

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION WIOA-NFJP
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ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 18-16

TO: STATE WORKFORCE ADMINISTRATORS
STATE WORKFORCE AGENCIES
STATE WORKFORCE LIAISONS
STATE AND LOCAL WORKFORCE BOARDS AND CHAIRS
AMERICAN JOB CENTERS
NATIONAL FARMWORKER JOBS PROGRAM GRANTEES
STATE MONITOR ADVOCATES

FROM: PORTIA WU /s/
Assistant Secretary

SUBJECT: Program Eligibility and Enrollment Guidance for the National Farmworker Jobs Program

1. **Purpose.** To provide guidance for eligibility of program participants for the National Farmworker Jobs Program (NFJP) authorized under Title I Section 167 Migrant and Seasonal Farmworker (MSFW) Programs of the Workforce Innovation and Opportunity Act (WIOA). This guidance rescinds and replaces Training and Employment Guidance Letter (TEGL) NO. 25-04 *Participant Eligibility Guidance* and TEGL NO. 25-04 Change 1.
2. **References.**
 - WIOA (Pub. L. 113-128), Title I;
 - WIA (Pub. L. 105-220), Title I;
 - *WIOA DOL-Only Final Rule* (20 CFR parts 603, 651 to 658, 675, and 679 to 688)
 - TEGL NO. 19-14 *Vision for the Workforce System and Initial Implementation of the Workforce Innovation and Opportunity Act*;
 - TEGL NO. 2-14 *Eligibility of Deferred Action for Childhood Arrivals Participants for Workforce Investment Act and Wagner-Peyser Act Programs*; and
 - TEGL NO. 11-11 Change 1 and Change 2 *Selective Service Registration Requirements for Employment and Training Administration Funded Programs*.
3. **Background and Program Overview.** NFJP provides career services, training services, housing assistance services, youth services, and related assistance services to low-income migrant and seasonal farmworkers (MSFWs), including MSFW youth, and their dependents. The purpose of the program is to counter the chronic unemployment and underemployment

RESCISSIONS TEGL 25-04 and TEGL 25-04 Change 1	EXPIRATION DATE Continuing
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experienced by farmworkers who depend primarily on jobs in agricultural labor performed across the country. NFJP grantees partner with American Job Centers (AJC) and State Monitor Advocates to support a comprehensive system that seamlessly provides integrated services that are accessible to farmworkers and their families. The Employment and Training Administration (ETA) will address NFJP services, performance, and partnerships in future guidance.

4. **Eligibility Requirements for NFJP Participants.** An individual receiving career services, training services, housing assistance services, youth services, and/or related assistance services through NFJP Funding must meet, on the date of application for enrollment, criterion A and criterion B below as defined in 20 CFR 685.110:

A. To receive NFJP services an individual must be either a(n):

- i. Eligible seasonal farmworker adult;
- ii. Eligible migrant farmworker adult;
- iii. Eligible MSFW youth; or
- iv. Dependent of a MSFW,

and,

B. A low-income individual who faces multiple barriers to economic self-sufficiency as defined in Section 6 below.

Note: Grantees may enroll a participant as either a MSFW adult or a MSFW youth participant as described in § 685.320, but not in both categories. See definitions in Section 6 below. Second, NFJP-funded permanent housing developed with NFJP funds must be promoted and made widely available to eligible MSFWs, but occupancy is not restricted to eligible MSFWs.

5. **Other Key Requirements:**

A. Male NFJP Participants: Male participants in any program or activity established under WIOA Title I or receiving any assistance or benefit under this title must not have violated section 3 of the Military Selective Service Act (50 U.S.C. App. 453) by not presenting and submitting to registration as required pursuant to such section (see WIOA Section 189(h)). TEGL 11-11, Change 1 and 2 provides Selective Service registration requirements for ETA programs funded through WIOA. TEGL 11-11 Change 1 and Change 2 implemented the requirements of WIA Section 189(h), and WIOA retains the same requirements. This guidance establishes that individuals who failed to register may still be eligible for NFJP services if they are able to provide, and the grantee determines, that there was not a knowing and willful failure to register according to the definitions provided in TEGL 11-11 Change 1 and Change 2.

B. Program participants may include individuals with employment authorization documents who have been granted relief under the Deferred Action for Childhood Arrivals (DACA).

NFJP grantees must administer the program in conformity with TEGL 2-14 *Eligibility of Deferred Action for Childhood Arrivals Participants for Workforce Investment Act and Wagner-Peyser Act Programs*

http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=7233. For information on prohibition on discrimination against certain non-citizens, see WIOA Section 188(a)(5).

6. **Definitions.** To help determine participant eligibility under section 4.A. i-iv of this TEGL, see the definitions below:

A. Eligible seasonal farmworker, as defined in WIOA Section 167(i)(3), means a low-income individual who for 12 consecutive months out of the 24 months prior to application for the program involved, has been primarily employed in agricultural or fish farming labor that is characterized by chronic unemployment or underemployment, and faces multiple barriers to economic self-sufficiency. Dependents of seasonal farmworkers are also eligible.

