

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	<b>CLASSIFICATION</b> WIOA / Indian and Native American Programs - Operating Guidance
	<b>CORRESPONDENCE SYMBOL</b> OWI/DINAP
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**ADVISORY:**        **TRAINING AND EMPLOYMENT GUIDANCE LETTER WIOA NO. 11-15 OPERATING GUIDANCE for the WORKFORCE INNOVATION AND OPPORTUNITY ACT (referred to as WIOA or the Opportunity Act)**

**TO:**                ALL WIOA SECTION 166 INDIAN AND NATIVE AMERICAN (INA) GRANTEES

**FROM:**            BYRON ZUIDEMA /s/ for PORTIA WU  
Assistant Secretary

**SUBJECT:**        Operational Guidance and Transition Planning for INA Grantees

- 1. Purpose.** To provide guidance and planning information to INA grantees on the activities associated with the implementation of Workforce Innovation and Opportunity Act (WIOA).

WIOA was signed into law on July 22, 2014, with the majority of the Act becoming effective on July 1, 2015. WIOA is designed to help job seekers access employment, education, training, and support services to succeed in the labor market and to match employers with the skilled workers they need to compete in the global economy. WIOA supersedes titles I and II of the Workforce Investment Act of 1998 (WIA), and amends the Wagner-Peyser Act and the Rehabilitation Act of 1973.

The U.S. Departments of Labor and Education published a set of proposed regulations for implementing WIOA through the posting of five Notice of Proposed Rulemaking (NPRMs) documents. These NPRMs were open for public comment until June 15, 2015, and several hundred comments were received by both Departments. The Federal agencies will review, analyze and consider the comments received. The Final WIOA rules will be issued in 2016.

In order to continue implementation prior to the final rule, a series of WIOA Operating Guidance documents are being issued in the form of Training and Employment Guidance Letters (TEGLs). These Operating Guidance documents on WIOA inform the workforce system on how to begin the important planning and organizational work necessary to comply with the WIOA statutory requirements. The Operating Guidance TEGLs provide a framework for program activities until the regulations are finalized. This TEGL is one in a series of WIOA Operating Guidance TEGLs.

- 2. References.** See Attachment I

- 3. Background.** While the enactment of WIOA includes substantial changes to the broader Workforce System, the INA employment and training program remains essentially the same under WIOA as it did under WIA. However, there are some important changes from WIA to WIOA, of which INA grantees must be aware. This TEGL identifies those changes and also provides

<b>RESCISSIONS</b> None	<b>EXPIRATION DATE</b> Continuing
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transition guidance from WIA to WIOA. A “WIA vs. WIOA” side-by-side chart, which provides a summary of the major changes in the statutory language from WIA to WIOA, has also been included in this TEGL (see Attachment II).

4. **Statutory and Regulatory References to the INA Program under WIOA.** The section number in the law that authorizes the INA employment and training program has not changed under WIOA and remains section 166, the same as it was under WIA. However, the proposed rules for the INA employment and training program under WIOA will be located under a new section number. The proposed WIOA regulations pertaining to the INA employment and training program will be located in 20 C.F.R. Part 684, and the proposed INA employment and training regulations can be found on pages 20892 - 20901 of the proposed rule, available at: <http://www.gpo.gov/fdsys/pkg/FR-2015-04-16/pdf/2015-05530.pdf>. The WIA regulations for the INA employment training program were located in 20 C.F.R. Part 668. The administrative requirements that apply to all WIOA grants will be located at Part 683, and the proposed administrative requirements can be found on pages 20874 - 20892 of the proposed regulations. As required one-stop partners of the state workforce systems, INA grantees should also be aware of the proposed WIOA regulations regarding one-stop partners, located in Part 678 (pages 20892 - 20901) in the proposed regulations issued jointly by Department of Labor and Education available at: <http://www.gpo.gov/fdsys/pkg/FR-2015-04-16/pdf/2015-05528.pdf>.
5. **New Uniform Guidance Regulations.** The Office of Management and Budget (OMB) streamlined the Federal government's guidance on Administrative Requirements, Cost Principles, and Audit Requirements for Federal awards, and issued *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards Final Rule* (Uniform Guidance). This new guidance applies to INA grantees. On December 19, 2014, the Department released TEGL No. 15-14 announcing that the Uniform Guidance will apply to all funding actions and new Federal awards made on or after December 26, 2014, (see TEGL Number 15-14 located at: [http://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=5740](http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=5740)).

