

NFJP ELIGIBILITY GUIDANCE

Participant Eligibility for the National Farmworker Jobs Program Under WIA Section 167 and the MSFW Youth Program under 20 CFR 669.600

To qualify as eligible for receipt of services from the National Farmworker Jobs Program (NFJP) under WIA, Section 167, and 20 CFR Part 669, other than self-service, informational activities, and eligibility determination services, an individual must be, on the date of application for enrollment, an “eligible farmworker” or a “dependent” of an eligible farmworker. In addition, male applicants must not have violated Section 3 of the Military Selective Service Act by not presenting and submitting to registration as required. *[WIA section 189(h)]*
[Farmworker Bulletin No. 97-16 governs].

The WIA statute also requires that participation in programs and activities receiving WIA funds “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.” *[WIA section 188(a)(5)]*

To qualify as eligible for participation in the MSFW Youth program (20 CFR 669, Subpart E), youth participants must be age 14 to 21 on the day of their enrollment and also meet the NFJP eligibility requirements.

I. Definitions

- “Eligible farmworker” is a person who, during the 12-month eligibility determination period, is a migrant farmworker or seasonal farmworker and whose family is disadvantaged.
- “Migrant farmworker” is a seasonal farmworker 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 (WIA Sec.167(h)(3)).
- “Seasonal farmworker” is a farmworker who, during the 12-month eligibility determination period, has been primarily employed in agricultural labor that is characterized by chronic unemployment or underemployment (WIA Sec.167(h)(4)).
- “Primarily employed in agricultural labor” means the farmworker depended on agricultural labor performed within the United States and/or Puerto Rico for his or her support during the 12-month eligibility determination period, which condition is demonstrated by working at least 25 days in farmwork; **or**

by earning at least \$800 in farmwork; **and** by earning at least 50 percent of his/her total income from farmwork; **or** by being employed at least 50 percent of his/her total employment time in farmwork.

- “Chronic unemployment” means that during the 12-month eligibility period the farmworker experienced or faced extended periods as an “unemployed individual” as defined by WIA.
- “Underemployment” means that during the 12-month eligibility period the farmworker experienced or faced extended periods of (or the prospects of) temporary, seasonal, or part-time employment associated with agricultural labor when he/she did not receive a year-round salary.
- “Unemployed individual” means an individual who is without a job and who wants to work and is available for work (WIA Sec.101(47)).
- “Day” means any calendar day.
- “Disadvantaged” means a person whose family income during the eligibility determination period does not exceed the higher of either the HHS poverty line or 70 percent of the Lower Living Standard Income Level (LLSIL) that is in effect on the date of application. Families receiving public assistance are considered to be disadvantaged. Foster children who are wards of a state are considered to be disadvantaged.
- “Eligibility determination period” is any consecutive 12-month period within the 24-month period immediately preceding the date of application for enrollment in the NFJP by the applicant (WIA Sec.167(h),20 CFR 669.110).

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 physical or mental disability, the grantee 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.

When relied on to qualify an applicant as eligible, such conditions must be substantiated by the applicant through documentary evidence satisfactory to the grantee.

- “Farmwork” means agricultural labor performed for wages in agricultural production and agricultural services as provided under the North American Industry Classification System (NAICS) subsections: 111—Crop Production; subsection 112--Animal Production (excluding the specific industries listed in the attached document *Farmwork That Does Not Qualify For Eligibility Purposes*); and subsection 115--Support Activities for Agriculture and Forestry (excluding the specific industries listed in the attached document *Farmwork That Does Not Qualify For Eligibility Purposes*).
- “Dependent” means an individual who was claimed as a dependent on the qualifying farmworker’s federal income tax return for the previous year, or is the spouse of the qualifying farmworker, or, if not claimed as a dependent for federal income tax purposes, is able to establish their relationship as the farmworker’s:
 - child, grandchild, great grandchild, including legally adopted children
 - stepchild
 - brother, sister, half brother, half sister, stepbrother, or stepsister
 - parent, grandparent, or other direct ancestor but not foster parent
 - foster child
 - stepfather or stepmother
 - uncle or aunt
 - niece or nephew
 - father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law

To be considered a dependent, an individual specified in the list above must also have received over half of his/her total support from the eligible farmworker’s family during the eligibility determination period. (20 CFR 669.110)

Family income includes gross wages and salaries (before deductions); net self employment income (gross receipts minus operating expenses); and other monetary income received from net rental income, Old Age and Survivors Insurance, Social Security retirement benefits, pensions, alimony, and periodic income from insurance policy annuities. Family income includes the income of all wage earners, except when its inclusion would be unjust due to unstable conditions of the family unit. Income from all other sources is excluded, including in-kind or bartered goods received, except in cases where those goods are taxed as income.