“Primarily employed in agricultural or fish farming labor” means an individual earns at least 50 percent of his/her total income from farmwork or is employed at least 50 percent of his/her total employment time in farmwork. The terms “chronic unemployment or underemployment” used in this definition refer to the nature of the agriculture or fish farming labor force as a whole and not whether an applicant is either chronically unemployed or underemployed. For the purposes of determining eligibility, grantees do not need to demonstrate that an individual is either chronically unemployed or underemployed.

Similarly, grantees are not required to document that an individual faces multiple barriers to economic self-sufficiency. (For additional information on individuals with multiple barriers to employment see WIOA Section 3(24).) To effectively serve all NFJP participants, grantees are encouraged to assess participants’ interests, strengths, and barriers to help inform their career planning approach. Career planning is a client-centered approach designed to develop comprehensive programs and to coordinate supportive services during program participation and after job placement described in WIOA Section 3(8).

B. Eligible migrant farmworker, as defined in WIOA Section 167(i)(2), means an eligible seasonal farmworker as defined in WIOA Section 167(i)(3) whose agricultural labor requires travel to a job site such that the farmworker is unable to return to a permanent place of residence within the same day. Dependents of migrant farmworkers are also eligible.

C. Eligible MSFW youth means an eligible MSFW aged 14-24 who is individually eligible or a dependent of an eligible MSFW. Grantees may enroll participants aged 18-24 as either a MSFW adult or a MSFW youth participant (described in § 685.110), but not in both categories.

D. Dependent of a MSFW is an individual who:

- (1) Was claimed as a dependent on the eligible MSFW's Federal income tax return for the previous year; or
- (2) Is the spouse of the eligible MSFW; or
- (3) If not claimed as a dependent for Federal income tax purposes, is able to establish:
 - (i) A relationship as the eligible MSFW's;
 - (A) Child, grandchild, great grandchild, including legally adopted children;
 - (B) Stepchild;
 - (C) Brother, sister, half-brother, half-sister, stepbrother, or stepsister;
 - (D) Parent, grandparent, or other direct ancestor but not foster parent;
 - (E) Foster child;
 - (F) Stepfather or stepmother;
 - (G) Uncle or aunt;
 - (H) Niece or nephew;
 - (I) Father-in-law, mother-in-law, son-in-law; or
 - (J) Daughter-in-law, brother-in-law, or sister-in-law; and
 - (ii) The receipt of over half of his/her total support from the eligible MSFW's family during the eligibility determination period.

Note: For the purpose of housing assistance, family means the eligible MSFW and all the individuals identified under the definition of dependent in this section who are living together in one physical residence (described in § 685.110)."

E. Low-Income Individual means an individual as defined in WIOA Section 3(36)(A) who:

- i. Receives, or in the past 6 months has received, or is a member of a family that is receiving or in the past 6 months has received, assistance through the supplemental nutrition assistance program (SNAP) established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.); the program of block grants to States for temporary assistance for needy families program (TANF) under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.); or the supplemental security income (SSI) program established under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.); or State or local income-based public assistance;
- ii. is in a family with total family income that does not exceed the higher of:
 - I. The poverty line; or
 - II. Seventy percent of the Lower Living Standard Income Level (see link to the current Lower Living Standard Income Level (LLSIL) at <https://www.doleta.gov/llsil/>);
- iii. Is a homeless individual (as defined in Section 41403(6) of the Violence Against Women Act of 1994 (42 U.S.C. 14043e-2(6)), or a homeless child or youth (as defined under Section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2));
- iv. Receives or is eligible to receive a free or reduced price lunch under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.);
- v. Is a foster child on behalf of whom State or local government payments are made; or

vi. Is an individual with a disability whose own income meets the income requirement of B above, but who is a member of a family whose income does not meet this requirement (WIOA Section 3(36)(A)).

F. Farmwork. NFJP participants must have performed labor for wages in occupations and industries within agricultural production and agricultural services for 12 consecutive months out of the 24 months prior to application for the program involved. Note that in some exceptional circumstances, grantees may shift the 24-month eligibility determination period so that it precedes a period of unavailability experienced by an individual, as described in Section 7 of this TEGL. In these circumstances, grantees should review the labor performed by such an individual within the modified 24-month eligibility determination period, rather than within the 24 months immediately preceding the individual's application to the program.

Farmwork means cultivation and tillage of the soil, dairying, production, cultivation, growing, and harvesting of any agricultural or horticultural commodities. This includes the raising of livestock, bees, fur-bearing animals, or poultry, farming of fish, and any practices (including any forestry or lumbering operations) performed by a farmer, or on a farm, as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market, or to carriers for transportation to market. It also includes the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state (See WIOA Final Rule <https://www.doleta.gov/wioa/Docs/wioa-regs-labor-final-rule.pdf>).

Although the North American Industry Classification System (NAICS) codes are the primary resource used to help define farmwork, ETA recommends that NFJP grantees draw upon multiple factors rather than refer only to the NAICS codes. For information on industry sectors, see NAICS codes available on the NFJP website at <https://www.doleta.gov/Farmworker/html/NFJP.cfm>.

