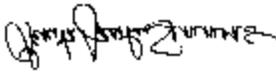


<b>U. S. Department of Labor</b> Employment and Training Administration Washington, D.C. 20210	<b>CLASSIFICATION</b> WtW
	<b>CORRESPONDENCE SYMBOL</b> OAS
	<b>DATE</b> September 7, 2000

**TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 4-00**

TO : ALL STATE WELFARE-TO-WORK CONTACTS  
 ALL STATE WORKFORCE LIAISONS

FROM : LENITA JACOBS-SIMMONS   
 Deputy Assistant Secretary

SUBJECT : Guidance on Welfare-to-Work Formula Grant Eligibility, Participant Reclassification, the Welfare-to-Work/Workforce Investment Act Interface, and the 70 Percent Minimum Expenditure Requirement and 15 Percent Administrative Cost Limitation under the Welfare-to-Work Program

1. **Purpose.** To provide clarifying information and guidance to Welfare-to-Work (WtW) grantees about 1) eligibility determination for formula grants for the period July 1 to September 30, 2000; 2) participant reclassification from the 30 percent eligibility category to the 70 percent eligibility category; 3) the WtW and Workforce Investment Act (WIA) interface; and 4) the proper calculation of the 70 percent minimum expenditure requirement for WtW funds.

2. **Authorities and References.**

- ? Title IV-A and Title IV-D of the Social Security Act (SSA)
- ? Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104-193)
- ? Balanced Budget Act of 1997 (Pub. L. 105-33) amending Title IV-A of the SSA
- ? 20 CFR Part 645, WtW Interim Final Rule (published at 62 Fed. Reg. 61588 (Nov. 18, 1997))
- ? Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Pub.L. 105-277)

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? Title VIII of H.R. 3424, enacted as part of the Consolidated Appropriations Act for FY 2000 (Pub. L. 106-113), which contains the Welfare to Work and Child Support Amendments of 1999 ("the 1999 Amendments")

? Workforce Investment Act (WIA) of 1998 (Pub. L. 105-220)

? 20 CFR Part 652 and Parts 660 through 671, WIA Interim Final Rule (published at 64 Fed. Reg. 18662 (April 15, 1999)) also WIA Final Rule published August 11, 2000

3. **Background.** The eligibility, allowable activities, and reporting modifications contained in the 1999 Amendments have fundamentally impacted the operation of WtW formula and competitive grants. The staggered effective dates for the new allowable activities and the revised eligibility criteria for WtW participants under the 1999 Amendments resulted in a need for guidance on eligibility determination and enrollment issues for WtW formula grantees for the period July 1 to September 30, 2000. There is also a need for guidance on when a WtW grantee is permitted to reclassify individuals from the 30 percent eligibility category to the 70 percent eligibility category. Questions and answers on these issues have been posted on the WtW online Questions and Answers system (<http://wtw.doleta.gov/qsanda.htm>). This TEGL conveys them as policy.

Similarly, the passage of WIA, and the nationwide implementation of WIA as of July 1, 2000, have created a need for guidance addressing the expected interface between the WtW Program and other WIA program partners. The attached questions and answers addressing these issues were first posted on the WtW online Questions and Answers system; their inclusion in this TEGL conveys them as official DOL policy.

Lastly, there has been some confusion about the WtW statutory and regulatory requirement that at least 70 percent of the total WtW funds allotted or awarded to an operating entity be spent upon individuals enrolled under the 70 percent eligibility provision. This TEGL reiterates that the 70 percent minimum expenditure requirement applies to a WtW operating entity's total allotment or award, not to a WtW operating entity's actual expenditures. This TEGL also restates that the 15 percent administrative cost limitation is similarly based on the operating entity's total allotment or award.

4. **Eligibility Determination Guidance for Formula Grants for the Period July 1 to September 30, 2000.** Section 801(e) of the 1999 Amendments contains effective dates for the new eligibility criteria and the new allowable activity, vocational educational training and job training, that are different for competitive grantees and formula grantees. For competitive grantees, the expanded eligibility criteria were effective on January 1, 2000.

