

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION WIA/Planning/Section 166
	CORRESPONDENCE SYMBOL OWI / INAP
	DATE March 19, 2009

TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 16-08

TO: ALL WORKFORCE INVESTMENT ACT SECTION 166 INDIAN AND NATIVE AMERICAN GRANTEEES

FROM: DOUGLAS F. SMALL /s/
Deputy Assistant Secretary

SUBJECT: Guidance for Implementation of the Workforce Investment Act (WIA) Funding in the American Recovery and Reinvestment Act of 2009 as required by Subtitle D, Section 166, Native American Programs

1. **Purpose.** On March 9, 2009, the Employment and Training Administration (ETA) emailed Indian and Native American grantees a letter and Modification Addendum regarding the availability and use of funds under the American Recovery and Reinvestment Act of 2009 (the Recovery Act), and stated that specific guidance would be forthcoming. Accordingly, the purpose of this Training and Employment Guidance Letter (TEGL) is to provide further policy guidance and direction regarding the Recovery Act funding for activities authorized under the WIA, Subtitle D, Section 166, Native American Programs. Through this guidance, ETA is also providing specific instructions about the requirements for Indian and Native American grantees to modify the currently approved two year plan. More specifically, this guidance provides policy on:

- The use of WIA, Section 166 Supplemental Youth Service Program (SYSP) funds provided in the Recovery Act
- The submission of a modification to the grantees' current two SYSP plans, addressing how the additional funding will be utilized under the Recovery Act consistent with WIA subtitle D, Sec. 166 and the Recovery Act; and
- General program and financial reporting requirements under the Recovery Act

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2. **References.**

- Workforce Investment Act of 1998, as amended (29 U.S.C. 2801 et seq.)
- The American Recovery and Reinvestment Act of 2009 (Pub. Law 111-5)
- WIA regulation, 20 CFR part 668; and
- Priority of Service for Covered Persons: Final Rule 20 CFR part 1010, 73 Fed. Reg. 78132 (December 19, 2008)

3. **Background.** The Recovery Act, enacted by Congress and signed into law by President Obama on February 17, 2009, is intended to preserve and create jobs, promote the nation's economic recovery, and to assist those most impacted by the recession. The Indian and Native American Program (INA) program plays a pivotal role in helping Indian and Native American youth prepare for and find employment. The Recovery Act made available to ETA \$1.2 billion for training and employment services for WIA Youth Activities. To allocate Recovery Act funds to INA grantees, ETA will reserve 1.5% of Recovery Act funds appropriated for youth activities to make available \$17.82 million for the WIA Section 166, Indian and Native American Supplement Youth Service program. See Attachment A for individual grant allotments.

In order for the INA grant community to meet both the letter and the spirit of the law and fulfill its critical role in U.S. economic recovery, it must implement the Recovery Act expeditiously and effectively, with full transparency and accountability for the expenditure of funds. The implementation of the Recovery Act should yield not only increased services and training for Indian and Native American youth, but also invigorate and advance prosperity in these indigenous communities.

In general, the Recovery Act envisions a stronger workforce environment for youth, including Indian and Native Americans, in which they can easily transition between the labor market and further education and training in order to advance in their careers. Education and training should be closely aligned with jobs and employment opportunities available on or near reservations (or Oklahoma, Alaska Natives, and Native Hawaiians.) Every level of education and training should afford Indian and Native American youth the ability to advance in school or at work, with assessments and certifications articulated to the requirements of the next level of education and employment.

4. **General Policy Guidelines.** In utilizing the funding in the Recovery Act, the INA program grantees must ensure: 1) transparency and accountability in the use of Recovery Act funding; 2) timely expenditure of the funds and implementation of activities; and 3) that workforce information is used to guide strategic planning and service delivery.

The Recovery Act contains many provisions stressing transparency in the use of the funds provided in the Recovery Act. That is, the public will have access to how funding is being used and the outcomes of program activities. Updates regarding the accountability for Recovery Act funds will be posted on the Website www.recovery.gov. The modifications made to the INA program grants described in this guidance will be important sources of information to ensure the transparency and accountability of the workforce funds provided in the Recovery Act.

Another guiding principle is the timely spending of funding and implementation of activities contained in the Recovery Act. The Act is intended to stimulate the nation's economy and provide quick assistance to those impacted by the economic downturn. In turn, ETA is requiring INA grantees to move quickly and use the funding to provide youth access to the services they need to pursue education and employment. We strongly encourage grantees to use as much as possible of this funding during the summer of 2009. (See discussion under "Allowable Activities" below.)

ETA expects that INA grantees will fully utilize the Recovery Act funding to substantially increase the number of youth served and expand summer employment or training services. To that end, the Recovery Act funding is to be spent concurrently with existing WIA Section 166, SYSP funding.

