

# Public Law 113-128

## Workforce Innovation and Opportunity Act of 2014 (WIOA)

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### General Program Requirements

#### WIOA Section 194

Except as otherwise provided in this title, the following conditions are applicable to all programs under this title:

- (1) Each program under this title shall provide employment and training opportunities to those who can benefit from, and who are most in need of, such opportunities. In addition, the recipients of Federal funding for programs under this title shall make efforts to develop programs that contribute to occupational development, upward mobility, development of new careers, and opportunities for nontraditional employment.
- (2) Funds provided under this title shall only be used for activities that are in addition to those that would otherwise be available in the local area in the absence of such funds.
- (4) On the job training contracts under this title shall not be entered into with employers who have received payments under previous contracts under this Act or the Workforce Investment Act of 1998 and have exhibited a pattern of failing to provide on-the-job training participants with continued long-term employment as regular employees with wages and employment benefits (including health benefits) and working conditions at the same level and to the same extent as other employees working a similar length of time and doing the same type of work.
- (5) No person or organization may charge an individual a fee for the placement or referral of the individual in or to a workforce investment activity under this title.
- (6) The Secretary shall not provide financial assistance for any program under this title that involves political activities.
- (7)(A) Income under any program administered by a public or private non-profit entity may be retained by such entity only if such income is used to continue to carry out the program.
- (7)(B) Income subject to the requirements of subparagraph (A) shall include - -
  - (i) receipts from goods or services (including conferences) provided as a result of activities funded under this title;
  - (ii) funds provided to a service provider under this title that are in excess of the costs associated with the services provided; and
  - (iii) interest income earned on funds received under this title.
- (7)(C) For purposes of this paragraph, each entity receiving financial assistance under this title shall maintain records sufficient to determine the amount of such income received and the purposes for which such income is expended.
- (9)(A) All education programs for youth supported with funds . . . shall be consistent with applicable State and local educational standards.

(9)(B) Standards and procedures with respect to awarding academic credit and certifying educational attainment in programs conducted under such chapter shall be consistent with the requirements of applicable State and local law, including regulation.

(10) No funds available under this title may be used for public service employment except as specifically authorized under this title.

(11) The Federal requirements governing the title, use and disposition of real property, equipment, and supplies purchased with funds provided under this title shall be the corresponding Federal requirements generally applicable to such items purchased through Federal grants to States and local governments.

(12) Nothing in this title shall be construed to provide an individual with an entitlement to a service under this title.

(13) Services, facilities or equipment funded under this title may be used, as appropriate, on a fee-for-service basis, by employers in a local area in order to provide employment and training activities to incumbent workers –

(A) when such services, facilities, or equipment are not in use for the provision of services for eligible participants under this title;

(B) if such use for incumbent workers would not have an adverse effect on the provision of services to eligible participants under this title; and

(C) if the income derived from such fees is used to carry out the programs authorized under this title.

(14) Funds provided under this title shall not be used to establish or operate a stand-alone fee-for-service enterprise in a situation in which a private sector employment agency is providing full access to similar or related services in such a manner as to fully meet the identified need. For purposes of this paragraph, such an enterprise does not include a one-stop delivery system as described in section 121 (e) [of this Act].

## **NONDISCRIMINATION**

### **Section 188 (a) (1)**

**Federal financial assistance** - - For the purpose of applying the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975, on the basis of disability under section 504 of the Rehabilitation Act of 1973, on the basis of sex under title IX of the Education Amendments of 1972, or on the basis of race, color, or national origin under title VI of the Civil Rights Act of 1964, programs and activities funded or otherwise financially assisted in whole or in part under this Act are considered to be programs and activities receiving Federal financial assistance.

### **Section 188 (a) (2)**

**Prohibition of discrimination regarding participation, benefits and employment** - - 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 (except as otherwise permitted under title IX of the Education Amendments of 1972), national origin, age, disability, or political affiliation or belief.