Therefore, all INA grantees received new grant terms and conditions from the Employment and Training Administration applying the Uniform Guidance to Program Year (PY) 2015 funds. The new Uniform Guidance Regulations replace the previous OMB circulars (i.e., A-87, A-110, A-122, etc.) and essentially combine all the circulars into a “unified” circular.

For new grants and allotments or incremental funding for an existing award received after December 26, 2014, these new terms supersede the previous Notice of Award conditions applying 2 CFR 220, 225, or 230; 29 CFR Parts 95 and 97; and the audit requirements at 2 CFR Parts 96 and 99. The Employment and Training Administration encourages INA grantees to follow the new Uniform Guidance for all funds, including funds received prior to December 26, 2014, which may require grantees to request a grant modification. Grantees should review TEGL Number 15-14 for specific instructions on requesting this type of modification.

6. **Transition of WIA Carry-In Funds to WIOA.** WIOA provisions for ETA programs took effect July 1, 2015. Any unobligated PY 2013 and PY 2014 funds remaining at the end of PY 2014 may be carried into PY 2015. These unobligated PY 2013 and PY 2014 funds assumed the requirements of WIOA effective July 1, 2015, and may only support WIOA activities, and must conform to WIOA reporting requirements beginning July 1, 2015, with the exception of funds used to pay for WIA services for transitioning WIA participants who were enrolled in the INA program prior to July 1, 2015, and did not exit until after June 30, 2015, or who are currently active. The

period of performance for PY 2013 and 2014 funds remains intact (i.e., the expiration of PY 2013 funds remains September 30, 2015, and the expiration of the PY 2014 funds remains June 30, 2016). PY 2012 fund availability expired June 30, 2015; therefore, PY 2012 funds should have been fully expended by June 30, 2015.

PY 2015 Supplemental Youth Services Program (SYSP) Funding: The SYSP year began April 1, 2015, however PY 2015 SYSP funds were not awarded and available to grantees April 1. Grantees can use “carry-in” funds (if available) to pay for allowable activities under the SYSP. Grantees may also use other non-Federal/un-restricted resources to operate a SYSP and reimburse such resource for allowable costs (retroactive to April 1) when PY 2015 funds became available in a grantees’ subaccount.

7. **Transition of WIA Participants to WIOA.** All WIA participants who did not exit the grantee’s program prior to July 1, 2015, must be grandfathered into WIOA, even if the participant was not otherwise eligible for WIOA. Grantees must not complete an eligibility re-determination for participants already determined eligible and enrolled under WIA. Furthermore, these participants must be allowed to complete the WIA services specified in their individual service strategy and/or individual employment plan, even if the services are no longer allowable under WIOA.

Participants enrolled after July 1, 2015, must follow all WIOA requirements and may only be placed in those activities and services allowable under WIOA. For the INA program, eligibility, allowable activities, and allowable services under WIOA are very similar to WIA. The Department will issue additional guidance once final rules/regulations have been issued for WIOA, and any differences in eligibility, allowable activities, and allowable services will be explained at that time.

8. **Participant Eligibility under WIOA.**

- A. **INA Comprehensive Service Program (Adult):** Participant eligibility requirements for the INA Adult program under WIOA have not changed. A person is eligible to receive services under the INA program if that person is:
- i. An Indian, as determined by a policy of the INA program grantee. The grantee’s definition must at least include anyone who is a member of a federally-recognized tribe; or
  - ii. An Alaska Native, as defined in WIOA sec. 166(b)(1); or
  - iii. A Native Hawaiian, as defined in WIOA sec. 166(b)(3).

The person also must be any one of the following:

- i. Unemployed; or
- ii. Underemployed- an individual who is working part-time but desires full-time employment, or who is working in employment not commensurate with the individual’s demonstrated level of educational and/or skill achievement; or
- iii. A low-income individual, as defined in sec. 3(36) of WIOA; or
- iv. The recipient of a bona fide lay-off notice which has taken effect in the last six months, or will take effect in the following six-month period, who is unlikely to return to a previous industry or occupation, and who is in need of retraining for either employment with another employer or for job retention with the current employer; or
- v. An individual who is employed, but is determined by the grantee to be in need of employment and training services to obtain or retain employment that allows for self-sufficiency.

