment to provide humanitarian assistance provides greatest range of potential disaster-relief employment activities for this public health emergency.

Disaster-relief employees may assist in addressing many needs created by this public health emergency and the prolonged social isolation that is necessary to curb it, such as:

- Delivering medicine, food, or other supplies to older individuals and other individuals with respiratory conditions and other chronic medical disorders, with appropriate training and precautions. Coronavirus infection has been the most harmful to these populations, and there may be heavy need for such services that traditional volunteer organizations cannot support alone.
 - Helping set up quarantine areas and providing assistance to quarantined individuals.
 - Organizing and coordinating recovery, quarantine, or other related activities.
- **Cleanup activities:** WIOA requires that cleanup activities respond to the impacts of the disaster. While this activity is more typical for tornadoes, fires, and floods, some clean-up activities are relevant to health emergency response. For instance, cleanup activities can include cleaning schools or sanitizing quarantine or treatment areas after their use. If research determines that coronavirus is more likely to spread under certain physical conditions, Disaster Recovery DWG funds could additionally be used to help remedy these conditions.
 - By law, disaster-relief employment activities may only respond to or mitigate the impact of the disaster, which means grantees may not use DWG-funded disaster-relief employees to perform work aimed at preventing future disasters. Preventative measures—setting up quarantines, cleaning buildings—are considered mitigation activities because they avoid the further spread of the disease.

WIOA sec. 170(d) generally requires that Disaster Recovery DWGs include disaster-relief employment, with the option for grantees to also conduct employment and training activities (which may include career, training, and supportive services) for workers eligible to participate in Disaster DWG activities.

An employer can be chosen as a work site employer under a Disaster Recovery DWG even if it has previously laid off staff, so long as the work will be conducted by eligible DWG participants and is allowable disaster-relief employment as defined in TEG 12-19, *National Dislocated Worker Grant Program Guidance*. However, the employer may not use DWG funds to supplant employee wages by simply rehiring former employees to do their former jobs or hiring new employees to do work not fundable by a Disaster Recovery DWG and shift the cost to the grant.

Eligible Disaster DWG participants for both disaster-relief employment and employment and training activities are:

- Dislocated workers
- Workers laid-off as a result of the disaster, including:
 - workers who are laid off as a result of a quarantine, because they miss work to care for a family member, or because they cannot come to their regular workplace in order to follow socially distance requirements; and
 - workers laid off after a business closure related to disruptions caused by the outbreak and the efforts to contain it.
- Self-employed individuals unemployed or underemployed because of the disaster
- Long-term unemployed individuals

Wages paid to temporary disaster-relief workers must be consistent with the wages of the supervising entity’s other employees—permanent or temporary—performing the same or similar work. This guidance also requires that wages must be at or above the relevant federal, state or local minimum wage. The guidance makes no distinction with regard to which locations participants are working. Rates of pay must be comparable to other employees of the worksite employer.

Approved by the NCAWDB on

3/10/2021

NCAWDB Chairperson:

Gayle Corger