**Section 188 (a) (3)**

**Prohibition on assistance for facilities for sectarian instruction or religious worship - -**

Participants shall not be employed under this title to carry out the construction, operation, or maintenance of any part of any facility that is used or to be used for sectarian instruction or as a place for religious worship (except with respect to the maintenance of a facility that is not primarily or inherently devoted to sectarian instruction or religious worship, in a case in which the organization operating the facility is part of a program or activity providing services to participants).

**Section 188 (a) (4)**

**Prohibition on discrimination on basis of participant status - -** No person may discriminate against an individual who is a participant in a program or activity that receives funds under this title, with respect to the terms and conditions affecting, or rights provided to, the individual, solely because of the status of the individual as a participant.

**Section 188 (a) (5)**

**Prohibition on discrimination against certain non-citizens - -** Participation in programs and activities or receiving funds under this title shall be available to citizens and nationals of the United States, lawfully admitted permanent resident aliens, refugees, asylees, and parolees, and other immigrants authorized by the Attorney General to work in the United States.

## *Identification of Eligible Providers of Training Services*

### **WIOA Section 122 (a) (2)**

**Providers** - - Subject to the provisions of this section, to be eligible to receive those funds for the provision of training services, the provider shall be - -

- (A) an institution of higher education that provides a program that leads to a recognized post-secondary credential;
- (B) an entity that carries out programs registered under the Act of August 16, 1937 (commonly known as the “National Apprenticeship Act”); or
- (C) another public or private provider of a program of training services, which may include joint labor-management organizations and eligible providers of adult education and literacy activities under title II if such activities are provided in combination with occupational skills training.

### **WIOA Section 122 (a) (3)**

Inclusion in List of Eligible Providers –

A provider described in subparagraph (A) or (C) of paragraph (2) [above] shall comply with the criteria, information requirements and procedures established under this section to be included on the list of eligible providers of training services. A provider described in paragraph (2) (B) shall be included and maintained on the list of eligible providers of training services . . . for so long as the corresponding program of the provider remains registered.

## *Criteria for Eligibility*

### **WIOA Section 122 (b) (1)**

In establishing criteria pursuant to subsection (a) the [State Board] shall take into account each of the following:

- (A) The performance of providers of training services with respect to –
  - (i) the performance accountability measures and other matters for which information is required
  - (ii) other appropriate measures of performance outcomes determined . . . for those participants receiving training services . . . and the outcomes of the program through which those training services were provided for students in general with respect to employment and earnings.
- (B) The need to ensure access to training services throughout the State, including in rural areas, and through the use of technology.
- (C) Information reported to State agencies with respect to Federal and State programs involving training services, including one-stop partner programs.
- (D) The degree to which the training programs of such providers relate to in-demand industry sectors and occupations in the State.
- (E) The requirements for State licensing of providers of training services and the licensing status of providers of training services if applicable.
- (F) Ways in which the criteria can encourage, to the extent practicable, the providers to use industry-recognized certificates or certifications.

- (G) The ability of the providers to offer programs that lead to recognized postsecondary credentials.
- (H) The quality of a program of training services, including a program of training services that leads to a recognized postsecondary credential.
- (I) The ability of the providers to provide training services to individuals who are employed and individuals with barriers to employment.

### Registered Apprenticeships

Under the Workforce Innovation and Opportunity Act title I-B, Registered Apprenticeship program sponsors that request to be ETP's are automatically included on the list and will remain as long as the program is registered or until the program sponsor notifies the State that it no longer wants to be included on the list.

Registered Apprenticeship programs are not subject to the same application and performance information requirements or to a period of initial eligibility or initial eligibility procedures as other providers because they go through a detailed application and vetting procedure to become a Registered Apprenticeship program sponsor with the US Department of Labor or the State Apprenticeship Agency (SAA).