II. Application, Attestation, and Verification Provisions:

- Self-Certification by Applicants

Applicants must sign a statement certifying that the information provided to the grantee, for purposes of determining an applicant's eligibility to receive services, is true and accurate to the best of his/her knowledge. The statement should include language advising the applicant that intentionally providing false information, in order to be determined eligible, is grounds for immediate termination. (The definitions at 20 CFR 669.110 provide that "self-certification" means a farmworker's signed attestation that the information he/she submits to demonstrate eligibility for the NFJP is true and accurate.")

Self-certifications of age, family size, family income and farmworker's work history that are accepted from Related Assistance only applicants are not subject to systematic verification.

- Staff Determination

Grantee staff/representatives who interview applicants for the purpose of determining eligibility must make these determinations based on all the available information. Those employees should sign a statement of eligibility determination on every completed application. Absent such a certification, the grantee does not have a documented record of the applicant's eligibility.

- Shelf-Life of an Eligibility Determination

An applicant's eligibility determination shall be valid for 60 days from the date of initial application. Updated information should not normally be requested to re-certify and re-determine eligibility during the 60-day period.

- Internal Controls and Verification

As part of their system of internal controls, grantees are expected to obtain source documentation that verifies the information provided by applicants covering such key eligibility elements as age, work history and earnings from agricultural labor, family size, family income, work authorization, and compliance with the Selective Service requirement for male applicants.

Grantees are required to establish procedures for verifying eligibility information on a scheduled basis. Some grantees use post-enrollment sampling while others require 100% verification prior to enrollment or

maintain a similar system of internal control.

The definition of “Emergency Assistance” in 20 CFR 669.110 provides that persons who apply for and are enrolled for receipt of Emergency Assistance **only**, under Related Assistance Services, should be enrolled based on their self-certification statement. The grantee must verify their work authorization status and Selective Service registration, where applicable.

ADDENDUM I

QUESTIONS AND ANSWERS:

Q: At what point does an applicant become eligible?

A: An applicant is eligible when the interviewing staff member makes a determination based on the information and documentation provided by the applicant. The determination must be signed and dated by the staff member.

Q: Does a farmworker compromise his/her status as a chronically unemployed farmworker when he/she voluntarily abandons farmwork jobs or opportunities to attend to a family priority such as returning home in time to enroll his/her children at the beginning of the school session?

A: No, unless the period is of such length that it affects the farmworker’s ability to qualify as a seasonal farmworker under WIA Section 167.

Q: Are students eligible for the NFJP?

A: Yes, students may be found eligible for the NFJP in two ways. First, a student may be found eligible if, during the 12-month eligibility period, the student was a *dependent of an eligible farmworker*. Second, a student may *establish eligibility independently* if the student was either (a) employed full-time during the 12-month eligibility period in seasonal agricultural labor, or (b) unemployed during the 12-month eligibility period but was available for and seeking full-time work. To establish eligibility independently the student must also meet the minimum time and income tests for working in seasonal agricultural labor (i.e., employment in agricultural work characterized by chronic unemployment and underemployment and be a member of an economically disadvantaged family).

Documenting well a student’s eligibility is important because, generally, an independent full-time student would not qualify because he/she is primarily engaged in his/her educational endeavors. Such individuals are not primarily employed in agricultural labor as defined for purposes of eligibility, unless

they are available for, and seeking full-time work in seasonal agricultural labor.

Q: Christmas trees and maple syrup have been moved from forestry to cropproduction in the NAICS. Under NAICS, will DSFP exclude these industries from qualifying farmwork?

A: No.

Q: May farmwork performed outside the United States be used as farmwork to qualify an applicant under NFJP?

A: No. The NFJP and the MSFW Youth Program provide services for domestic farmworkers who face conditions that historically constitute part of the Nation's rural employment problems. In this NFJP Eligibility Guidance, the term "primarily employed in agricultural labor" means labor performed within the United States and/or Puerto Rico. Furthermore, qualifying farmwork is limited to that performed in the crop production and animal production farm operations described by the North American Industrial Classification System (NAICS), and qualifying farmwork and earned income are subject to verification.

Q: Under the SIC codes; (prior to NAICS) all crop production was qualifying farmwork. Will this change?

A: There is no change.

Q: What constitutes a day worked in farmwork?

A: Any amount of work time in eligible farmwork for which the farmworker received compensation.

Q: Why was the minimum amount of money earned from farmwork increased from \$400?

A: The threshold of income derived from farmwork had remained unadjusted at \$400 for several decades. It was increased under WIA to \$800 to reposition the threshold closer to its original relation with other economic factors.

