

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION WIOA-NFJP
	CORRESPONDENCE SYMBOL OWI
	DATE July 12, 2021

**ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 18-16
CHANGE 1**

TO: STATE WORKFORCE ADMINISTRATORS
STATE WORKFORCE AGENCIES
STATE WORKFORCE LIAISONS
STATE AND LOCAL WORKFORCE BOARDS AND CHAIRS
AMERICAN JOB CENTERS
NATIONAL FARMWORKER JOBS PROGRAM GRANTEES
STATE MONITOR ADVOCATES

FROM: SUZAN G. LEVINE /s/
Principal Deputy Assistant Secretary

SUBJECT: Change 1 to Training and Employment Guidance Letter 18-16, Program Eligibility and Enrollment Guidance for the National Farmworker Jobs Program

1. **Purpose.** To clarify participant eligibility for the National Farmworker Jobs Program (NFJP) authorized under Section 167 of the Workforce Innovation and Opportunity Act (WIOA).
2. **Action Requested.** NFJP grantees should use this guidance when enrolling individuals for services to comply with portions of WIOA Title I Section 167 and the WIOA Final Rules. NFJP grantees must actively work with their American Job Centers (AJC) and other workforce system partners in identifying services and programs that are tailored to the applicants' needs and career pathway interests. Individuals who are determined ineligible for NFJP should be connected to other AJC services or alternative programs for which they qualify.
3. **Summary and Background.**
 - a. Summary – This Change 1 allows grantees to consider the nature of the agriculture industry, including farmworkers' seasonal employment patterns and irregular income when determining program eligibility. Additionally, Section 4.II, Other Key Requirements, is updated to reflect an order of a United States District Court regarding consideration of Deferred Action for Childhood Arrivals (DACA). This Change 1 also provides guidance regarding the updated low-income definition under the Consolidated Appropriations Act, 2021 (P.L. 116-260) for determining eligibility of participants to receive services through NFJP grants awarded with Program Year 2021 funds. Additionally, Section 4.I, Eligibility Requirements for NFJP Participants, updates the list

RESCISSIONS TEGL 18-16	EXPIRATION DATE Continuing
----------------------------------	--------------------------------------

of individuals that grantees can serve through NFJP to align with the approved Employment and Training Administration (ETA) Form 9172, Department of Labor (DOL)-Only Participant Individual Record Layout (PIRL). Furthermore, this guidance includes Attachment I: Included Income, Excluded Income, and Examples of Methods to Calculate Income Tool. All other information in TEGL 18-16 remains the same.

- b. Background – ETA published TEGL 18-16 in January 2017. In the years since, grantees have asked questions about how income should be calculated in determining participant eligibility. Further, courts have addressed questions on DACA, and the recent appropriations act adjusted program eligibility. This Change addresses all three of these occurrences.

4. **Program Details.**

I. **Eligibility Requirements for NFJP Participants.** Individuals receiving career services, training services, housing services, youth services, or related assistance services through NFJP funding must meet, on the date of application for enrollment, criterion A and criterion B below as defined in 20 CFR 685.110:

- A. To receive NFJP services an individual must be either a(n):
 - i. Eligible seasonal farmworker adult;
 - ii. Eligible migrant farmworker adult;
 - iii. Eligible migrant and seasonal farmworker (MSFW) Youth;
 - iv. Dependent Adult of an eligible MSFW; or
 - v. Dependent Youth of an eligible MSFW.

and,

- B. A low-income individual who faces multiple barriers to economic self-sufficiency as defined in Section IV.6 below.

Note: Grantees may enroll a participant as either MSFW adult or MSFW youth participant as described in 20 CFR 685.320, but not in both categories. See definitions in Section 4.III below. Additionally, NFJP-funded permanent housing developed with NFJP funds must be promoted and made widely available to eligible MSFWs, but occupancy is not restricted to eligible MSFWs.

II. **Other Key Requirements.** Male participants in NFJP must have presented and submitted to registration as required by Section 3 of the Military Selective Service Act (50 U.S.C. App. 453) (see WIOA Section 189(h)). TEGL 11-11, Change 1 and 2 provide Selective Service registration requirements for ETA programs authorized by WIOA. TEGL 11-11 Change 1 and Change 2 implemented the requirements of WIA Section 189(h), and WIOA retains the same requirements. This guidance establishes that individuals who failed to register may still be eligible for NFJP services if they are able to provide, and the grantee determines, that there was not a knowing and willful failure to register according to the definitions provided in TEGL 11-11 Change 1 and Change 2. Please visit the Selective Service website for more information about the registration requirements at www.SSS.gov. The Selective Service System also provides a quick

reference chart showing who must register located at <https://www.sss.gov/wp-content/uploads/2020/11/WhoMustRegisterChart.pdf>.