Registered Apprenticeship can take many forms and the sponsors are diverse, including:

1. Employers who provide related instruction
2. Employers who use an outside educational provider
3. Joint Apprenticeship Training programs
4. Intermediaries

Registered Apprenticeship program sponsors must indicate their interest in being placed on the Eligible Training Provider list to the Workforce Board in writing. Additionally, the following information should be included on the request:

- Occupations included within the Registered Apprenticeship program;
- The name and address of the Registered Apprenticeship program sponsor;
- The name and address of the Related Technical Instruction provider, and the location of instruction if different from the program sponsor's address;
- The method and length of instruction; and
- The number of active apprentices.

The State Board will review the list Registered Apprenticeship programs as part of the review of the list of eligible training providers at least every two years. The Board will coordinate with the federal OA or the local SAA to obtain a list of all Registered Apprenticeship programs that are either voluntarily or involuntarily deregistered.

The list of Registered Apprenticeship program sponsors must also be maintained by the State Agency. This includes updating new Registered Apprenticeship Program ETP's, removing programs that no longer want to remain on the list and eliminating deregistered programs.

## **INITIAL ELIGIBILITY**

Providers may seek initial eligibility as a new provider under WIOA as a provider of training services and may receive that initial eligibility for only one (1) year for a particular program. The provider shall provide verifiable program-specific performance information based on criteria established by the Workforce Board.

The criteria shall include at least:

- (a) A description of each program of training services to be offered;
- (b) Information addressing factors related to indicators of performance;
- (c) Information concerning whether the provider is in a partnership with business;
- (d) Other factors that indicate high-quality training services, such as resulting with a recognized postsecondary credential;
- (e) Information concerning alignment of the training services with in-demand industry sectors and occupations, to the extent practicable; and
- (f) Program cost information, including tuition and fees for WIOA participants in the program.

This information, in an application along with verifiable organizational documents shall be submitted to the Workforce Board for review.

After the Workforce Board has reviewed the application and eligibility has been determined, a *list* of eligible applicants will be created and submitted to the designated State Agency – VI Department of Labor (VIDOL). The list will include performance and program costs information for each eligible applicant.

- All information will be verified by VIDOL for accuracy.
- VIDOL shall compile a single list of eligible providers and disseminate such list with performance and program cost information to the one-stop delivery system.
- VIDOL will maintain the provider list.
- The list and the accompanying information shall be made available to participants and members of the public through the One-Stop delivery system in a manner that does not reveal personally identifiable information about an individual participant;
- The list may be made available electronically through a searchable database and/or through print media.

## **CONTINUED ELIGIBILITY**

In order for a provider of training services to maintain their eligibility and the eligibility of their programs, such provider shall submit an Application for Continued Eligibility. Continued Eligibility requirements apply to training providers transitioning to WIOA title I-B who were previously eligible under WIA title I and newly eligible providers that were determined to be initially eligible under WIOA.

Each provider seeking continued eligibility shall submit an application to the Workforce Board with the following criteria:

- (a) Program description;
- (b) Performance outcome information for the indicators described in accompanying criteria;
- (c) Information identifying the recognized post-secondary credentials received by WIOA participants;
- (d) Program cost information, including tuition and fees for WIOA participants in the program; and
- (e) Information on the program completion rate for WIOA participants.

After the Workforce Board has reviewed the application and eligibility has been determined, a list of eligible applicants will be submitted to the designated State Agency – the Virgin Islands Department of Labor (VIDOL). The list will include all verifiable performance and program costs information for each eligible applicant.

- All information will be verified by the VIDOL for accuracy.
- The State agency shall maintain the list of the providers identified and disseminate such list with performance and program cost information to the one-stop delivery system.
- The list and the accompanying information shall be made available to participants and members of the public through the One-Stop delivery system in a manner that does not reveal personally identifiable information about an individual participant;
- The list may be made available electronically through a searchable database and/or through print media.

Providers of Continued Eligibility must renew their application every two (2) years. Applications for Continued Eligibility shall be submitted at least thirty (30) days before the end of the eligibility period for review by the Board.

In addition, the Workforce Board will annually review the status of the Eligible Training Providers to ensure up-to-date information on the training provided, performance outcomes and placement rates of the provider.

