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YOUTH  
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COALITION

# **NEW WIOA YOUTH GUIDANCE: WHAT YOU NEED TO KNOW**

NEW TEGL COVERS ELIGIBILITY, PROGRAM DESIGN,  
PROCUREMENT, AND PROGRAM ELEMENTS

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## SUMMARY

On March 2, the U.S. Department of Labor’s Employment and Training Administration issued [Training and Employment Guidance Letter No. 16-21](#), its third “TEGL” providing guidance designed to assist states and local areas in implementing the WIOA Title I Youth Formula Program. The new TEGL responds to requests for clarification from the field on several areas in the Final Rule, and offers new interpretations on several key points.

This NYEC brief provides an overview of new TEGL, with an emphasis on areas of greatest potential impact. The TEGL addresses eligibility, procurement of youth services, program design, and program elements. The highlights of the TEGL include:

- Added clarification about in-school vs. out-of-school status for youth in different circumstances, such as taking non-credit-bearing postsecondary classes or accessing dropout reengagement centers;
- Responding to questions about expenditures on youth before program enrollment;
- More detailed explanations of assessment requirements for initial assessment and during program participation; and
- A reference to states’ possible role in developing policies to guide how local boards choose to competitively procure youth services.

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## ELIGIBILITY (PP. 2-7)

**Non-Credit-Bearing Postsecondary Classes.** NYEC and other youth advocates argued that young adults who were enrolled in non-credit-bearing postsecondary coursework should still be considered eligible for out-of-school youth (OSY) services. The TEGL affirms this position: “If the youth is only enrolled in non-credit-bearing postsecondary classes, they would not be considered attending postsecondary school and, therefore, an OSY.” (third full paragraph on p. 2)

**High School Equivalency and Dropout Prevention Programs.** Many NYEC members manage or support dropout re-engagement programming, including in partnership with public schools. The TEGL adds a new wrinkle to eligibility determination for these kinds of efforts: if the K-12 school system funds the program – the TEGL does not specify what level of funding is required to meet this criterion – and if the K-12 school system internally classifies a young person as attending school, then that young person must now be considered an in-school youth for WIOA purposes. Specifically, the TEGL states: “Youth attending high school equivalency (HSE) programs, including those considered to be dropout re-engagement programs, funded by the public K-12 school system that are classified by the school system as still enrolled in school are considered ISY.” (first full paragraph on p.3)

**Self-Attestation.** NYEC and other advocates had urged DOL to allow self-attestation with appropriate validation/verification. The TEGL does not address the issue, but states that self-attestation will be addressed in data validation guidance, which is expected later this year. (fourth full paragraph, p.3)

**Using Free or Reduced Lunch Status for Income Determination.** Youth advocates have long argued that eligibility for federal free or reduced lunch should make students automatically eligible for services, a provision that WIOA included. However, the new TEGL will limit its utility in areas with universal or whole-school feeding programs. Specifically, the TEGL states: “When a school does not use individual eligibility criteria to determine who is eligible for free or reduced price lunch, whole school receipt of free or reduced price lunch cannot be used to determine WIOA low-income status for ISY.” In these instances, eligibility must be determined on an individual student basis. (first full paragraph, p. 6)

Also relating to free and reduced lunch, the TEGL clarifies that “if an OSY is a parent living in the same household as a child who receives or is eligible to receive free or reduced price lunch based on their income level, then such an OSY would meet the low-income criteria based on his/her child’s qualification.” (p. 6, same paragraph)

**What Counts as Income?** The TEGL notes that the definition of what must be counted as income has changed under WIOA. Specifically, the TEGL states: “WIOA youth programs must include Unemployment Insurance and child support payments as income when determining a youth’s eligibility based on low-income status.” (top of p. 7)

**Exception for Youth with Disabilities.** In another instance of WIOA eligibility being wrapped up in state K-12 policy, the TEGL states: “Youth with disabilities who have an Individualized Education Program (IEP) may be enrolled as ISY after the age of 21, if their state law allows youth with disabilities to be served by the K-12 public school system beyond the age of 21. Such youth may only be enrolled as ISY up to the age allowed by their state law to receive secondary education services.” (final paragraph, p. 2)

**Dropout Definition.** As noted in earlier guidance, “an individual who has dropped out of postsecondary education is not a ‘school dropout’ for purposes of youth program eligibility.” (first line, top of p. 4)

**Streamlining the Offender Definition.** The TEGL notes that different wording is used to describe eligibility for ISY and OSY based on their involvement in the criminal justice process. To address this, the TEGL states that the Department considers the WIOA definition of “offender” to apply to both ISY and OSY eligibility determination: “[T]o be clear that the same eligibility criteria apply to both OSY and ISY, both 20 CFR § 681.210, which provides the eligibility criteria for OSY, and 20 CFR § 681.220, which provides the eligibility criteria for ISY, use the term ‘offender.’” (middle of p.4)

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## PROGRAM DESIGN (PP. 7-11)

**Program Expense Prior to Enrollment.** Some NYEC members asked for clarification concerning expenditure of WIOA dollars prior to formal enrollment. The TEGL clarifies that, in certain instances, WIOA funds maybe be spent on individuals who are not yet participants. Specifically, the TEGL states: “Youth funds can be expended on outreach and recruitment or assessment for eligibility determination (such as assessing basic skills level)

prior to eligibility determination, but they cannot be spent on youth program services, such as the 14 program elements ... prior to eligibility determination.” (near the bottom of p.7)

**Assessment Requirements.** The TEGL expands options for initial assessments of youth, while tying assessments of individuals’ Educational Functional Level (EFL) during program participation to approved instruments listed in the U.S. Department of Education’s National Reporting System (NRS).