Workforce information will be particularly critical as INA grantees seek to identify those businesses and sectors of the economy that are still in need of workers, even in the economic downturn, and those that will begin to grow as the economy recovers. Furthermore, the INA community should consider the value of working with State and local workforce investment areas to obtain information on how the Recovery Act is being implemented and utilize funding to assist the low-income, displaced and under-skilled, and disconnected youth population in their communities.

5. **WIA Section 166 Native American Programs.** As authorized by WIA section 127(b)(1)(C)(i)(I), to allocate Recovery Act funds to INA grantees, ETA has reserved 1.5% of the Recovery Act funds appropriated for youth activities to make available \$17.82 million for the WIA Section 166 INA SYSP. Funds are allocated based on the PY 08 formula. See Attachment A.

A. Allowable Activities:

Except as otherwise stated in the Recovery Act or this and other applicable TEGs, youth activities authorized under WIA Section 166 SYSP are allowable activities under the Recovery Act. Grantees should refer to 20 CFR Part 668, Subpart D - Supplemental Youth Services, for specific guidance regarding the proposed activities and requirements for operating this program. A significant change under the Recovery Act is that youth services are extended to individuals

up to and including age 24. The Recovery Act also states that the work readiness indicator described in WIA section 136(b)(2)(A)(ii)(I) is the only measure of performance used to assess the effectiveness of the summer youth programs provided with the Recovery Act funds. The Recovery Act funds may not be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool. A complete list of the Recovery Act Assurances can be found in Attachment B.

While the Recovery Act does not limit the use of the Recovery Act funds for only summer employment, the Congressional explanatory statement for the Recovery Act states that “the conferees are particularly interested in these funds being used to create summer employment opportunities for youth.” ETA strongly encourages grantees to use as much of these funds as possible to operate expanded summer youth employment opportunities during the summer of 2009, and provide as many youth as possible with summer employment opportunities and other work experiences while still ensuring that these summer employment opportunities and work experiences are high quality. For purposes of the Recovery Act funds, the period of “summer” will be from May 1 through September 30. “Summer employment” may include any set of allowable WIA Section 166 youth services that occur during the above referenced summer months as long as it includes a work experience component.

ETA is also particularly interested in and encourages INA grantees to develop work experiences and other activities that expose youth to opportunities in “green” educational and career pathways, as well as opportunities to work in registered apprenticeship programs. Additional guidance regarding supplemental youth services can be found at 20 CFR 668.450.

B. Suggested Strategies:

Under the Recovery Act, the Indian and Native American community plays a significant role in providing work experience and employment opportunities for Indian and Native American youth. ETA encourages INA grantees to consider these service delivery strategies as priority guidance for utilizing the Recovery Act funds:

- 1) Develop plans and strategies that target the use of WIA Section 166, SYSP Recovery Act funds on the services that most efficiently and effectively provide positive educational and employment outcomes for at-risk youth (e.g. out-of-school, high school dropouts, youth at-risk of dropping out of school, parenting teens, runaway and homeless youth, youth in-foster care or aging of foster care, youth with disabilities, and youth offenders.)

- 2) Incorporate culturally relevant training approaches, including mentorships, internships, placements at tribal colleges or at other training centers that develop academic, occupational, and literacy skills. In addition, INA SYSP grantees are encouraged to use on-the-job training as a mechanism for introducing youth job seekers to industries and jobs that employ “green” skills or technologies.
 - 3) ETA encourages INA program grantees to adhere to current workplace safety guidelines and applicable federal/state wage laws. For information and resources on safety and child labor laws, consult <http://www.youthrules.dol.gov/about.htm> and <http://www.osha.gov/teens>. Provisions for wages under the amendments to the Fair Labor Standards Act (FLSA) apply to all youth participants employed under WIA. Current law specifies a minimum wage of \$6.55 per hour effective July 24, 2008; and \$7.25 per hour effective July 24, 2009. Depending on the facts, FLSA regulations may apply only to the workplace portion, and not to the classroom portion, of summer employment. Any hours spent in classroom training as part of a summer employment opportunity may or may not fall under the FLSA. (If you have questions regarding whether an individual is an employee, or whether an employee’s time spent in training is compensable, please contact the Wage and Hour Division at 1-866-4-USWAGE, or at <http://www.dol.gov/esa/WHD>.) INA summer youth service programs may provide wages or stipends to youth in a classroom-based component of a summer employment opportunity. INA programs should have a policy guiding the payment of classroom-based stipends and wages.
6. **Priority of Service.** Since the Recovery Act expanded the age range for participants in youth programs to 24, grantees may encounter an increased volume of veterans in the SYSP youth program. Veterans age 21-24 have a particularly high incidence of unemployment immediately upon discharge. Grantees are required to provide priority of service for veterans and eligible spouses pursuant to 20 CFR Part 1010, the regulations implementing priority of service for veterans and eligible spouses, in Department of Labor job training programs under the Jobs for Veterans Act, published at 73 Fed. Reg. 78132 on December 19, 2008.
7. **Availability of Funds.** The Recovery Act funding for all WIA youth funds is considered Program Year (PY) 2008 formula funding, and therefore, must be expended by June 30, 2011. While the Recovery Act does not mandate the use of the funds solely for summer employment, grantees are strongly encouraged to utilize this funding during the summer of 2009.

