

TITLE 11 LABOR AND WORKERS' COMPENSATION
CHAPTER 2 JOB TRAINING
PART 8 WORKFORCE INNOVATION AND OPPORTUNITY ACT (WIOA) TITLE I, ADULT, DISLOCATED WORKER, AND YOUTH PROGRAM SERVICE DELIVERY

11.2.8.1 ISSUING AGENCY: New Mexico Department of Workforce Solutions (DWS)
[11.2.8.1 NMAC - N, 7/1/2018]

11.2.8.2 SCOPE: State workforce development board (state board), department of workforce solutions (DWS), chief elected officials (CEOs), local workforce development boards (local boards), local workforce system administrative entities (local administrative entities), workforce system sub-recipients and workforce system partners.
[11.2.8.2 NMAC - N, 7/1/2018]

11.2.8.3 STATUTORY AUTHORITY: Title I of the Workforce Innovation and Opportunity Act (WIOA), 29 U.S.C. Chapter 32, Subchapter I; and NMSA 1978 50-14-1 *et seq.*
[11.2.8.3 NMAC - N, 7/1/2018]

11.2.8.4 DURATION: Permanent.
[11.2.8.4 NMAC - N, 7/1/2018]

11.2.8.5 EFFECTIVE DATE: July 1, 2018, unless a later date is cited at the end of a section.
[11.2.8.2 NMAC - N, 7/1/2018]

11.2.8.6 OBJECTIVE: To provide guidance to local boards and other WIOA sub-recipients regarding the appropriate selection of service providers, participant eligibility, provision of career and training services for eligible adults, dislocated workers, and youth, appropriate use of training accounts, provisions of work-based training, incumbent worker training, supportive services, priority of service, co-enrollment and performance.
[11.2.8.6 NMAC - N, 7/1/2018]

11.2.8.7 DEFINITIONS:

A. Eligible training provider. Training services must be provided by an eligible training provider in accordance with WIOA Section 122(d). Training is available through a state eligible training provider and program list comprised of entities determined eligible to receive funds through WIOA Title I, Subtitle B, according to DWS's established eligibility criteria and procedure. The purpose of this list is to ensure the accountability, quality and labor-market relevance of programs, and to ensure informed customer choice for individuals eligible for training.

B. Out of school youth according to Section 20 CFR 681.210, must be aged 16-24, not attending any school, and meet one or more additional conditions, which could include: school dropout; within age of compulsory attendance but has not attended for at least the most recent complete school year calendar quarter; holds a secondary school diploma or recognized equivalent and is low-income and is basic skills deficient or an English language learner; subject to the juvenile or adult justice system; homeless, runaway, in foster care or aged out of the foster care system, eligible for assistance under Section 477, Social Security Act, or in out-of-home placement; pregnant or parenting; an individual with a disability; low income person who requires additional assistance to enter or complete an educational program or to secure and hold employment.

C. In-school youth according to Section CFR 681.220, must be aged 14-21, attending school low income, and meet one or more additional conditions, which could include: basic skills deficient; English language learner; an offender; homeless, runaway, in foster care, or aged out of the foster care system; pregnant or parenting; an individual with a disability; person who requires additional assistance to enter or to complete an educational program or to secure and hold employment.

D. Training contract. Individual training accounts (ITAs) are the primary method to be used for procuring training services under WIOA. However, in certain circumstances, a training contract may be used to provide services, instead of an ITA. These circumstances are referred to as the "training exceptions" or "contract exceptions", as governed by WIOA Section 134(c)(3)(G)(ii) and consistent with Sections 20 CFR 680.320, 680.340,

and 680.530. Additionally, the local board must have fulfilled the consumer choice requirements of Section 20 CFR 680.340.

E. Work-based training. Allowed types of work-based training include registered apprenticeships, on-the-job training (OJT), and customized training. Sections 20 CFR 680.700 through 680.840 govern work-based training.

F. Incumbent worker training is designed to meet the needs of an employer or group of employers to retrain a skilled workforce or avert layoffs, as governed by Sections 20 CFR 680.780 through 680.820.

G. Supportive service are designed to provide a participant with the resources necessary to enable their participation in career and training services, and are governed by Section 20 CFR 680.900 through 680.970. Supportive services can include services such as transportation assistance, child care and dependent care assistance, housing assistance, and needs-related payments. Needs-related payments are only available to individuals enrolled in training services and must be consistent with Sections 20 CFR 680.930, 680.940, 680.950, 680.960, and 680.970.