If applicable, male applicants must also register or be registered for the Selective Service. Once the proposed regulation is finalized, we may issue additional guidance on participant eligibility.

- B. INA SYSP: There are three major changes for eligibility under the INA SYSP compared to WIA.
- i. Under WIOA, the age range for eligibility for the SYSP is between the ages of 14 and 24. Under WIA, the age range was limited to 14 and 21.
  - ii. WIA required youth individuals who did not meet the low-income requirement to have additional barriers in order to be eligible under the “five percent exception rule” (see WIA regulations at 668.430(b) (1) – (8)). WIOA does not require individuals to have additional barriers in order to be served under the “five percent exception rule”.
  - iii. Section 129(a)(2) of WIOA includes a special rule that allows for the term “low-income” to include youth living in a high poverty area. Accordingly, INA grantees may consider all youth living in a high poverty area as low-income.

## 9. Allowable Participant Activities under WIOA.

- A. Allowable Activities for the INA Adult Program: WIOA authorizes “career services” for adults and dislocated workers, rather than “core” and “intensive” services, as authorized by WIA. There are three types of “career services”: basic career services, individualized career services, and follow-up services. These services can be provided in any order; there is no sequence requirement for these services. Career services under this approach provide grantees with flexibility to target services to the needs of the customer. WIOA also authorizes training, as under WIA. While it is important that INA grantees know the change in service categories from WIA to WIOA, these changes do not change the actual services grantees can provide. The activities and services that were allowable under WIA have not changed under WIOA. INA grantees can provide the same services under WIOA as they did under WIA. However, there are restrictions on allowable activities under WIOA, just as there were under WIA, and grantees should be aware of the following restrictions:
1. Training services must be directly linked to an in-demand industry sector or occupation in the service area, or in another area to which a participant receiving such services is willing to relocate (WIOA sec. 134(c)(3)(A)(i)(II)).
  2. INA grantees must provide On-the-Job training (OJT) services consistent with the definition provided in WIOA sec. 3(44) and other limitations in WIOA.
- B. Allowable Activities for the INA SYSP: WIOA emphasizes services to disconnected youth to prepare them for successful employment by requiring State operated youth programs to use a minimum of 75 percent of youth formula funds to serve “out-of-school” youth (OSY). While the INA program collects data on the number of OSY and ISY (in-school youth) served, it does not require that 75 percent of INA youth funding be used to serve OSY. INA grantees should be familiar with the definitions of OSY and ISY, which are located at WIOA Sections 129(a)(1)(B) and (C). The Department recognizes that given the small funding amounts that INA grantees receive for the SYSP, most INA grantees are limited to operating summer employment programs for ISY. However, the Department encourages the few grantees that receive significant amounts of youth funding (\$500,000 or more) to provide year-round youth programs and incorporate educational and training components in their SYSP.

**10. On-the-Job Training Activity.** INA grantees must provide On-the-Job training (OJT) services consistent with the definition provided in WIOA sec. 3(44) and other limitations in WIOA. Individuals in OJT must:

1. Be compensated at the same rates, including periodic increases, as trainees or employees who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills (WIOA sec. 181(a)(1)); and
2. Be provided benefits and working conditions at the same level and to the same extent as other trainees or employees working a similar length of time and doing the same type of work. (WIOA sec. 181(b)(5)).

In addition, OJT contracts under this title must not be entered into with employers who have:

1. Received payments under previous contracts under WIOA or the Workforce Investment Act of 1998, and who have exhibited a pattern of failing to provide OJT 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 (WIOA sec. 194(4)); or
2. Have exhibited a pattern of violating the two requirements in the previous list.

**11. Grantee Use of Funds.** INA program grantees must not use Section 166, WIOA funds to: 1) encourage the relocation of a business, as described in WIOA sec. 181(d); 2) displace currently employed individuals, impair existing contracts for services, or in any way affect union organizing. INA program grantees must only use WIOA funds for activities that are in addition to those that would otherwise be available to the INA population in the area in the absence of such funds (WIOA sec. 194(2)). Also, sectarian activities involving WIOA financial assistance or participants are limited in accordance with the provisions of sec. 188(a)(3) of WIOA.

**12. Performance Accountability Requirements.** The Performance Accountability provisions of section 116 of WIOA become effective on July 1, 2016. Until that time, INA grantees shall continue to report using their current performance indicators, including the WIA common performance measures. Please note that INA grantees will be subject to the performance indicators specified in WIOA section 116. Further guidance on definitions and specific reporting requirements will be forthcoming from the Department in the next several months.