The provision allowing pre-employment vocational educational training and job training was effective for competitive grantees on November 29, 1999, the enactment date for the 1999 Amendments. Provisions relating to the eligibility of participants for WtW formula grants are effective on July 1, 2000, except that expenditures from allotments to the States must not be made before October 1, 2000, for individuals who would not have been eligible under the criteria in effect before the changes made by the 1999 Amendments.

Provisions authorizing pre-placement vocational educational training and job training for WtW formula grants are effective on July 1, 2000, except that expenditures from allotments to the States must not be made for this activity before October 1, 2000.

For formula grants, State and local areas may expend matching funds beginning July 1, 2000 for the newly eligible participants and the newly authorized services. Also, State and local areas may incur unpaid obligations within the normal course of business, beginning July 1, 2000, providing that the timing of those transactions ensures that drawdown of federal WtW formula funds to liquidate the obligations will not occur until October 1.

Five Questions and Answers (No. E28 through No. E32) have been posted online at <http://wtw.doleta.gov/q&a/eligibility.htm> under "Eligibility Questions." These Questions and Answers provide guidance on which individuals are eligible as of July 1, 2000, and clarify the time frame when Federal formula funds may be expended towards serving such individuals. Also, a new Question & Answer No. AA43 has been posted under "Allowable Activities" which describes the restriction on the expenditure of formula-allotted funds for the limited vocational educational training and job training activities. The described Questions and Answers are included as Attachments 1 and 2 of this TEGL and they are incorporated by reference as part of this policy guidance.

**5. Participant Reclassification from the 30 Percent Portion of the WtW Program to the 70 Percent Portion.** At least 70 percent of the WtW funds allotted to or awarded to an operating entity must be spent to benefit individuals meeting certain eligibility criteria described in 20 CFR 645.212. Operating entities may spend up to 30 percent of the WtW funds allotted or awarded on individuals meeting certain other eligibility criteria described in 20 CFR 645.213.

True to the intent of the 1999 Amendments, overall eligibility criteria for the WtW program has been simplified and new categories of eligible individuals have been added. Most notable is the elimination of the barriers individuals must meet to be enrolled in the 70 percent portion of the program.

It is now sufficient that Temporary Assistance for Needy Families (TANF) recipients simply either 1) have received assistance under the State TANF program for at least 30 months (whether or not consecutive); or 2) within twelve (12) months will become ineligible for benefits due to a Federal or State-imposed time limit; or 3) no longer receive TANF benefits due to the imposition of Federal or State-imposed time limits.

The criteria for noncustodial parents have also changed. It is expected that all new enrollments of noncustodial parents will be in the 70 percent portion. Those who are currently enrolled under the 30 percent portion may be re-classified and enrolled under the 70 percent portion if they meet the new eligibility criteria for noncustodial parents.

Before passage of the 1999 Amendments, we provided guidance to operating entities on reclassifying individuals from the 30 percent eligibility portion to the 70 percent eligibility portion. This earlier guidance concerned individuals whose circumstances changed, such as attaining the 30 months on TANF needed to meet the 70 percent criterion, and individuals who may have been misclassified when enrolled. Question and Answer No. E27 provided guidance on transferring such participants from one portion to the other as well as the relevant reporting instructions.

We revised Question and Answer No. E27 to add new scenarios posed by the 1999 Amendments as discussed above. Basically, in certain circumstances, enrolled individuals may be transferred from the 30 percent portion to the 70 percent portion. The operating entity does not have to re-determine an individual's eligibility after the effective date of the 1999 Amendments, but does need to document in the participant's eligibility file the reason for the transfer and the information needed to support the reclassification. The

revised Question and Answer No. E27 contains the accompanying reporting instructions for each scenario and is included in this TEGL as Attachment 3, which is incorporated by reference as part of this policy guidance.