#### **REMOVAL FROM THE ELIGIBLE PROVIDER LIST**

- A training provider may be denied re-certification for a training program by VIDOL if it is determined that:
  - The provider does not meet the expected levels of performance.
  - The training program does not support the demand occupations for the area
  - Other requirements for training providers of the Workforce Innovation and Opportunity Act have not been met.

- The State Board may remove a training provider from the approved provider list if it is determined that:
  - The provider of training intentionally supplied inaccurate information.
  - The provider of training substantially violated any requirement under the Workforce Innovation and Opportunity Act.
- A provider that is an entity that carries out programs registered under the National Apprenticeship Act shall be included and remain on the list of eligible providers of training services for so long as the corresponding program of the provider remains registered.

Upon determination that an application by a training provider does not meet the eligibility requirements, a notice denying eligibility will be issued. The notice of denial will be mailed to the training provider at the address listed on the application and to the attention of the contact person identified on the application. The denial notice shall also clearly state that the training entity has the right to appeal the decision within fourteen (14) calendar days of the date that the denial notice is mailed.

#### **APPEALS PROCEDURE**

A provider of training services, who is removed from the Eligible Provider List, may appeal the decision by following the procedures listed below:

- 1) A written request for a hearing should be made to the State Board
- 2) The State Board will conduct a hearing within thirty (30) calendar days of receiving the request; at which time the provider may present all information that shows cause for eligibility to be reinstated.
- 3) The State Board will give its decision within fifteen (15) calendar days of the hearing.
- 4) If the provider of service finds the decision of the State Board unacceptable, an appeal may be made in writing to the Governor.
- 5) The decision of the Governor is final.

The Administrative Agency (VI Department of Labor), may offer corrective action or technical assistance to a provider of training service who has been removed from the Eligible Provider's List for non-performance. Corrective action or technical assistance may also be offered to providers of training services that fail to comply with the Act. Providers receiving corrective action assistance or technical assistance may reapply for the Eligible Providers List after the period of one (1) year.

The eligibility of a provider of training service determined to have intentionally supplied inaccurate information, will be terminated for a period of time not to exceed two (2) years.



## INDIVIDUAL TRAINING ACCOUNTS

WIOA mandates that training services, with the exception of on-the-job training customized training, incumbent worker training or transitional employment be provided through the use of Individual Training Accounts (ITA) and that eligible individuals shall receive ITA's through the one-stop delivery system.

The One-Stop system is the basic delivery system for adult and dislocated worker services. Through the One-Stop system adults and dislocated workers in need of training will be provided an Individual Training Account and access to lists of eligible providers of training. Participants may purchase training services from eligible service providers they select in consultation with their case managers.

Customer Choice: Individual Training Accounts allow customers to choose the provider of training service based on the specific information (prerequisites, costs, location, duration, certification received) listed by the provider.

- The *amount* of the Individual Training voucher shall not exceed ***\$3,800.00***, except in the instance of an approved specialized or technical program.
- The *duration* of an Individual Training voucher shall not exceed twelve (12) months, except in the instance of an approved specialized or technical program.

Linkage to occupations in demand: Training services shall be directly linked to an in-demand sector or occupation in the local area or the planning region, or in another area to which an adult or dislocated worker receiving such services is willing to relocate, except that a local board may approve training services for occupations determined by the local board to be in sectors of the economy that have a high potential for sustained demand or growth in the local area.

## EXCEPTIONS

Training services may be provided pursuant to a contract for services in lieu of an Individual Training Account if –

- Training is offered by providers of *Customized training, Incumbent Worker training* or *On-the-Job training*
- There are certain circumstances that allow for mechanisms other than Individual Training Accounts to be used; specifically:
  - A Board decision that determines that there are an insufficient number of eligible providers in the local area to accomplish the purpose of the system; and
  - There is a training program of *demonstrated effectiveness* offered by a community-based organization or other private organization to serve individuals with barriers to employment; or
  - The Board makes the decision that it would be most appropriate to award a contract to an institution of higher education or other eligible provider of training services in order to facilitate the training of multiple individuals in in-demand industry sectors or occupations; and
  - Such contract does not limit customer choice; or is a pay-for-performance contract.