Q: Since the Lower Level Living Standard (LLSIL) and the Poverty Line are revised annually, how are grantees expected to apply these requirements to the 12-month eligibility period?

A: Grantees must apply the standards that are in effect as of the date of application.

- Q:** How is family size to be used to determine eligibility? For example, if the family size was 7 and two children turned 18 and moved out to live on their own (e.g., enlisted in the army) one month into the 12-month determination period, would the qualifying family size be 7, or would it be 5?
- A:** Grantees should use the family size that exists at the time the eligibility determination is made.
- Q:** If an applicant was unavailable for work due to a mental disability, but was not hospitalized, how may grantees' document the incapacitation for work?
- A:** Grantees should verify the incapacitation with a third party, such as with a professional in the mental health field.
- Q:** Must an otherwise eligible farmworker meet work status and military requirements in order for one of his/her dependents to qualify?
- A:** No. The dependent of an otherwise eligible farmworker must satisfy these criteria in order to enroll, but not the farmworker.
- Q:** What is required of grantees regarding applicant eligibility determinations for the purpose of enrolling individuals into the NFJP (for receipt of intensive services, training services or related assistance services)?
- A:** Grantee staff must make a determination of eligibility that is based on the factual information provided by the applicant. The applicant authenticates the information by signing the statement used by the grantee.
- Q:** Under self-certification, may an applicant sign a statement declaring his/her eligibility?
- A:** No. The provision for self-certification provides relief from requirements to obtain independent verification of the eligibility information submitted by the applicants for emergency services only under Related Assistance Services. Under self-certification, only work authorization and Selective Service compliance need to be authenticated by verifying documentary evidence.
- Q:** Are any and all certifications considered valid?
- A:** No. Persons may only certify to the facts on which they have direct personal knowledge. For example, the certifications of family income, family size, and a parent's work history, must be made by the parent(s). A dependent's statements about total family income and parent's (including head of household's) work history cannot be accepted as authoritative. However, when an applicant who is a dependent supplies corroborating documentary evidence, such as a prior year's federal or state income tax return, the

required information would be inherently evident on the copy of the signed tax return.

Q: What are the consequences to a participant should auditors or the Department of Labor determine the participant is ineligible?

A: An ineligible participant must be terminated. Unless there is evidence of deliberate misrepresentation by the applicant with the intention to defraud the program, the grantee is the responsible party. The grantee is responsible for maintaining an outreach, assessment and eligibility determination system that is effective at reaching, identifying and documenting client eligibility.

Q: Does the qualifying farmwork apply only within the eligible 01, 02 and 07 Standard Industrial Classifications (SIC) industries?

A: No. Eligible farmwork qualifies without regard to the official industrial classification of the employer.

Q: Do grantees need to obtain parental consent to provide services to minors?

A: Written consent is not required unless there is a state law requiring a signed statement of consent. In other cases, consent is implicit in the submission of information by the family that is necessary for determining whether the minor applicant's family is disadvantaged.

Q: Are foster children of farmworkers eligible?

A: Foster children who are wards of the state are considered disadvantaged. A foster child of an eligible farmworker is therefore eligible for the NFJP.

Q: The examples of "other monetary income" do not recognize in-kind or bartered goods received, such as the value of food and housing supplied by growers. Is it intended that we omit the monetary value of goods received in lieu of payment by cash or by check?

A: Yes, unless the farmworker is taxed for those in-kind goods.

Q: Are H-2A workers included among the "other immigrants authorized by the Attorney General to work in the United States" and hence, potentially eligible to receive NFJP services?

A: No, because H-2A workers are authorized under "non-immigrant" status Visas. H-2A farmworkers may be eligible for Related Assistance services that are appropriate for them. The provision of other services is inconsistent with the authorization of an H-2A Visa.

Q: May the time individual family members are working in agriculture be added together as well as the income from their agricultural labor to qualify the family as a farmworker family unit, when the totals for the family unit exceed the qualifying minimums for earned agricultural income and time worked in agriculture?

A: No. There is no provision to support the concept of a family farmworker unit. In WIA, paragraph (h)(2) of section 167 provides that “eligible migrant and seasonal farmworkers means *individuals*...”(Emphasis added.)

Q: What are examples of excluded sources of income?

