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To: Local Workforce Area Signatory Officials
Local Workforce Development Board Chairs
Local Workforce Development Area Administrators
State Grantees

From: Kevin Cummings /s/
Director of Technical Services, Policies and Reporting

Subject: **Dislocated Worker Eligibility and Unlikely to Return Memo**

Date: April 14, 2020

References: WIOA Section 3(15); Training and Employment Guidance Letters (TEGLs)
19-16 and 02-15

On March 13, 2020, President Trump declared a national emergency in the face of the COVID-19 pandemic, leading to closed schools, cancelled events, and uncertainty in our communities. The Workforce Innovation and Opportunity Act (WIOA) authorizes states to establish eligibility policies and definitions consistent with WIOA and its regulations. This memo defines “unlikely to return” as used in Category A of the dislocated worker eligibility requirements. Defining “unlikely to return” will enable local boards to accurately determine an individual’s eligibility for the Dislocated Worker (DW) program, including those recently dislocated by the COVID-19 pandemic.

Category A Eligibility Requirements for Dislocated Workers

To be eligible for the Dislocated Worker (DW) program under Category A as outlined in section 3(15)(A) of the Workforce Innovation and Opportunity Act (WIOA), individuals must meet the following requirements:

Category A: Terminated or Laid Off, or Received a Notice of Termination or Layoff from Employment

- Has been terminated or laid off or has received a notice of termination or layoff from employment; AND
- Is eligible for or has exhausted entitlement to unemployment compensation; or
 - Has been employed for a duration sufficient to demonstrate attachment to the workforce, but is not eligible for unemployment compensation due to insufficient earnings or having performed services for an employer that were not covered under a state unemployment compensation law; AND
- Is unlikely to return to a previous industry or occupation.

Definition of Unlikely to Return to a Previous Industry or Occupation

An individual who is unlikely to return to a previous industry or occupation due to lack of growth, decline in job openings or employment opportunities, or has been laid off without a recall date, or the date has passed, and is in need of additional services or training.

Examples include:

- Skill Oversupply – Excess number of workers locally with similar skill sets and experience seeking limited related employment opportunities; or
- Obsolete Skills – Applicant no longer meets the minimum requirements of jobs available in their occupation; or
- Local Layoff Impact – Local business closing(s) or layoffs have had a significant negative impact on the availability of jobs in the applicant’s primary occupation and accustomed wage/hour/skill level; or
- No Job Offers Received – Applicant has been available and looking for work for a number of weeks and has not received an offer of work (“number of weeks” could be two or more weeks, depending upon the occupation, state of local economy, and/or applicant’s verified job search efforts); or
- Physical Limitations or Disabilities – Newly acquired physical limitations or injuries occurring which limit the individual’s ability to perform the job from which they were dislocated.

NOTE: An individual laid off on a temporary basis or furloughed with a specific, upcoming return to work date does not meet the definition of “unlikely to return to a previous industry or occupation.”

The following forms of documentation can be used to demonstrate “unlikely to return”:

- Labor market information indicating the applicant’s skills are not currently in demand.
- Labor market information indicating the applicant cannot meet the skills requirements for jobs currently available in their chosen occupation.
- Labor market information indicating no jobs or only part-time jobs are available that match the applicant’s skills.
- Job search records demonstrating no job offers received for a period of weeks prior to WIOA enrollment.
- Documentation from a physician or other applicable professional of acquired physical limitations or injuries that make an individual unable to perform the same work as the job of dislocation.
- Documentation provided by the individual from employer or UI where no return to work date was given or the date has passed with no job availability. (For UI documentation, claimants can access their return to work status in the UI My Benefits self-service portal. See attachment.)

Questions may be directed to PolnPro@dew.sc.gov.

Attachment: Unlikely to Return UI Documentation