**13. State Workforce Development Board Membership.** Section 111(b)(1) of WIOA specified membership on the State Workforce Development Boards (SWDBs), which includes the Governor, two members of each chamber of the State legislature, and a representative appointed by the Governor. WIA did not require the Governor to appoint a section 166 grantee to the SWDB and this has not changed under WIOA (see Sec. 101 of WIOA).

**14. Local Workforce Development Board Membership.** Section 117 of WIA specified that membership on the Local Workforce Investment Boards (LWIBs) shall include each of the one-stop partners. Therefore, as a required one-stop partner under WIA, INA grantees were included as members of the LWIBs. However, under WIOA, the language regarding the requirement that Local Workforce Development Boards (LWDB) include each of the one-stop partners has been removed (see section 107 of WIOA).

- 15. Requirement of INA Grantees as One-Stop Partners.** WIA required INA grantees to be partners in the one-stop system, and this requirement continues under WIOA. However, unlike WIA, WIOA added language at sec. 121(h)(2)(D)(iv) that states: “*One-Stop partners for Native American programs established under section 166 shall not be subject to the provisions of this subsection (other than this clause) or subsection (i).*” Section 121(h)(2)(D)(iv) also elaborates that “*the method for determining the appropriate portion of funds to be provided by such partners to pay for the costs of infrastructure of a one-stop center shall be determined as part of the development of the memorandum of understanding under subsection (c) for the one-stop center and shall be stated in the memorandum.*” Accordingly, INA grantees will not be subject to the funding of the one-stop infrastructure unless otherwise agreed upon in the Memorandum of Understanding (MOU). ETA will publish subsequent guidance on the requirements for one-stop partners.
- 16. MOU Between INA Grantees and LWDBs.** WIA required INA grantees to have an MOU with the LWIBs located in their service area, and this requirement continues for LWDBs under WIOA (see section 121(a)(1)). MOU’s will be required as part of the four-year planning strategy in which the Department anticipates the first INA plan under WIOA will be for PY 2018 – PY 2022. The Department recognizes that there may be instances in which an INA grantee and a LWDB reach an impasse. In such instances, the LWDB and/or the INA grantee can ask for assistance from the State in negotiating the MOU and infrastructure cost funding, and also can consult with the Department to resolve any impasse. If an MOU still cannot be reached and the INA grantee fails to enter into a MOU with the LWDB, the INA grantee must describe in its four-year plan the good-faith efforts made in order to negotiate an MOU with the LWDB.
- 17. Competition and Four-Year Plans under WIOA.** Section 166 of WIOA requires INA grants to be awarded through a competitive process but also requires INA grantees to submit a four-year plan (WIOA sec. 166(c) and 166(e)). Under the WIA regulations, the competition was separate from the plan. However, WIOA propose regulations to streamline the grant award process to ease the administrative burden inherent in WIA regulations. The NPRM proposes to remove the designation process and no longer require a Notice of Intent. Moreover, the NPRM proposes to incorporate the four-year plan into the competitive grant award process. These proposed changes should result in less of an administrative burden on both applicants and the Department. Additionally, WIA had a two-year grant cycle for grantees under sec. 166; WIOA has established a four-year grant cycle (WIOA sec. 166(c)). Consequently, all references to the grant cycle or plan in the proposed WIOA regulations refer to a four-year cycle or four-year plan. The Department anticipates that the first four-year competition and plan for INA under WIOA will be for the four-year period, PY 2018 – PY 2022.
- 18. Paperwork Reduction Act.** *The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq., provides that no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The information collections mentioned in this TEGL have been approved under control number 1205-0422. Individual forms contain additional important PRA information.*
- 19. Action Requested.** Grantees should be aware of the changes from WIA to WIOA specified in this TEGL. Specifically, grantees should be aware of the new Uniform Administrative requirements in Item 5 above and ensure that they comply with these requirements. Also, grantees should be aware and follow the new youth eligibility requirements specified in Item 8B above. Finally, grantees

should look for changes in practices that may occur as a result of new guidance or the finalization of the WIOA regulations.

**20. Inquiries.** Please direct questions to your designated Federal Project Officer below:

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**21. Attachments.**

- WIOA Operating Guidance TEGL References
- Side-By-Side Comparison of Key Statutory Changes