*On-the-Job Training* means training by an employer that is provided to a paid participant while engaged in productive work in a job that:

- ◇ Provides knowledge or skills essential to the full and adequate performance of the job;
- ◇ Is made available through a program that provides reimbursement to the employer of up to 50% of the wage rate of the participant – this percentage may be increased to 75% by the Board based on factors such as the:
  - a) *Characteristics of the participant;*
  - b) *Size of the employer;*
  - c) *Quality of employer-provided training and advancement opportunities and other factors as may be determined by the Board;*
- ◇ Is limited in duration as appropriate to the occupation for which the participant is being trained, taking into account the content of the training, the prior work experience of the participant and the service strategy of the participant, as appropriate.

*Customized training* is training that is:

- ◇ Designed to meet the special requirements of an employer (including a group of employers);
- ◇ Conducted with a commitment by the employer to employ individuals upon successful completion of the training; and
- ◇ For which the employer pays a significant portion of the cost of training, as determined by the local board taking into account the size of the employer and such other factors ... which may include the number of employees participating in training, wage and benefit levels of those employees, relation of the training to the competitiveness of a participant and other employer-provided training and advancement opportunities.

*Incumbent Worker training* is training carried out with employers or groups of employers of such workers (which may include employers in partnership with other entities for the purposes of delivering training) for the purpose of assisting such workers in obtaining the skills necessary to retain employment or avert layoffs. The cost to employers shall not be less than –

- ◇ 10 percent of the cost for employers with not more than 50 employees
- ◇ 25 percent of the cost for employers with more than 50 employees but not more than 100 employees
- ◇ 50 percent of the cost for employers with more than 100 employees

Criteria to describe programs of *demonstrated effectiveness* may include:

- Financial stability;
- Innovative program of learning/training;
- Demonstrated performance; and
- Local area demand occupation.

*Special participant populations* are defined as:

- Individuals with substantial language or cultural barriers;
- Offenders
- Homeless individuals; and
- Other hard-to-serve populations – as determined by the Governor.

Adult Priority

Priority shall be given to recipients of public assistance, other low-income individuals and individuals who are basic skills deficient for receipt of career services and training services.

**PAYMENT POLICY**

Please note that payment for WIOA customers on Individual Training Accounts (ITA) is based on their attendance and performance throughout the program. Payments are made at midpoint and ending of the program, based on data submitted by the provider and verified by the monitoring unit.

Payments for other training programs such as On-the-Job training, Customized training and Incumbent Worker training are contractual and terms of payment may be negotiated at the time the contract is prepared.

**PARTICIPANT ELIGIBILITY**

In order for a participant to be eligible for paid services under the Workforce Innovation and Opportunity Act he/she must meet circumstances consistent with either Adult or Dislocated Worker criteria.

All participants must:

- Be 18 years of age or older;
- Be a citizen or national of the United States, lawfully admitted permanent resident alien, refugee, asylee, parolee, or other immigrant authorized to work in the United States; and
- Be in compliance with the Military Selective Service Act.

Adult

To be classified as an Adult under the Workforce Innovation and Opportunity Act, the participant must meet the following criteria:

- Recipients of public assistance;
- Low income;
- Limited English proficient;
- Disabled;
- Long term unemployed; or
- Basic skills deficient.