8. **Monitoring.** Pursuant to WIA regulations 20 CFR 667.410, each recipient and its sub-recipient(s) of the Recovery Act funds must conduct regular oversight and monitoring of its activities in order to determine that expenditures have been made against the appropriate cost categories and within the cost limitations. Oversight and monitoring should determine whether or not there is compliance with programmatic, accountability, and transparency provisions of the Recovery Act and this TEGL, as well as the regular provisions of WIA, and its associated regulations and other applicable laws and regulations. The INA program office will provide technical assistance as necessary and appropriate. In the INA, SYSP plan modification amendment, the grantees must be able to demonstrate that there will be monitoring and oversight of the funds provided under the Recovery Act.
9. **Reporting.** Accountability guidelines provided by the Office of Management and Budget (OMB) for the Recovery Act emphasize data quality, streamlining data collection, and collection of information that shows measurable program outputs. As noted above, the Recovery Act states that a work readiness indicator must be used to assess the effectiveness of the summer youth programs. Final guidance on participant and performance reporting will be issued under the PY 2009 Program Guidance TEGL, which will be published within 30 days from the date of this announcement. Participants served during the PY 2009 youth summer program will be included in the Department of Labor's (DOL) report on Recovery Act activities.

ETA is separately developing reporting guidelines on how the Recovery Act funds will be monitored. To the extent that new information or reports are required for the Recovery Act activities, ETA will seek OMB clearance through the Paperwork Reduction Act process.

10. **Paperwork Reduction Act (PRA).** The public reporting burden for this collection of information is estimated to average approximately (16) hours per response including time for gathering and maintaining the data needed to complete the required disclosure.

This TEGL contains a new collection of information in the form of a grant application narrative specifically for the delivery of youth services and INA program grant management assurances required to receive a grant under the Recovery Act. According to the Paperwork Reduction Act of 1995 (Pub. L. 104-13), no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The Department is planning to submit an Information Collection Request (ICR) to OMB requesting a new OMB Control Number. The Department notes that a Federal agency cannot conduct or sponsor a collection of information unless it is approved by OMB under the PRA, and displays a currently valid OMB control number, and the public is not required to respond to a collection of information unless it displays a currently valid OMB control number. See 44 U.S.C. § 3507. Also, notwithstanding any other provisions of

law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. See 44 U.S.C. § 3512. The Department will notify grantees of OMB's decision upon review of the Department's ICR, including any changes that may result from this review process.

11. Action Requested. Grantees receiving WIA Section 166 INA summer youth funding under the Recovery Act are required to submit a modification to their current two year plan, which should describe the delivery of program services specific to Recovery Act funding. Grantees should address the following questions:

- How will the grantee ensure that the Recovery Act funds are tracked separately?
- What strategies will the grantee implement to provide employment and training opportunities to an increased number of youth participants year round and/or for the summer 2009 program?
- How will the grantees address the employment and training needs of those participants ages 18-24?
- Does the program currently have access to and use the SYSP Bear Tracks reporting system? If not, does the program have the capability to install the Bear Tracks reporting system?
- Describe how the grantee will implement the veteran priority of service requirement?
- How does the grantee intend to work with state or local WIA programs to leverage resources and access services made available by the Recovery Act funding?
- How does the grantee intend to meet the transparency requirements of the Recovery Act?
- How does the grantee intend to meet the other requirements listed under "Allowable Activities" (5A) and "Suggested Strategies" (5B) of this TEG?

Grantees should include their responses to these questions in the plan modification. Grantee plans are due no later than 30 days from the date of this announcement. Additionally, along with the plans, grantees must submit signed Recovery Act assurances, as contained in Attachment B.

The information can be submitted electronically to taylor.belinda@dol.gov. However, if you are unable to submit the required information electronically, it may be faxed to (202) 693-3817 or sent by overnight mail attention to the U.S. Department of Labor, Division of Adult Services, Indian and Native American Program, 200 Constitution Ave. NW, Room S-4209, Washington, DC 20210. ATTN: Belinda Taylor.

- 12. Inquiries.** If you have questions regarding this planning guidance, please contact your Federal Project Officer (FPO).

Midwest:

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- 13. Attachment.**

Attachment A: WIA Title I Sec. 166 Supplemental Youth Service
Recovery Act Allotments

Attachment B: American Recovery and Reinvestment Act of 2009
Assurances