6. **WtW and WIA Interface.**

a) WtW/WIA Questions and Answers. We posted a series of Questions and Answers about the changes necessitated by the implementation of WIA on the WtW website at <http://wtw.doleta.gov/q&a/wiaquestions.htm> as a separate part of the WtW Questions and Answers. These Questions and Answers are found in Attachment 4. This same Question and Answer series is included as a subpart on WIA implementation found at <http://www.usworkforce.org/asp/qanda.asp>. They are transmitted as policy guidance for the WtW competitive and formula grant programs via this TEGL.

The major thrust of this series of questions concerns the transition from local service delivery areas to WIA local areas

and the transition from Private Industry Councils (PICs) to local workforce investment boards (local boards) in those local areas. For purposes of WtW, this change was foreseen and earlier amendments to the Social Security Act (contained in the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Pub.L. 105-277)) provide that the operating entities may be either PICs or the successor local boards. The WIA legislation calls for the WtW Program to be a partner in the One-Stop system under WIA. Memoranda of Understanding (MOUs) are required between the WtW operating entity and the local board to cover coordination, referrals and resource allocation pertaining to the operation of the One-Stop system in the local area.

We recognize that there may be a change in geographic configuration during the transition from service delivery areas under the Job Training Partnership Act (JTPA) to local areas under WIA. Question and Answer No. 5 and No. 6 in Attachment 4 discuss such a situation, and provides that States are required to redistribute WtW funds as a result of such changes. This redistribution should occur within 30 days of the implementation of WIA or as soon as possible. Further, States should submit a modification of the State WtW formula plan to reflect the redistribution of the original allocation(s). Such modifications should be submitted to appropriate Regional Office as soon as the redistribution has been made.

b) Novation Agreements. If the geographical areas are the same under JTPA and WIA, the PIC operating a formula WtW program should enter into a "novation agreement" with the local board which is the new administrative entity. State formula grantees should ensure that such agreements are entered into promptly in the local areas in accordance with the State's overall administrative responsibility for the WtW Program.

A copy of the instructions regarding Novation and Change-of-Name Agreements, published in the Federal Acquisition Regulation (48 CFR Ch. 1 Subpart 42.12, October 1, 1999 edition), is included as Attachment 5. These instructions should be used in accordance with guidance provided in WtW/WIA Question and Answer No. 4 and No. 5 on the transfer of responsibility for WtW grants from a PIC to a local board. For purposes of WtW, references to the Administrative Contracting Officer means the State administering entity.

c) Liability. The Balanced Budget Act of 1997 established the WtW Program. The statute named JTPA service delivery areas as grant recipients. PICs were identified as presumptive administering entities under the Formula Grant portion of the WtW Program. PICs were also allowed to compete under the competitive grant portion.

On July 1, 2000, JTPA expired. As discussed above, amendments to the WtW statute identified local boards established under WIA section 117 (including alternative entities meeting the requirements of section 117(i)) as eligible WtW operating entities. With the expiration of JTPA, PICs ceased to have legal authority to continue as the statutorily named board to oversee employment and training programs in a particular community.

With the implementation of WIA, the Chief Elected Official (CEO) determines who can now oversee the WtW formula or competitive grant programs previously overseen by the PIC:

In most cases, the CEO will choose the successor entity local board to oversee the WtW Program(s). This is accomplished through a novation agreement by which a PIC transfers WtW funds, assets and responsibilities to the new local board.

In some cases, the CEO may select the PIC (although no longer statutorily authorized as an employment and training oversight body with the expiration of JTPA) to continue to exist as an independent service provider, incorporated to operate programs and carry out other tasks. A CEO may wish to have such an incorporated, independent PIC serve as the WtW grant recipient.

In other cases, the CEO may wish to have some other organization as grant recipient to oversee the WtW Program(s) in his/her community. In such as case, the CEO will have to coordinate with the Governor to request a waiver under 20 CFR 645.400, to designate the other organization as an alternate local administering agency.

Any of these choices rest with the CEO. No matter which choice is made, the CEO is responsible and liable for WtW funds at the local level.