H. Basis career services include universally accessible services, such as eligibility determinations, initial skill assessments, labor exchange services, provisions of information on programs and services, and program referrals, that must be made available in at least one comprehensive workforce connection center per local area to all individuals seeking employment and training services. These services may be provided by both the adult and dislocated worker programs, as well as by the Wagoner-Peyser employment services.

I. Individual career services include services, such as specialized assessments, developing an individual employment plan, counseling, work experiences, which must be provided to participants after workforce connections center staff determine that such services are required to retain or obtain employment, consistent with any applicable statutory priorities.

J. Training services are described in WIOA, Section 134(c)(3). Training services are governed by Sections 20 CFR 680.200 through 680.230 and 20 CFR 680.300 through 680.350. Workforce connection center staff may determine training services are appropriate, regardless of whether the individual has received basic or individualized career services first, and there is no sequence of service requirement. Training services, when determined appropriate, must be provided either through a training contract, such as an ITA.

K. Follow-up services must be provided for adults and dislocated worker participants who are placed in unsubsidized employment, for up to 12 months after the first day of employment and local areas must establish policies that define what are considered to be appropriate follow-up services, as well as policies for identifying when to provide follow-up services to participants.

L. Basic skills deficient means an individual:

(1) who is a youth, that the individual has an English reading, writing, or computing skills at or below the eighth grade level on a generally accepted standardized test; or

(2) who is a youth or adult, and the individual is unable to compute or solve problems, or read, write, or speak English, at a level necessary to function on the job, in the individual's family, or in society.
[11.2.8.7 NMAC - N, 7/1/2018]

11.2.8.8 SELECTION OF SERVICE PROVIDERS: Local boards must select the following providers in the local area, and where appropriate, terminate such providers in accordance with Section 20 CFR 200:

A. Providers of youth services. Providers of youth workforce investment activities through competitive grants or contracts based on the recommendations of the youth standing committee (if such committee is established), in accordance with WIOA Section 107(d)(10)(E), and local area grant agreements. The local board may implement a WIOA pay-for-performance contract strategy for youth program elements described in 20 CFR 681.460, for which the local board may reserve and use not more than ten percent of the total funds allocated to the local area under WIOA Section 128(b).

B. Providers of adult and dislocated worker services. Providers of WIOA Title I adult and dislocated worker career services through the award of contracts in accordance with local board grant agreements.
[11.2.8.8 NMAC - N, 7/1/2018]

11.2.8.9 ELIGIBLE TRAINING PROVIDERS. DWS, in partnership with local boards, identifies eligible training providers and programs that are qualified to receive WIOA Title I-B funds to train adults, dislocated workers and out-of-school youth ages 16-24, including those with disabilities. DWS administers and provides access to the eligible training provider list in accordance with WIOA Sections 116, 122, and 134, and Sections 20 CFR 677.230, 679.370-380, 680.400-530, and 683.630. This state-approved list identifies appropriate providers and programs for eligible WIOA participants in the local areas who are seeking training, as well as cost and program performance information for each of the providers' programs, to allow participants to make informed consumer

choices. DWS administers the application procedure for training providers and programs to maintain their eligibility.

[11.2.8.9 NMAC - N, 7/1/2018]

11.2.8.10 WIOA PARTICIPANT ELIGIBILITY: Local boards are required to establish and formally approve a local policy for making eligibility determinations for the three WIOA finding streams under Title I - adult, dislocated worker, and youth. Local board policy must also include guidance on the use of self-attestation as a last resort when other documentation cannot be found or accessed.

A. Adult and dislocated worker eligibility. Eligibility criteria vary according to each type of career or training service, in accordance with Sections 20 CFR 680.120, 680.130, and 680.210.

(1) To be eligible to receive career services as an adult in the adult and dislocated worker programs, an individual must be 18 years of age or older, and meet the criteria of Section 680.120.

(2) To be eligible for any dislocated worker program, an eligible adult must meet the criteria of section 20 CFR 680.130.

(3) Eligibility criteria for training services are found at Sections 20 CFR 680.210 and 680.220.

B. Youth eligibility. Section 20 CFR 681, Part B governs eligibility criteria for youth activities under WIOA Title I. In order to be a participant in the WIOA youth program an eligibility determination must be made including the provision of an objective assessment, development of an individual service strategy, and participation in any of the 14 WIOA youth program elements discussed in section 11.2.8.13 of this rule.

(1) Both in-school and out-of-school youth are eligible for youth services, in accordance with definitions in Sections 20 CFR 681.210-220.