- Initial assessment may use instruments in the NRS or, “local programs may use other formalized testing instruments designed to measure skills-related gains,” if they are valid, reliable and meet other standards of fairness and appropriateness. Also, local programs may determine skill gains “through less formal alternative assessment techniques such as observation, folder reviews, or interviews ... [and] may use previous basic skills assessment results if such previous assessments have been conducted within the past six months.”
- Unlike the initial assessment, “when measuring EFL gains after program enrollment under the measurable skill gains indicator, local programs must use an NRS-approved assessment for both the EFL pre- and post-test to determine an individual’s educational functioning level.” (bottom of p.7 and top of page 8)

**Serving 18-24-Year-Old Youth.** NYEC members and others have asked for guidance and clarification concerning co-enrolling WIOA youth participants in other core programs for which they might be eligible and which could bring additional benefit and support. In a February meeting, DOL staff stated their interest in doing a TEGL on implementing co-enrollment, though cautioned that it could take a while to compile such guidance. For now, this TEGL discusses considerations in making co-enrollment decisions, such as school status, life experience, literacy levels, barriers and support needs, work experience, and other factors. The TEGL’s discussion concludes by reiterating the language of the Final Rule and the statute: “if a young adult’s needs can best be met by co-enrollment in the WIOA Title I youth and adult programs, local program operators must identify and track the funding streams which pay the costs of services provided to individuals who are participating in youth and adult programs concurrently, and ensure no duplication of services.” (top of p.9)

**Incentives.** The Final Rule allows the use of WIOA funds for participant incentives, including gift cards. The TEGL clarifies that “local program must have written policies and procedures in place governing the award of incentives and must ensure that such incentive payments are tied to the goals of the specific program,” and meet other federal requirements. Regarding gift cards, the TEGL references general federal regulations prohibiting incentives for entertainment: “Incentives must not include entertainment, such as movie or sporting event tickets or gift cards to movie theaters or other venues whose sole purpose is entertainment.” (bottom of p.9 and top of p. 10)

**Braiding Funds.** Many NYEC members and other youth program practitioners attempt to braid multiple funding streams in ways that provide coordinated and comprehensive services for young people. The TEGL gives modest support to this concept regarding WIOA funds: “WIOA does not prohibit the braiding of funds.” The TEGL goes on to describe potentially valuable connections between WIOA Title I youth and adult programming, as well as Title I youth and Title II adult education activities, and suggests that braiding could be particularly appropriate for “Integrated education and training, a service approach that provides adult education and literacy activities concurrently and contextually with workforce preparation activities and workforce training for a specific occupation or occupational cluster.” (bottom of p.10 and top of p.11)

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## COMPETITIVE PROCUREMENT (PP. 11-12)

The biggest news in this section of the TEGL is an implicit encouragement to states to put more parameters in place regarding youth-services procurement. Generally, the TEGL reiterates and expands on the discussion of competitive procurement for WIOA Title I youth activities programming initially presented in the Preamble and the Final Rule before underscoring that, “The Department interprets the competitive selection provisions discussed in WIOA Section 107(d)(10) and 123 to apply only if the Local WDB provides youth services by awarding grants or contracts to youth service providers. Consistent with 20 CFR § 681.400, a Local WDB may determine that the grant recipient or designated fiscal agent may ‘provide directly some or all of the youth workforce investment activities.’”

At the same time, the TEGL states that “DOL expects Local WDBs to use youth service providers best positioned to provide program elements resulting in strong outcomes (and) encourages Local WDBs to award contracts to youth service providers, using a competitive procurement process, when local areas have access to experienced and effective youth service providers.”

The TEGL then goes on to say this about state policy: “If a State chooses to do so, it has the authority to set policy requiring Local WDBs to competitively select some or all youth services,” since the state has the ultimate responsibility for the Youth program’s performance.

Finally, if local boards determine that they will provide youth activities, then there must be “a written agreement with the Local WDB and Chief Elected Official (CEO) to clarify how the organization will carry out its responsibilities while demonstrating compliance with WIOA” and other related statutes, rules, and regulations.

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## PROGRAM ELEMENTS (PP. 12-22)

This section covers much of the same ground as the Proposed and Final Rules in terms of the kinds of activities that must and may be supported under each program element. In addition, since there is considerable overlap in the activities within the program elements, the TEGL specifies which activities should be reported within which program element.

Further, the TEGL provides a helpful table (p. 13) that describes, for each of the 14 elements, whether the element is described in the Final Rule, and, if so, the citation; whether the element relates to and/or overlaps with another; and the applicable PIRL numbers for each element.

Due to the complex nature of the interconnections between and among the elements, and specific activities that should be reported under each element, we do not attempt to specify them here. However, we strongly encourage NYEC members with WIOA data reporting responsibilities to study these descriptions carefully.

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## **CONCLUSION**

NYEC will continue to provide updates and clarifications on this TEGL and other federal guidance in the weeks and months ahead. We also will attempt to set up a question-and-answer call with DOL's Youth Services team. NYEC members will remember that several members of the youth office joined us for a conference call last summer to discuss the WIOA Final Rule.

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## **FOR MORE INFORMATION...**

Please contact Thomas Showalter, Director, NYEC, at [thomas.showalter@nyec.org](mailto:thomas.showalter@nyec.org).

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