



**TECHNICAL ASSISTANCE - #TA-02-2021**

**TO:** Chief Local Elected Officials  
Workforce Development Board Chairs  
Workforce Development Board Staff  
WIOA Service Providers

**FROM:** Don Morris, Executive Director

**DATE:** March 4, 2021

**SUBJECT:** Title I Dislocated Worker Program Definition of Unlikely to Return to a Previous Industry or Occupation

**PURPOSE:** The Oklahoma Office of Workforce Development (OOWD), as the Governor's chosen WIOA administrative entity, provides this technical assistance to establish the criteria for "unlikely to return" to a previous industry or occupation for determining eligibility for the Workforce Innovation and Opportunity Act (WIOA) Dislocated Worker (DLW) program.

**MESSAGE:** The WIOA Final Rule at 20 CFR 680.130(b) allows states to create policies and procedures to define terms to determine an individual's eligibility as a dislocated worker, consistent with the definition at WIOA 3(15). Oklahoma has determined that the criteria for "Unlikely to Return" does not need to be based solely on economic conditions and job availability, but may also be defined in terms of family, personal, or financial circumstances that may affect the likelihood of an individual returning to his or her previous industry or occupation for employment.

**INSTRUCTIONS:** For the purposes of WIOA Dislocated Worker program eligibility, the previous industry or occupation relates directly to the job of dislocation, not the most recent job if it is considered stop-gap employment. Stop-gap employment is temporary work an individual accepts only because they have been laid off from the customary work for which their training, experience, or work history qualifies them. Typically stop-gap employment will pay less than the individual's layoff wage or will pay significantly less than the self-sufficiency standard.

An individual may be determined unlikely to return to their previous industry or occupation when one or more of the following criteria is met:

- The individual was laid off from a declining industry or occupation.



- The individual has a gap in employment that decreases his/her chances of returning to the same level of occupation or type of job. For example, jobs available to applicant would be temporary or substantially below applicant's accustomed skill, hour, or wage level. (Stop-Gap Employment, as defined above.)
- There are limited employment opportunities in the occupation or industry within the local area as evidenced by limited job orders in OKJobMatch at the time of eligibility determination.
- The individual has had a lack of job offers as documented by the local Service Provider staff or Unemployment Insurance staff, rejection letters from employers in the area, or other documentation of unsuccessful efforts to obtain employment in the prior industry or occupation.
- There is an excess number of workers with similar skill sets and experience that exceeds current demand for those skills in the local area.
- The individual has out-of-date, obsolete or inadequate skills.
- The individual has adequate skills, but lacks a credential required by most employers.
- A local plant or business closing or layoff has had a significant negative impact on the availability of jobs in the applicant's primary occupation and accustomed wage/hour/skill level.
- The negative economic conditions and sudden economic impact on industries or occupations experienced by the nation, such as a pandemic.
- Has a poor employment history indicating a reduced capacity or ability to be reemployed in the former industry or occupation. Documentation to verify poor employment history may include but is not limited to, proof of:
  - Employment that has been limited to one or more part-time (20 hours per week or less), or short-term (four months or less), jobs within the prior year. For example, they accepted employment for the income maintenance rather than a career path.
  - Unemployment insurance (UI) benefits and/or public assistance receipt in the prior year, with little or no employment in interim periods, indicating a poor work history; or
  - Terminated or laid-off due to mechanization/automation.
- Determination by staff that an individual's likelihood of returning to his/her previous industry or occupation is unlikely due to circumstances that cause significant barriers to employment, including individuals with the following barriers:
  - Ex-Offender
  - High school dropout
  - Homelessness
  - Cultural or language barrier
  - Older worker (Age 55+)
  - Basic skills deficient
  - Disability or medical condition
- Has exhausted UI Benefits and has been unable to find a job in their previous industry or occupation.
- Has a change in a family situation that requires higher income, includes a claim of financial hardship supported by documentation. (e.g., pay stubs, bank statements, family or business financial records, tax documents, public benefits award letters).

Documentation to verify "Unlikely to Return" includes, but is not limited to, the following:

- Labor market information showing that the applicant skills are not currently in demand.

- Labor market information showing that the applicant cannot meet the skills requirements for jobs currently available in their chosen occupation.
- Labor market information showing no jobs or only stop-gap jobs are available that match the applicant's skills.
- Job search logs that demonstrate no job offers received for a period of weeks prior to WIOA enrollment.
- Documentation of acquired physical limitations or injuries that make an individual unable to perform the same work as the job of dislocation.
- Documentation of enrollment in Reemployment Services (RESEA).
- Letters from applicable professional (e.g. psychiatrist, psychiatric social worker, chiropractor, etc.)
- Program staff determination based on sufficient information provided in a Self-Attestation/Customer Statement form.

### **Recently Separated Service Members and Military Spouses**

Recently Separated Service members who are within 48 months of “other than dishonorable” discharge or release from active military, naval, or air service automatically meet the dislocated worker requirement that the individual is unlikely to return to his or her previous industry or occupation.

A military spouse may be documented as "unlikely to return" if the spouse was required to leave employment as a result of a military member's transfer and one of the following circumstances prevents the spouse from returning to their previous industry or occupation:

- The spouse resumes employment with the same employer in a new location, but due to structural or organizational differences from the previous location, is required to take a job in at a lower level of seniority than their position at their previous location;
- A gap in employment may lessen their likelihood of returning to the same level of occupation or job; or
- The skills of the spouse may be obsolete or inadequate to meet the advancing competency needs of the current workforce and economy.

**EQUAL OPPORTUNITY AND NONDISCRIMINATION STATEMENT:** All Recipients, and Sub-recipients/Sub-grantees must comply with WIOA’s Equal Opportunity and Nondiscrimination provisions which prohibit discrimination on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, political affiliation or belief, or, for beneficiaries, applicants, and participants only, on the basis of citizenship status or participation in a WIOA Title-I financially assisted program or activity.

**ACTION REQUIRED:** This Oklahoma Workforce Development Issuance (OWDI) is to become a part of your permanent records and made available to appropriate staff and sub-recipients.

**INQUIRIES:** [If you have any questions about this issuance, please contact Staff in the Oklahoma Office of Workforce Development. Contact information can be found at http://www.oklahomaworks.gov/about/.](http://www.oklahomaworks.gov/about/)