

NFJP Eligibility Policy 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 participation in the National Farmworker Jobs Program (NFJP) under WIA, Section 167 and 20 CFR 669, an individual on the date of application for enrollment must be:

an “**eligible farmworker**” or a “**dependent**” of an **eligible farmworker**,

and,

a citizen, a national of the United States, a lawfully admitted permanent resident alien, a refugee, an asylee, a parolee, or other immigrant authorized by the Attorney General to work in the United States [WIA section 188(a)(5)],

and

male applicants must have not 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].

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.

Definitions:

“**eligible farmworker**” is a person who, during the **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 167(h)(3))

“seasonal farmworker” is a farmworker who has been *primarily employed in agricultural labor* that is characterized by *chronic unemployment or underemployment* (WIA 167 (h)(4)).

“chronic unemployment and underemployment” means the farmworker did not receive a year-round salary.

“primarily employed in agricultural labor” means the farmworker, during the 12-month eligibility determination period, depended primarily on farmwork for his/her support by

earning at least 50 percent of his/her total income from farmwork **or** was employed at least 50 percent of his/her total work time in farmwork

and exceeded a minimum threshold level of farmwork

by working at least 25 days in farmwork **or** by earning at least \$800 in farmwork.

“disadvantaged” means a person whose farmworker 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.¹ Families receiving public assistance are disadvantaged. Foster children who are wards of a State are disadvantaged.

“eligibility determination period” is a consecutive 12-month period within the 24-month period immediately preceding the date of application for enrollment in the NFJP or the MSFW Youth program by the applicant (WIA167(h)(1)). The 24-month period may be extended under circumstances as follows:

Labor Force Re-entrants: The 24-month period, within which the 12 consecutive month period falls, may be expanded, up to an additional 24 months, by the amount of time an applicant was unavailable for work, because he or she was in the armed forces, incarcerated, legally detained, hospitalized or otherwise unavailable due to documented physical or mental disability.

Such condition must be positively demonstrated by the applicant through documentary evidence satisfactory to the grantee.

¹ HHS poverty criteria may be viewed at [www.aspe.hhs.gov/poverty/poverty.htm]. LLSIL criteria may be viewed on ETA's Home Page at [www.wdsc.org/llsil].

“farmwork” means agricultural labor performed for wages in agricultural production and agricultural services as provided under the following Standard Industrial Classification Codes (SIC) or North American Industry Classification System (NAICS) subsections.

The agricultural production and agricultural services are the agricultural activities described in the Standard Industrial Classification Codes (SIC): (01) agricultural production--crops, (02) agricultural production--livestock (excluding 027--animal specialties) and (07) agricultural services (excluding 074--Veterinary Services, 0752--Animal Specialty Services, and 078--Landscape and Horticultural Services).

When the 1997 North American Industry Classification System (NAICS) is used, farmwork industries include subsection 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*). Grantees should plan to transition to use of the NAICS by January 1, 2001.

“Dependent” means an individual who

(1) was claimed as a dependent on the qualifying farmworker’s federal income tax return for the previous year, or

(2) is the spouse of the qualifying farmworker, or

(3), if not claimed as a dependent for federal income tax purposes, is able to establish:

(A) the 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

and

(B) the receipt of over half of his/her total support from the eligible farmworker's family during the eligibility determination period." (WIA definitions: 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 sources such as net rental income, Old Age and Survivors Insurance, Social Security retirement benefits, pensions, alimony, periodic income from insurance policy annuities.

Income from all other sources is excluded.

Application, Attestation, and Verification Provisions:

Attestation (or Certification or Self-Certification) by applicants: Applicants must sign a statement attesting that the information provided to the grantee for making its determination of the applicant's eligibility to receive services, is true and accurate to the best of his/her knowledge. The statement should provide that intentionally providing false information in order to be qualified as 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.")

Staff Determination: The grantee representative who interviews applicants for the purpose of determining eligibility, must make determinations of eligibility based on all the available information. Those employees should sign a statement of eligibility determination on every completed application.

Shelf-life of an Eligibility Determination: The determination that an applicant is eligible shall be valid for 60 days from the date of initial application. (Updated information should not normally be requested to re-certify and redetermine 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 farmwork, family size and income, work authorization, and compliance with Selective Service requirements.

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 **only** for receipt of Emergency Assistance, or any other Related Assistance Services **only**, will be enrolled on the basis of the applicant's statements as to the facts and his/her self-attestation certifying the statements are truthful, except that the applicant's work status and Selective Service registration must be verified.

Transfers from JTPA funded grants: All participants enrolled under the JTPA §402 grant on June 30, 2000 are eligible for transfer into the PY 2000 grant under WIA §167.

ADDENDUM TO “NFJP ELIGIBILITY POLICY GUIDANCE”

QUESTIONS AND ANSWERS:

- 1) At what point does an applicant become eligible? **When the interviewing staff member makes a determination that an applicant is either eligible or ineligible. The determination must be signed and dated by the staff member.**
- 2) Qualifying farmwork: Christmas trees and maple syrup have been moved from forestry to crop production in the NAICS. Under NAICS, will DSFP exclude these industries from qualifying farmwork? **No.**
- 3) Historically (under the SIC codes), all crop production was qualifying farmwork. Will this change? **There is no change.**
- 4) What constitutes a day worked in farmwork? **Any amount of work time for which the farmworker received compensation for farmwork.**
- 5) Will the minimum amount of money earned from farmwork remain at \$400? **No. The threshold of income derived from farmwork had remained unadjusted at \$400 for several decades. It has now been increased to \$800 to reposition the threshold close to its original relation with other economic factors.**
- 6) If an applicant was unavailable for work due to a mental disability reason, but was not hospitalized, how may grantees document the incapacitation for work? **Grantees should verify the incapacitation with a third party, such as with a professional in the mental health field. Non-professional opinions may be relied upon when the evidence is from two or more independent sources. Such evidence must be well documented.**
- 7) Regarding included and excluded sources of income used for determining whether a family is disadvantaged, will the Department use the same guidelines used in JTPA? **Basically, yes.**
- 8) Must an otherwise eligible farmworker meet work status and military requirements in order for one of his/her dependents to qualify? **No: The dependent of an otherwise eligible farmworker must satisfy these criteria in order to enroll, but not the farmworker.**
- 9) What is required of grantees regarding applicant eligibility determinations for the purpose of enrollment of persons into the NFJP (for receipt of intensive services, training services or related assistance services)? **Grantee staff must make a determination of eligibility that is based on the factual information provided by the applicant. During the interview, the intake staff assist the applicant**