Please note that TEGL 2-14 specifies that an individual who has been granted relief under DACA and has employment authorization documents may be eligible to receive DOL-funded services (provided that the individual meets all other program eligibility requirements). NFJP grantees must continue to follow existing DOL policy in TEGL 2-14 and any updated guidance DOL releases on these individuals' eligibility for DOL-funded programs. For further information about eligibility for DACA, please review the U.S. Citizenship and Immigration Services (USCIS) website <https://www.uscis.gov/>. For information on prohibition on discrimination against certain non-citizens, see WIOA Section 188(a)(5).

III. **Definitions.** To help determine participant eligibility under section 4.I. of this TEGL, see the definitions below:

A. **Eligible seasonal farmworker**, as defined in WIOA Section 167(i)(3)(A), means a low-income individual who: i.) for 12 consecutive months out of the 24 months prior to application for the program involved, has been primarily employed in agricultural or fish farming labor that is characterized by chronic unemployment or underemployment, and ii.) faces multiple barriers to economic self-sufficiency. Please note that dependents of an eligible seasonal farmworker may receive NFJP services.

- The terms “primarily employed in agricultural or fish farming labor” used in the definition of eligible seasonal farmworker refer to an individual who earns at least 50 percent of their total income from farmwork or is employed at least 50 percent of their total employment time in farmwork.
- The terms “chronic unemployment or underemployment” used in the definition of eligible seasonal farmworker refer to the nature of the agriculture or fish farming labor force as a whole and not whether an applicant is either chronically unemployed or underemployed. For the purposes of determining eligibility, grantees do not need to demonstrate that an individual is either chronically unemployed or underemployed.

Similarly, grantees are not required to separately document that an individual faces multiple barriers to economic self-sufficiency in determining eligibility, since farmworker status and low-income status are both barriers to employment as defined in WIOA Section 3(24) (and thus, individuals who meet the farmworker and low-income criteria have multiple barriers by definition). To effectively serve all NFJP participants, grantees are encouraged to assess participants' experience, skills, and needs, leveraged with labor market information, to help inform their career planning approach. Additionally, although grantees are not required to separately document multiple barriers to determine eligibility, grantees should document any information about an applicant's barriers to economic self-sufficiency and use it to inform the development of a career plan for all participants as well as to improve the program's effectiveness. Career planning is a client-centered

approach designed to develop comprehensive programs and to coordinate supportive services during program participation and after job placement described in WIOA Section 3(8).

- B. Eligible migrant farmworker, as defined in WIOA Section 167(i)(2), means an eligible seasonal farmworker as defined in WIOA Section 167(i)(3) 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. Please note that dependents of eligible migrant farmworkers may receive NFJP services.

- C. Eligible MSFW youth means an eligible MSFW aged 14-24 who is individually eligible or a dependent of an eligible MSFW. Grantees may enroll participants aged 18-24 as either an MSFW adult or an MSFW youth participant (described in § 685.110), but not in both categories.

- D. Dependent of an MSFW as defined in 20 CFR 685.110 is an individual who:
 - 1) Was claimed as a dependent on the eligible MSFW's Federal income tax return for the previous year; or
 - 2) Is the spouse of the eligible MSFW; or
 - 3) If not claimed as a dependent for Federal income tax purposes, is able to establish:
 - (i) A relationship as the eligible MSFW's;
 - (A) Child, grandchild, great grandchild, including legally adopted children;
 - (B) Stepchild;
 - (C) Brother, sister, half-brother, half-sister, stepbrother, or stepsister;
 - (D) Parent, grandparent, or other direct ancestor but not foster parent;
 - (E) Foster child;
 - (F) Stepfather or stepmother;
 - (G) Uncle or aunt;
 - (H) Niece or nephew;
 - (I) Father-in-law, mother-in-law, son-in-law; or
 - (J) Daughter-in-law, brother-in-law, or sister-in-law; and
 - (ii) The receipt of over half of his/her total support from the eligible MSFW's family during the eligibility determination period.

Note: To receive services as dependents, the family members of an eligible MSFW must meet the definition of a dependent as described in 20 CFR 685.110.

For the purposes of determining eligibility for a “dependent of an eligible MSFW,” the dependent’s farmworker family member is required to demonstrate that they are an “eligible MSFW” by meeting both the eligibility requirements in criterion A (farmworker status) and criterion B (low-income status).