7. Eligibility Determination Procedure.

A. Eligibility Determination Period (timing): The eligibility determination period means any consecutive 12-month period within the 24-month period immediately preceding the date of application for NFJP by the MSFW applicant.

- An applicant's eligibility determination shall be valid for 60 days from the date of initial application. After the initial 60-day period has elapsed, if the individual is not an enrolled participant, the grantee will update information to re-certify the applicant.
- When an applicant was unavailable for work in the period immediately preceding the date of application because he/she had been in the armed forces, institutionally confined by incarceration or other legal detainment, hospitalized or otherwise unavailable due to a documented disability, grantees may establish an eligibility

determination period during the 24 months immediately preceding the date of such unavailability, provided, however, that such period may not begin more than 48 months prior to the date of application.

B. NFJP grantees are required to have an eligibility determination system that enables the generation of a record supporting eligibility determinations and enrollment decisions, including program participant status, low-income status, etc. ETA will address source documentation for data validation requirements in future guidance.

8. **NFJP Enrollment.** To be a program participant, an individual must complete the following requirements: eligibility determination, career assessment, and receipt of at least 1 of the 5 program elements (i.e., career services, training services, housing assistance services, youth services, and/or certain related assistance services). These individuals will be considered program participants and will be included in either adult or youth performance calculations.

Individuals who are enrolled in certain related assistance activities that require significant involvement of grantee staff are also considered participants [20 CFR 685.400(b)]. Specifically, “certain related assistance” activities are those that require an eligibility determination and a career assessment, as described above, and are directly related to education, training, career, and/or employment outcomes. These activities may include, but are not limited to:

- School dropout prevention and recovery activities;
- Self-employment and related business or micro-enterprise development or education; and
- Occupational career and technical education.

An individual who receives only related assistance services that 1) do not require significant involvement of grantee staff time; and 2) do not require a career assessment by grantee staff of an individual’s skills, education, or career objectives (including all emergency assistance services) will be considered a “reportable individual,” as defined in 20 CFR 677.150(b). Such individuals are not included in performance calculations as program participants. For example, the Department does not consider pesticide and worker safety training (which neither requires a significant involvement of grantee staff time, nor career assessments) to be the kind of related assistance that requires the individual to be included in the performance calculations.

Emergency assistance, a form of short-term related assistance, may be provided to eligible MSFWs and their dependents as defined in § 685.110 to address these farmworker’s immediate needs. Emergency assistance may include, but is not limited to, the provision of necessary items like garments of clothing, food, and transportation vouchers. When an individual receives emergency assistance only (and no other NFJP services), an applicant’s self-certification is accepted as sufficient documentation of eligibility.

Under certain circumstances, NFJP grantees may provide emergency assistance to H-2A Temporary Agricultural Workers (H-2A workers) to address an immediate and short-term need. NFJP grantees are expected to leverage available alternative resources and coordinate

continuously with State Monitor Advocates, Farm Labor Specialists, and other community-based partners, whenever possible, to raise awareness with respect to any underlying issues preventing the H-2A workers from receiving similar benefits or assistance, as required by the agricultural employer's certified job order or work contract with the H-2A workers (see 20 CFR part 655 Subpart B, 20 CFR part 653, and 29 CFR part 501). The Department's Wage Hour Division (WHD) has developed a user-friendly H-2A Worker Rights Card for workers and H-2A Worker Rights Poster for employers, which summarizes the benefits, wages, and working conditions to be provided to H-2A and U.S. workers performing the same work for the employer. Electronic versions of the H-2A Worker Rights Card and Poster in English and Spanish can be found on the WHD's web site at https://www.dol.gov/whd/ag/ag_h-2a.htm.

In circumstances where an H-2A worker submits a complaint or reports a possible violation of any contractual H-2A labor standard, NFJP grantees should refer the H-2A worker to the appropriate office of the State Monitor Advocate (SMA) who can educate the H-2A worker regarding how to file a formal complaint with the State Workforce Agency (SWA) Employment Service Complaint System (Complaint System). The SMA or outreach workers (SWA staff) will explain the Complaint System to the H-2A worker. If the H-2A worker wishes to file a complaint, the SWA staff will take the complaint in writing and refer to the Department of Labor's Wage and Hour Division (WHD) since WHD is the agency that enforces the contractual obligations under the H-2A program, as described at 29 CFR part 501. If the H-2A worker decides not to file a complaint, the report of a suspected violation could turn into an apparent violation and may be handled as a complaint as described at 20 CFR 658.419.

9. **Action Requested.** NFJP Grantees should use this guidance when enrolling individuals for services to comply with portions of WIOA Title I, Section 167 and the WIOA Final Rules. NFJP grantees should actively work with their AJC and other workforce system partners in identifying services and programs that are tailored to the applicants' needs and career pathway interests. Individuals who are determined ineligible for NFJP should be connected to other AJC services or alternative programs for which they qualify.

10. **Inquiries.** All NFJP Grantees should submit inquiries to their respective Federal Project Officer.

11. **Attachment.** None.