at providing, to the best of his/her recollection, all the information required for the grantee to make a determination of eligibility such as income and work history. The applicant authenticates the information by signing the certification statement used by the grantee.

- 10) Under self-attestation, may an applicant sign a statement declaring his/her eligibility? **No. The provision for self-attestation provides relief from requirements to obtain independent verification of the eligibility information submitted by the applicants for Related Assistance Services only. Under Self-attestation, only work authorization and Selective Service compliance need to be authenticated by verifying documentary evidence. Although the grantee is expected to not pursue verification of any other information certified by the applicant, the intake staff should assist applicants in a manner that elicits truthfulness in completing the application. Absent a compelling reason to believe an applicant is being untruthful, grantees should not pursue verification of other information provided by farmworker applicants seeking only Related Assistance Services.**
- 12) Are any and all certifications considered valid? **No. Persons may only certify to the facts on which they have direct personal knowledge. For example, the certification of family income and family size must be made by a parent. A dependent cannot speak authoritatively about total family income. (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 parental certification would be on the copy of the signed tax return.)**
- 13) Does the qualifying farmwork apply only within the eligible 01, 02 and 07 Standard Industrial Classifications (SIC) industries? **No. Eligible farmwork qualifies without regard to the official industrial classification of the employer.**
- 14) Do we need to obtain parental consent to provide services to minors? **Unless there is a state law requiring a signed statement of consent, no. Consent is implicit in the submission of information by the family that is necessary for determining whether the minor applicant's family is disadvantaged.**
- 15) Are dependents of an eligible farmworker eligible to participate in the MSFW youth program? **Yes. Dependents of eligible migrant and seasonal farmworkers are eligible to receive services as youth participants under the MSFW Youth program.**
- 16) What about foster children of farmworkers? **The Policy Guidance provides that foster children are disadvantaged. A foster child who qualifies as a farmworker is eligible for the NFJP.**

- 17) The stated 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?

Yes. When farmworkers receive such goods, the goods are often provided, not as compensation, but in order to make it possible for them to work. Also, we do not believe that definitive guidance could be developed.

- 18) Are H2A 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?

H2A workers are authorized under “non-immigrant” status Visas. Under the Visa limitations H2A farmworkers may be eligible for Related Assistance services that are appropriate for them. The provision of other services would be inconsistent with the authorization of their Visa.

- 19) What is the eligibility status of participants enrolled under the JTPA grant that are carried over to the WIA grant? **The Guidance provides that all JTPA participants remaining enrolled on June 30, 2000 are eligible for the NFJP grant funded under WIA §167.**

Grantees should continue to serve participants carried over into PY 2000 by making the transfers to the PY 2000 grant in a manner that ensures a seamless transition by continuing each participant’s Individual Service Strategy without disruption and consistently with the grantee’s Case Management system.

It is unnecessary for grantees to seek up-dated information that is current for July 1, 2000 by obtaining a new intake application. The intake information that is relevant and meaningful is the intake information which was obtained at the time of original application for enrollment into the MSFW / NFJP program and that ultimately governed the decision to enroll. Grantees need to review their records to ensure the information system for the PY 2000 grant provides a complete administrative record transferring all participants who are enrolled COB June 30, 2000, into the PY2000 grant on July 1, 2000.

- 20) May the time individual family members working in agriculture be added to qualify the family unit as a “farmworker family” by exceeding the minimum agricultural income and time worked in agriculture tests? **No. In WIA, paragraph (h) (2) of §167 provides that “eligible migrant and seasonal farmworkers’ means individuals....” (Emphasis added.)**

21) What principles are there that may serve as guidance to grantees and staff in making and documenting eligibility determinations?

For staff:

REASONABLENESS -- Staff should strive to be reasonable by making decisions in which they have confidence and can personally defend.

For Managers:

LEADERSHIP -- Agency management must maintain and develop an environment that promotes the development of resources that help front-line staff make adequately documented eligibility determinations.

For Managers and staff:

CUSTOMER FOCUS ON ELIGIBLE FARMWORKERS – As a One-Stop system partner, the NFJP serves migrant and seasonal farmworkers who meet the eligibility requirements. A system of eligibility determination exists for the objective of bringing NFJP services to the qualifying migrant and seasonal farmworkers.

22) What are examples of excluded sources of income?

The 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 property;**
- 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) Capital gains and losses;**
- 8) 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;**
 - iv) 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;**
 - vii) Fixed-term workers' compensation awards;**
 - viii) Terminal leave pay;**
 - ix) Soil bank payments; and**
 - x) Agricultural crop stabilization payments.**

- 9) Pay or allowances received by any veteran while he/she was serving on active duty in the Armed Forces;**
- 10) 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;**
- 11) Payments received under the Trade Act of 1974 as amended;**
- 12) Black Lung payments received under the Benefits Reform Act of 1977, Pub. L. 95-239, 30 USC 901; and**
- 13) Child support payments (except foster child payments).**