For the purpose of determining eligibility for individuals receiving housing services, the same eligibility requirements (farmworker status and low-income status) apply as

described in Section 4.I of this TEG. For an MSFW's family member who does not meet the definition of dependent at 20 CFR 685.110, grantees must serve them as an eligible MSFW individual or Other Individual, as appropriate.

- E. Low-Income Individual means an individual as defined in WIOA Section 3(36)(A), and incorporating the low-income provision of the NFJP appropriations language in Public Law 116-260, who:
- i. Receives, or in the past 6 months has received, or is a member of a family that is receiving or in the past 6 months has received, assistance through the supplemental nutrition assistance program (SNAP) established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.); the program of block grants to States for temporary assistance for needy families program (TANF) under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.); or the supplemental security income (SSI) program established under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.); or State or local income-based public assistance;
 - ii. Is in a family with total family income that does not exceed the higher of:
 1. 150 percent¹ of the poverty line² (Note: this provision of the low-income definition takes effect July 1, 2021 for determining eligibility of participants to receive services through NFJP grants awarded with Program Year 2021 funds. For determining eligibility of participants to receive services through Program Year 2020 funds or earlier, grantees must use 100 percent of the poverty line for this provision); or
 2. 70 percent of the Lower Living Standard Income Level (LLSIL);
 - iii. Is a homeless individual (as defined in Section 41403(6) of the Violence Against Women Act of 1994 (42 U.S.C. 14043e-2(6)), or a homeless child or youth (as defined under Section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)));
 - iv. Receives or is eligible to receive a free or reduced price lunch under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751

¹ Note, The Consolidated Appropriations Act, 2021 (P.L. 116-260) specified that, "...notwithstanding the definition of 'eligible seasonal farmworker' in section 167(i)(3)(A) of the WIOA relating to an individual being 'low-income', an individual is eligible for migrant and seasonal farmworker programs under section 167 of the WIOA under that definition if, in addition to meeting the requirements of clauses (i) and (ii) of section 167(i)(3)(A), such individual is a member of a family with a total family income equal to or less than 150 percent of the poverty line." Accordingly, ETA has revised the definition of "low-income individual" above to incorporate this provision. However, as noted above, this provision is tied to the appropriations language, and applies to grant activities funded under Program Year 2021 awards. ETA will subsequently revise its guidance regarding the definition of "low-income individual," as needed, if the same provision is not included in subsequent appropriations.

² Pursuant to WIOA Section 3(49), the term "poverty line" as defined by the Office of Management and Budget is revised annually in accordance with Section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)). The poverty line is updated annually based on most recent data available from the U.S. Census Bureau. The U.S. Department of Labor, Employment and Training Administration posts the poverty guidelines and the LLSIL online at <https://www.dol.gov/agencies/eta/llsil>. The U.S. Department of Health and Human Services also posts the poverty guidelines online at <https://aspe.hhs.gov/poverty-guidelines>.

et seq.);³ Is a foster child on behalf of whom State or local government payments are made; or

- v. Is an individual with a disability whose own income meets the income requirement of clause (ii), but who is a member of a family whose income does not meet this requirement (WIOA Section 3(36)(A)).

F. Family Income and Low-Income Eligibility. For the purposes of determining low-income status as defined under WIOA Section 3(36)(A) for an individual who resides with their family in a single residence, grantees should use “family” as defined in 20 CFR 675.300, which means two or more persons related by blood, marriage, or decree of a court, who are living in a single residence, and are included in one or more of the following categories:

- (1) A married couple and dependent children;
- (2) A parent or guardian and dependent children; or
- (3) A married couple.

Note: When determining family income, NFJP grantees have the discretion to develop policies, outline methodologies, and select a method to calculate family income. All methods must be aligned with the grantee organization’s policies and procedures, and grantees should consult with their Federal Project Officers in examining or changing their income determination methodologies. See Section IV of this TEGl and the NFJP Program Guide for additional information.

When calculating the family income, grantees may use the income of the married couple, single parent, or guardian as well as other regular contributions for support, if appropriate. To determine the family size, grantees may use the total number of individuals who fall under the definition of family as defined above. See the NFJP Program Guide to learn more about what counts as income and other regular contributions for support. The NFJP Program Guide is available at <https://farmworker.workforcegps.org/resources/2018/09/20/19/58/NFJP-Program-Guide>. Additionally, if an individual is not living in a single residence with other family members, that individual is not a member of a family for the purpose of income calculations to determine eligibility under NFJP.

Additionally, pursuant to 20 CFR 685.110, an MSFW youth may be individually eligible or may receive services as a dependent of an eligible MSFW. When an MSFW youth is individually eligible this means their own income and farmwork meets the low-income and farmwork requirements.