(2) Applicable state law governs the definition for “attending” or “not attending” school for the purposes of determining in-school youth and out-of-school youth eligibility for WIOA-funded service. These definitions are based on the department of public education’s rules in 6.10.4 NMAC and described in the WIOA state plan.

(3) Applicable state law for secondary and postsecondary institutions defines “school”, however, for the purposes of WIOA, some additional eligibility restrictions apply, in accordance with Section 20 CFR 681.230.

(4) Sections 20 CFR 681.250-270 address how certain eligibility criteria are to be applied including low-income and disability determinations.

(5) Local boards must establish a policy in their local plans to govern how “basic skills deficient” criteria are to be applied in making eligibility determinations, in accordance with Section 20 CFR 681.290 and the WIOA state plan.

(6) For in-school and out-of-school youth, local boards may establish definitions and eligibility documentation requirements for the “requires additional assistance to enter or complete an educational program, or to secure and hold employment” criterion of Sections 20 CFR 681.210(c)(9) and 681.220(d)(8). Local boards who wish to apply this criterion must establish a policy in their local plans that aligns with state policy as stated in the WIOA state plan and that local policy must establish definitions and eligibility documentation requirements for the “requires additional assistance to complete an educational program to secure and hold employment”.

(7) Per WIOA Section 129(3)(B), local areas are not allowed to assist more than five percent of in-school youth who are eligible under “individual who requires additional assistance” to complete an educational program or to secure or hold employment.

(8) Per WIOA Section 129(3)(A)(ii), local areas are not allowed to assist more than five percent of in-school youth who are not low-income.

[11.2.8.10 NMAC - N, 7/1/2018]

11.2.8.11 ADULT AND DISLOCATED WORKER SERVICES: WIOA Title I formula funds allocated to local areas for adults and dislocated workers must be used to provide career and training services through the one-stop delivery system, in accordance with Section 20 CFR 680.

A. Career services. Career services consist of three categories, including basic career services, individualized career services, and follow-up services. Local boards determine the mix of these services but both types must be available for eligible adults and dislocated workers. Requirements on who may provide career services for adults and dislocated workers and how those services are to be provided are located in Section 20 CFR 680.160.

(1) **Basic career services.** At a minimum, all of the basis career services described in WIOA Sections 134(c)(2)(A)(i)-(ix) and 20 CFR 678.430(a) must be provided in each local area through the one-stop delivery system.

(2) **Individualized career services.** Individualized career services described in WIOA Section 134(c)(2)(A)(xii) and Section 20 CFR 678.430(b) must be made available, if determined appropriate in order for an individual to obtain or retain employment.

(3) **Follow-up services.** Follow-up services, as described in WIOA Sections 134(c)(2)(A)(xiii) and 20 CFR 678.430(c) must be made available, as determined appropriate by the local board for a minimum of 12 months following the first day of employment, to participants who are placed in unsubsidized employment.

B. Training services. The types of training services that may be provided to eligible adults and dislocated workers are provided in WIOA Section 134(c)(3)(D), and include but are not limited to, work-based training and incumbent worker training. Local boards must adhere to criteria for funding training in Section 20 CFR 680.230.

C. Additional services. WIOA Title I funds may also be used to provide additional services, as described in WIOA Section 134(d), including:

(1) job seeker services, including but not limited to, customer support for individuals with barriers to employment, such as individuals with disabilities and veterans, as well as supportive services;

(2) employer services, including but not limited to, customized employment-related services to employers on a fee-for-service basis; and

(3) coordination activities, including but not limited to, employment and training activities in coordination with child support enforcement activities, activities to facilitate remote access to services provided through the workforce connection centers, and economic development activities within the local area.

[11.2.8.11 NMAC - N, 7/1/2018]

11.2.8.12 PRIORITY AND SPECIAL POPULATIONS: According to WIOA Section 134(c)(3)(E), local boards must establish a policy with criteria by which the workforce connection center will apply the priority of service in assisting individuals. Requirements governing priority of service, including the order in which priority is given, are locate in Sections 20 CFR 680.600-660, local board grant agreements and the WIOA state plan.

A. Priority for individualized career services and training services funded with WIOA Title I adult funds must be given to recipients of public assistance, other low-income individuals, and individuals who are basic skills deficient in the local area.

B. Veterans, as defined under WIOA Section (3)(63) and 38 USC 101, and eligible spouses receive priority of service in all US department of labor-funded training programs, in accordance with Sections 20 CFR 680.650-660.