A: Some examples are:

- 1) Non-cash income such as food stamps, or compensation received in the form of food or housing;
- 2) Rental Value of owner-occupied properties;
- 3) Public assistance payments;
- 4) All payments received pursuant to the Social Security Act that are not retirement payments;
- 5) Federal, State or local unemployment benefits;
- 6) Payments made to participants in employment and training programs;
- 7) One-time unearned income such as, but not limited to;
 - i) payments received for a limited fixed term under income maintenance programs and supplemental (private) unemployment benefits plans;
 - ii) one-time or fixed-term scholarship and fellowship grants;
 - iii) accident, health, and casualty insurance proceeds;
 - v) disability and death payments, including fixed term (but not lifetime) life insurance annuities and death benefits;
 - v) one-time awards and gifts;
 - vi) inheritance, including fixed term annuities; and
 - vii) fixed-term workers compensation awards;
- 8) Pay or allowances received by any veteran while he/she was serving on active duty in the Armed Forces;
- 9) Educational assistance and compensation payments to veterans and other eligible persons under Chapter 11, 13, 31, 34, 35, and 36 of Title 38, United States Code;
- 10) Payments received under the Trade Act of 1974, as amended;
- 11) Black Lung payments received under the Benefits Reform Act of 1977, Pub. L. 95-239, 30 USC 901; and
- 12) Child support payments (except foster child payments).

Q: Are farmworkers who are working in qualifying farmwork but in a grower-owned cooperative (off the farm premises) eligible for NFJP services if they meet all the other eligibility criteria?

A: Yes, MSFWs working in an eligible agricultural production and services code

(found under subsections 111,112 and 115 of the NAICS) for a cooperative representing a consortium of growers are eligible for NFJP services.

Many growers have joined into cooperatives to prepare their crops for market. These are not processing facilities where the original products are changed through canning or freezing, but places where products are graded, sorted, and/or packaged for fresh distribution. Often these facilities have the capacity to store product until shipping. Typically these cooperatives are established because it is not cost effective for one grower to establish such a facility on his own. The growers, by organizing with others who need the same services, achieve cost efficiencies that make it feasible for all.

- Q:** How can a grantee accurately report on the employment retention and earnings gains of a participant placed by the grantee in unsubsidized employment and subsequently activated by the National Guard or military reserves? This would make it difficult to verify the earnings because the participant is no longer available for follow-up. For example, a participant in the National Guard is activated and deployed overseas during their follow-up period. Since the employer must keep the job open and hire them back upon their return, the participant is, technically, still an employee of the placement employer. However, the participant will not receive wages from the employer during this time, but will receive wages from the military yet the grantee may not be able to get information on those wages from the military.
- A:** This participant should be recorded as having entered employment (a termination category of "1"), and he/she should receive a code of "1" for having worked during the placement follow-up period (since either he/she worked for an employer or for the U.S. government). Therefore, it counts as both a placement and as having retained employment. It also would count as currently employed at follow-up since the participant is currently working for the government. The wages/earnings may not be verifiable since the participant is not available for follow-up. To calculate the earnings, the grantee may try a couple of alternatives. For example, if the participant worked for the employer long enough (i.e., a few months) before being activated, the grantee could get earnings from the employer; assuming these will likely exceed their prior earnings, the participant is recorded as a positive earnings gain (albeit underestimated, since their earnings from the National Guard work would not be included). If they worked for the employer only a short time before being activated, this approach may penalize the grantee because their prior earnings may exceed their follow-up earnings from only the employer portion of their follow-up work. As an alternative, the grantee may try to identify earnings for the National Guard so that these can be added to those from the employer. One strategy might be to find the absolute base wage offered to the National Guard (this should be available from the National Guard office, or even on-line), and calculate how much the participant must have earned (as a minimum National Guard wage) since activation. This

would represent a conservative estimate, since the individual may make more than this minimum, but would provide the grantee with some earnings. These earnings could be added to those from the employer to provide total earnings in the six months since placement. Please note that this alternative must be flagged on the report as an estimate, so that the report can be certified.

Example: An individual worked for an employer for eight weeks, then was activated, and in those eight weeks earned \$4,000 (or \$500 a week). The remaining 18 weeks of the follow-up period they were active in the National Guard. Minimum pay for the National Guard is \$16,000 per year (assumed). Thus, for 18 weeks, a participant in the National Guard must make a minimum of \$5,538 (calculated by dividing \$16,000 by 52 weeks to get a weekly rate, and multiplying that by 18 for the number of weeks). This participant's earnings since placement would then be reported as \$9,538, or the total of their eight weeks working for the employer, and the 18 working for the National Guard. The limitation is that the grantee would be imputing earnings for the National Guard portion, but by using the absolute minimum an individual can make in that service, the estimate should be a conservative one.

Q: How can a grantee accurately report on the status of a participant who is in a training activity and is activated by the National Guard or military reserves?

A: A participant in a training activity who is activated by the National Guard or military reserves should be reported as an exiter under "Other Reasons for Exit." The participant's performance outcome is excluded from the performance measures (per Training and Employment Guidance Letter 14-00, Change 1, issued November 19, 2001).