G. Farmwork means cultivation and tillage of the soil, dairying, production, cultivation, growing, and harvesting of any agricultural or horticultural commodities. This includes the raising of livestock, bees, fur-bearing animals, or

³ An individual who receives or is eligible to receive free or reduced price lunch. To qualify for free meals through the National School Lunch Program, the income of the child’s family must not exceed 130 percent of the poverty level. To qualify for reduced-price meals, the income of the child’s family must not exceed 185 percent of the poverty line. The eligibility guidelines are available at <https://www.fns.usda.gov/cn/income-eligibility-guidelines>.

poultry, farming of fish, and any practices (including any forestry or lumbering operations) performed by a farmer, or on a farm, as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market, or to carriers for transportation to market. It also includes the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state (See WIOA Final Rule <https://www.dol.gov/agencies/eta/wioa/regulations>).

Pursuant to WIOA Section 167(i)(3)(A), individuals must have performed labor for wages in occupations and industries within agricultural production and agricultural services for 12 consecutive months out of the 24 months prior to application for the program involved. Note that in some exceptional circumstances, grantees may shift the 24-month eligibility determination period so that it precedes a period of unavailability experienced by an individual, as described in Section IV of this TEGL. In these circumstances, grantees should review the labor performed by such an individual within the modified 24-month eligibility determination period, rather than within the 24 months immediately preceding the individual's application to the program.

Although the North American Industry Classification System (NAICS) codes are the primary resource used to help define farmwork, ETA recommends that NFJP grantees draw upon multiple factors rather than refer only to the NAICS codes. For information on industry sectors, see <https://www.bls.gov/bls/naics.htm>.

IV. Eligibility Determination Procedures.

- Eligibility Determination Period for Farmworker Status: To determine an applicant's farmworker status, grantees must use any consecutive 12-month period within the 24-month period immediately preceding the date of application for NFJP by the MSFW applicant.
 - An applicant's eligibility determination shall be valid for 60 days from the date of the initial application. After the initial 60-day period has elapsed, if the individual is not an enrolled participant, the grantee will update the information to re-certify the applicant.
 - 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 disability, grantees 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.

- Eligibility Determination for Low-income Status: To determine an applicant’s low-income status, grantees must calculate income at the time of application.
 - Methods for Calculating Income. MSFWs experience earnings fluctuations throughout the year due to the nature of working in the agriculture industry. Determining whether an individual meets the low-income requirement by gathering source documentation for the past 12 months may be challenging and may distort an individual’s financial circumstance at the time of application. NFJP grantees have the discretion to develop policies, outline methodologies, and select a method that annualizes an individual’s income in a way that reflects the financial circumstances of an individual at the time of application. Grantees should document any changes in wages and salaries, and document the reason they chose a specific method to annualize an individual’s income. All methods must be aligned with the grantee organization’s policies and procedures. See NFJP Program Guide for additional information.

V. **NFJP Enrollment.** To be a program participant, an individual must complete the following requirements: eligibility determination, career assessment, and receipt of at least 1 of the 5 program elements (i.e., career services, training services, housing assistance services, youth services, and/or certain related assistance services). These individuals will be considered program participants and will be included in either adult or youth performance calculations.

Individuals who are enrolled in certain related assistance activities that require significant involvement of grantee staff are also considered participants (see 20 CFR 685.400(b)). Specifically, “certain related assistance” activities are those that require an eligibility determination and a career assessment, as described above, and are directly related to education, training, career, and/or employment outcomes. These activities may include, but are not limited to:

- Solutions to increase graduation rates;
- Remedial and adult-basic education;
- Self-employment and related business or micro-enterprise development or education; and
- Occupational career and technical education.

An individual who receives only related assistance services that 1) do not require significant involvement of grantee staff time; and 2) do not require a career assessment by grantee staff of an individual’s skills, education, or career objectives (including all emergency assistance services) will be considered a “reportable individual,” as defined in 20 CFR 677.150(b). Such individuals are not included in performance calculations as program participants. For example, the Department does not consider pesticide and worker safety training (which neither requires significant involvement of grantee staff time nor career assessments) to be the kind of related assistance that requires the individual to be included in the performance calculations.

Emergency assistance, a form of short-term related assistance, may be provided to eligible MSFWs and their dependents as defined in 20 CFR 685.110 to address these farmworker's immediate needs. Emergency assistance may include but is not limited to, the provision of necessary items like garments of clothing, food, and transportation vouchers. When an individual receives emergency assistance only (and no other NFJP services), an applicant's self-attestation is acceptable as sufficient documentation of eligibility.