[11.2.8.12 NMAC - N, 7/1/2018]

11.2.8.13 YOUTH SERVICES:

A. Youth program design. Section 20 CFR 681.420 describes the design framework services of local youth programs that must be met, including but not limited to, objective assessments, individual service strategies, case management, local plan content requirements, linkages to appropriate entities, and referral requirements. Program design requirements are also agreed to in the local board grant agreements. Local youth programs must provide services to a participant for the amount of time necessary to ensure successful preparation to enter postsecondary education or unsubsidized employment. Programs must link participation to the individual service strategy and not the timing of youth service provider contracts or program years.

B. Youth elements. Local programs must make each of the 14 youth services available to youth participants as described in Section CFR 681.460, which include:

(1) tutoring, study skills training, instruction and evidence-based dropout prevention and recovery strategies that lead to completion of the requirements for a secondary school diploma or its recognized equivalent or for a recognized postsecondary credential;

(2) alternative secondary school services, or dropout recovery services;

(3) paid and unpaid work experiences that have as a component academic and occupational educational;

(4) occupational skills training;

(5) education offered concurrently with and in the same context as workforce preparation activities and training for specific occupational cluster;

- (6) leadership developmental opportunities;
- (7) supportive services;
- (8) adult mentoring;
- (9) follow-up services;
- (10) comprehensive guidance and counseling;
- (11) financial literacy education;
- (12) entrepreneurial skills training;
- (13) services that provide labor market and employment information about in demand industry sectors or occupations available in the local area; and
- (14) activities that help youth prepare for and transition to postsecondary education and training.

C. Out-of-school youth expenditures. Criteria for expending youth funds to provide services to out-of-school youth in Section 20 CFR 681.410 must also be met. At least seventy-five percent of the total amount of youth formula funds allocated to the local workforce area must be used to provide activities to out-of-school youth, in accordance with the eligibility section of this rule, 11.2.8.10 NMAC, as agreed to in the local board grant agreements, and described in the state plan.

D. Work experience expenditures. Criteria for expending youth funds to provide work experiences to youth, in accordance with Section 20 CFR 681.590 must also be met. Local youth programs must expend not less than twenty percent of the funds allocated to them to provide in-school and out-of-school youth with paid and unpaid work experiences that fall under the categories listed in Section CFR 681.460(a)(3), and further defined in Section 20 CFR 681.600, such as summer employment opportunities, pre-apprenticeship programs, internships and on-the-job training.

E. Follow-up services for youth. Follow-up services are critical services provided following a youth's exit from the program to help ensure the youth is successful in employment or postsecondary education and training. Follow-up services must be provided to all participants for a minimum of 12 months unless the participant declines to receive follow-up services or the participant cannot be located or contacted. Follow-up services may include regular contact with a youth participant's employer, including assistance in addressing work-related problems that arise. Section 20 CFR 681.580 addresses the types of follow-up services for youth.
[11.2.8.13 NMAC - N, 7/1/2018]

11.2.8.14 INDIVIDUAL TRAINING ACCOUNTS (ITAs): Training services for eligible individuals are typically provided by training providers who receive payment for their services through an ITA. The criteria for establishing an ITA, including how these services are provided, limitations on the duration and amounts of ITAs, under what circumstances mechanisms other than ITAs may be used to provide training, coordination of ITAs with grant assistance, the appropriate use of ITAs and supportive services related to registered apprenticeships, and requirements around consumer choice and in-demand occupations, are located in Section 20 CFR 680.300-330, and further discussed in federal and state technical assistance guidance. Additionally, WIOA ITAs are allowable for out-of-school youth, ages 16-24 using WIOA youth funds when appropriate, to enhance individual participant choice in their education and training plans and provide flexibility to service providers. Local boards must establish a policy on the use of ITAs based on the criteria in state technical assistance guidance.
[11.2.8.14 NMAC - N, 7/1/2018]

11.2.8.15 SUPPORTIVE SERVICES: Local boards, in consultation with the one-stop partners and other community service providers, must develop policies on supportive services, payments, and other compensation that ensures resource and service coordination in the local area for participating youth, adults, and dislocated workers. The supportive service policies, at a minimum, must address the following in accordance with 20 CFR 680, subpart G:

- A.** coordination with partners and other entities to ensure non-duplication of resources and services;
- B.** define the types of WIOA-funded supportive services that may be made available to eligible participants;
- C.** establish or provide the workforce connection centers with the authority to establish limits on the amount and duration of funding to be made available for participants, including any procedures for granting exceptions to these limits;
- D.** provision of needs-related payments, which may only be provided to participants enrolled in training, requires verification of any unemployment insurance claim and benefits status, and must adhere to the requirements of Section 20 CFR 680.930-970, and federal and state technical assistance guidance; and

E. procedures for referral to supportive services, including how they will be funded and what documentation will be required to indicate no other resources are available. The need for supportive services must be documented in the individual employment plan or individual service strategy prior to the provision of WIOA-funded supportive services.