Dislocated Worker

To be classified as a dislocated worker under the Workforce Innovation and Opportunity Act, the participant must meet the following criteria:

- (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 unemployment compensation; or
  - (II) Has been employed for a duration sufficient to demonstrate, to the appropriate entity at a one-stop center 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(c)(3), career services described in section 134(c)(2), 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;
- (D) Is a displaced homemaker; or
- (E)(i) Is the spouse of a member of the Armed Forces on active duty and who has experienced a loss of employment as a direct result of relocation to accommodate a permanent change in duty station of such member; or
- (ii) Is the spouse of a member of the Armed Forces on active duty and who is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

## ELIGIBLE TRAINING ACTIVITIES

### Training Services

Training services may be made available to Adults and Dislocated Workers who are eligible to receive services from the One-Stop Center –

- (I) Who after an interview, evaluation or assessment and career planning have been determined by a One-Stop Operator or One-Stop Partner as appropriate to –
  - (a) Be unlikely or unable to obtain or retain employment that leads to economic self-sufficiency or wages comparable to or higher than wages from previous employment, through career services;
  - (b) Be in need of training services to obtain or retain employment that leads to economic self-sufficiency or wages comparable to or higher than wages from previous employment; and
  - (c) Have the skills and qualifications to successfully participate in the selected program of training services;
- (II) Who select programs of training services that are directly linked to the employment opportunities in the local area or the planning region or in another area to which the adults or dislocated workers are willing to commute or relocate;
- (III) Who meet the requirements of Adult and Dislocated Worker funding eligibility; and
- (IV) Who are determined to be eligible in accordance with the Adult Priority requirements

### **Training services may include –**

- Occupational skills training, including training for non-traditional employment;
- Programs that combine workplace training with related instruction, which may include cooperative education programs;
- Training programs offered by the private sector;
- Skill upgrading and retraining;
- Entrepreneurial training;
- Job readiness training provided *in combination with* services described above;
- Adult education and literacy training provided *concurrently or in combination* with services described in above;
- Customized training conducted with a commitment by an employer or group of employers to employ an individual upon successful completion of training.

### Consumer Choice

Training services provided shall be provided in a manner that maximizes consumer choice in the selection of an eligible provider of such service.

## PERFORMANCE ACCOUNTABILITY

The Workforce Innovation and Opportunity Act Section 116 (d) requires providers to submit performance information for the State's Eligible Training Provider Performance Reports which are disseminated publicly similarly to the list of eligible training providers.

The primary indicators of performance for activities provided under the adult and dislocated worker programs authorized is collected and maintained for ALL participants of each program of training provided in which at least one participant is funded through the Workforce Innovation and Opportunity Act.

### *Performance for ALL Class Participants*

Number of Participants that entered employment \_\_\_\_\_

Number of Participants that retained employment after (6) months \_\_\_\_\_

Number of Participants that retained employment after (12) months \_\_\_\_\_

Median Hourly Wage at Placement in Employment \_\_\_\_\_

Number of Participants that Received a Credential \_\_\_\_\_

Performance reports are to be submitted by each provider of training services on an annual basis; however, data must be collected and maintained on an on-going basis. Program monitors will work with training providers to ensure accuracy and quality of reports.

## EVALUATION FACTORS FOR ADULT/DISLOCATED WORKER SERVICES

*Evaluation factors* used in awarding grants and weights assigned to each include the following:

<b>REASONABLENESS OF COST</b> – overall cost of training program is commensurate with length of time required for completion, occupational area qualifications; and level of instruction provided	20
<b>PROGRAM DESIGN/CONTENT</b> – a) verifiable assurances that minimum course requirements or prerequisites are realistically commensurate with course applications; b) all coursework leads to the acquisition of an occupational skill; c) presentation of work in a clear and understandable format	25
<b>PROGRAM STRUCTURE</b> – sequentially developmental, catering to the disadvantaged customer who faces multiple barriers to attaining or retaining employment; items to note: total time allotted to course, amount of time per segment, availability of lab time (when applicable), make-up schedule, if necessary	15
<b>LABOR MARKET STATUS</b> – local demand occupation with current high employment need	25
<b>CERTIFICATION</b> – portable, industry or employer recognized certification	15
<b>TOTAL POINTS</b>	100

*\*NOTE\* On applications for Continued Eligibility, Performance Information is an additional evaluation factor and weights are adjusted accordingly.*