Because local boards are considered the successor entities to PICs, the CEO must consult with or otherwise notify the State level formula grantee of any local formula grant recipient designations other than local boards established under WIA section 117. The State level formula grantee has the responsibility of notifying the Department of Labor and requesting a State WtW formula grant modification when:

1. A local board chosen to oversee the WtW formula grant program at the local level has replaced the PIC, but now has a changed geographical jurisdiction from the service delivery area that PIC originally covered. In such instances, funds should be redistributed to the new local areas as soon as possible using the existing formula; or
2. A designation to oversee the WtW formula grant program at the local level is made to any organization other than the local board established under WIA Section 117.

In cases where the PIC is also a competitive grant recipient, the CEO has responsibility for notifying the Department of Labor when he/she chooses any entity other than the local board established under section 117 of WIA to oversee a competitive grant previously overseen by a PIC. (Note: it is possible the CEO may designate a different entity to oversee the competitive grant from the entity in the area that will oversee the formula grant).

**7. Application of the 70 Percent Minimum Expenditure Requirement and the 15 Percent Administrative Cost Limitation.** Direction provided in Question and Answer No. AF7 on the WtW online questions and answers system, and in the WtW Financial Management Technical Assistance Guide (TAG), created some ambiguity about the base against which 70 percent minimum expenditure requirement, discussed above, is to be calculated. If the grantee is unable to attain the 70 percent minimum expenditure requirement, there may be an

administrative finding. The Department of Labor has discretion about how such administrative findings may be resolved.

As stated in 20 CFR 645.211, the calculation of the 70 percent minimum expenditure requirement, as well as the related 30 percent maximum expenditure limitation, is applied against a base of the total amount of funds allotted or awarded to the WtW operating entity. The minimum expenditure requirement is not calculated against a base of the total amount of funds expended by the operating entity.

The WtW regulations, at 20 CFR 645.235(a), limit the expenditure of WtW funds for administrative purposes to no more than 15 percent of the grant award. Similar to the measurement of the 70 percent expenditure requirement, the base against which the 15 percent administrative cost limitation is applied is also the total amount of funds allotted or awarded to the WtW operating entity. Expenditures for administrative costs will not be measured against total expenditures.

Question and Answer No. AF8 correctly conveys what base the administrative costs limitation applies to. However, this Question and Answer was responding to whether the planned or the actual expenditures at the end of three years would be the basis for determining compliance. The answer notes: "The 15 percent administrative cost limitation applies to **actual expenditures, as compared with the total grant award amount**, as determined at the end of the three year period." (Emphasis added). This language did not imply that the limitation would be adjusted based upon the level of expenditures; it meant only that actual expenditures on administration would be the measuring rod instead of planned expenditures. To resolve any misunderstanding based on the highlighted language in the Question and Answer, this TEGL makes clear that the administrative cost limitation will be measured against the total amount of funds allotted or awarded. The regulations at 20 CFR 645.235 (a) and (b) affirm the statutory intent that administrative expenditures are limited to 15 percent maximum "of the grant award" for both formula and competitive grants.

Should the total amount of the grant award be reduced because of difficulty in meeting the match requirements, or due to voluntary or involuntary return of grant funds to the Department of Labor, the administrative cost expenditures and the 70% minimum expenditure requirement will be measured against the total amount of funds awarded or allotted,

adjusted by the reduced allotment, at the end of the program for compliance purposes.

The two Questions and Answers referred to in this section (AF7 and AF8) will be revised for clarity and will refer to this TEGL for further guidance.

8. **Action Required.** States should provide this guidance to appropriate staff.

9. **Inquiries.** Inquiries on this TEGL should be addressed to the appropriate Regional Office contact, which can be found at <http://wtw.doleta.gov/resources/regcon.htm>.

10. **Attachments.**

- 1 - Eligibility Questions & Answers E28 to E32;
- 2 - Allowable Activity Question and Answer A43;
- 3 - Reclassification Question & Answer E27;
- 4 - WIA Questions & Answers;
- 5 - Novation and Change-of-Name Agreements (FAR, 48 CFR Ch. 1 Subpart 42.12).