F. Awards of incentives to youth, in accordance with Sections 20 CFR 681.640 and 20 CFR part 200, for recognition and achievement directly tied to training activities and work experiences, as well as to the goals of the specific program.

[11.2.8.15 NMAC - N, 7/1/2018]

11.2.8.16 CO-ENROLLMENT AND COORDINATED SERVICE DELIVERY: WIOA provides a significant opportunity for coordination across all of the core programs, and any coordination or co-enrollment activities must adhere to the service delivery provisions of federal regulations, Sections 20 CFR 651, 652, 653, 358, and 680.

A. Coordination between adult dislocated worker and youth programs. Individuals aged 18-24 may be eligible for both the WIOA youth and adult programs and can be co-enrolled in the two programs.

B. Coordination with Wagner-Peyser employment services. Universal access to basic career services must be achieved through close integration of Wagoner-Peyser, WIOA programs, and other partners in the New Mexico workforce connection centers. Basic career services offered by the WIOA programs must be made available by the Wagoner-Peyser program in coordination with other workforce connection center partners.

C. Coordination with adult education. Individuals who meet the respective program eligibility requirements for WIOA youth Title I and Title II may participate in Title I and Title II concurrently. WIOA Sections 134(c)(2) authorizes career services to be provided with Title I adult and dislocated worker funds.

D. Coordination with vocational rehabilitation. Individuals with disabilities are identified as individuals with barriers to employment under WIOA, and should be able to access all workforce connection center services. Funds allocated to a local area for adult and dislocated worker activities may be used to improve coordination between employment and training programs carried out in the local area for individuals with disabilities through the workforce connection centers.

E. Coordination with trade adjustment assistance (TAA). TAA eligible workers can be co-enrolled with the WIOA dislocated worker or adult programs to allow for the timely provision of individualized services through the workforce connection center network. The Trade Act, as amended, contains provisions allowing the costs of a training program approved under the Trade Adjustment Act to be paid by TAA funds or from other sources, but does not allow duplication of payment in training costs. Those authorities and restrictions are governed by Section 20 CFR 617.25(b).

[11.2.8.16 NMAC - N, 7/1/2018]

11.2.8.17 PERFORMANCE: In order to achieve the vision of WIOA, align service delivery across the core WIOA programs, and ensure a comprehensive approach across all partners, the US departments of labor and education have developed common measures and reporting elements. DWS is required to measure the success and overall effectiveness of the WIOA Title I adult, dislocated worker and youth programs.

A. Performance indicators: Each local area under WIOA Title I is subject to the same primary performance indicators of performance for the core programs under 20 CFR 677.155(a)(1) and (c). In addition to these indicators, DWS may apply additional indicators of performance to local areas.

B. Performance levels. Performance levels are established through a negotiation process between DWS and local areas, in accordance with Section 20 CFR 210, as agreed to in local board grant agreements. In establishing performance expectations, local boards must, through the local planning process, consider the overall goals of the programs and how the WIOA-funded activities will lead to outcomes that contribute to these goals.

C. Performance monitoring. Through the grant agreements, local areas are directed to work with their service providers to monitor performance and report outcomes to DWS, in accordance with Section 20 CFR 677, Subpart C, as well as per their grant agreements. The local board grant agreements serve as a basis for monitoring the attainment of the performance outcomes of each local board. Refer to 11.2.19 NMAC, oversight and monitoring, for further information on monitoring requirements.

[11.2.8.17 NMAC - N, 7/1/2018]

HISTORY OF 11.2.8 NMAC:

History of Repealed Material:

11.2.8 NMAC, Workforce Investment Act (WIA) Individual Training Accounts (ITAs), filed 6-16-2000 - Repealed effective 12-31-2005.

11.2.8 NMAC, Workforce Investment Act (WIA) Individual Training Accounts (ITAs), filed 12-15-2005 - Repealed effective 8-15-2012.

11.2.13 NMAC, Workforce Investment Act (WIA) Participant Eligibility, filed 5-17-2001 - Repealed effective 7-1-2003.

11.2.13 NMAC, Workforce Investment Act (WIA) Participant Eligibility, filed 5-13-2003 - Repealed effective 8-15-2012.

11.2.13 NMAC, Workforce Investment Act (WIA) Participant Eligibility, filed 8-15-2012 - Repealed effective 7-1-2018.