Under certain circumstances, NFJP grantees may provide emergency assistance to H-2A Temporary Agricultural Workers (H-2A workers) to address an immediate and short-term need. NFJP grantees are expected to leverage available alternative resources and coordinate continuously with State Monitor Advocates, Farm Labor Specialists, and other community-based partners, whenever possible, to raise awareness with respect to any underlying issues preventing the H-2A workers from receiving similar benefits or assistance, as required by the agricultural employer's certified job order or work contract with the H-2A workers (see 20 CFR part 655 Subpart B, 20 CFR part 653, and 29 CFR part 501). The Department's Wage Hour Division (WHD) has developed a user-friendly H-2A Worker Rights Card for workers and H-2A Worker Rights Poster for employers, which summarizes the benefits, wages, and working conditions to be provided to H-2A and U.S. workers performing the same work for the employer. Electronic versions of the H-2A Worker Rights Card and Poster in English and Spanish can be found on the WHD's web site at <https://www.dol.gov/agencies/whd/agriculture/h2a>.

In circumstances where an H-2A worker submits a complaint or reports a possible violation of any contractual H-2A labor standard, NFJP grantees should refer the H-2A worker to the appropriate office of the State Monitor Advocate (SMA) who can educate the H-2A worker regarding how to file a formal complaint with the State Workforce Agency (SWA) Employment Service Complaint System (Complaint System). See TEGL 8-17 for additional guidance at https://wdr.doleta.gov/directives/corr_doc.cfm?docn=6290. The SMA or outreach workers (SWA staff) will explain the Complaint System to the H-2A worker. If the H-2A worker wishes to file a complaint, the SWA staff will take the complaint in writing and refer to WHD, the agency that enforces the contractual obligations under the H-2A program, as described at 29 CFR part 501. If the H-2A worker decides not to file a complaint, the report of a suspected violation could turn into an apparent violation and may be handled as a complaint as described at 20 CFR 658.419.

- VI. Data Validation and Performance Reporting Requirements. NFJP grantees are required to have an eligibility determination system that enables the generation of a record supporting eligibility determinations and enrollment decisions, including program participant status, low-income status, etc. To learn about data validation requirements, NFJP grantees can review guidance in TEGL 23-19 at https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=9155. See Attachment II of TEGL 23-19 Source Documentation for Core/Non-Core Programs DOL-only Data Element Validation. The table displays the PIRL data element numbers, data element

names, definitions/instructions, program specific requirement and source documentation needed to perform data element validation on each data element.

Additionally, NFJP grantees can review guidance on performance reporting requirements in TEGL 14-18 at https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=7611. Note, although redetermination is not required under NFJP, participants may experience an unexpected interruption that leads to disenrollment. In such circumstances, grantees may use PIRL data element #923, Other Reasons for Exit, to exclude a participant from performance calculations. Note: Code 6 may be used when an individual who was determined to be eligible, is later determined not to have met eligibility criteria. Similar to other performance reporting data elements, grantees are required to maintain documentation when using PIRL data element #923. Additional ETA performance reporting updates are available at <https://www.dol.gov/agencies/eta/performance/updates>.

5. **Inquiries.** All NFJP Grantees should submit inquiries to their respective Federal Project Officer.
6. **References.**
 - WIOA (Pub. L. 113-128), Title I;
 - WIA (Pub. L. 105-220), Title I;
 - WIOA DOL-Only Final Rule (20 CFR parts 603, 651 to 658, 675, and 679 to 688);
 - TEGL NO. 23-19 *Guidance for Validating Required Performance Data Submitted by Grant Recipients of U.S. Department of Labor (DOL) Workforce Programs*;
 - TEGL NO. 14-18 *Aligning Performance Accountability Reporting, Definitions, and Policies Across Workforce Employment and Training Programs Administered by the U.S. Department of Labor (DOL)*;
 - TEGL NO. 8-17 *Guidance on the Requirement for a Memorandum of Understanding (MOU) Between State Monitor Advocates (SMA) and National Farmworker Jobs Program (NFJP) Grantees*;
 - TEGL NO. 2-14 *Eligibility of Deferred Action for Childhood Arrivals Participants for Workforce Investment Act and Wagner-Peyser Act Programs*; and
 - TEGL NO. 11-11 Change 1 and Change 2 *Selective Service Registration Requirements for Employment and Training Administration Funded Programs*.
7. **Attachment(s).**
 - Attachment I: Included Income, Excluded Income, and Examples of Methods to Calculate Income Tool