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(SN 25)

### WIOA Bulletin No. 25-18

**DATE:** August 13, 2018

**TO:** WIOA Partners

**SUBJECT:** Hawaii Island Disaster Dislocated Worker Grant Policies and Procedures

### Purpose

The US Department of Labor (USDOL) has awarded the Workforce Development Council (WDC) Disaster Dislocated Worker Grant (Disaster DWG) funding for Hawaii County, of which \$3,000,000 can be used to temporarily employ up to 175 individual workers who, as a consequence of the Kilauea eruption, were laid off or experienced a reduction in employment. This bulletin transmits federal and state requirements for Eligibility and Grant Activities for Disaster DWG funding under the Workforce Innovation and Opportunity Act (P.L. 113-128), Title I, §170.

### Background

In July 2015, the USDOL issued Training and Employment Guidance Letter 2-15 to guide the policies and procedures for the Use of Disaster Dislocated Worker Grant (DWG) Funding.

As outlined in WIOA §170(d)(1-4), when an area impacted by disaster is declared eligible for public assistance from the Federal Emergency Management Agency (FEMA), National Disaster Dislocated Worker Grants (Disaster DWG) provide funding to create temporary employment opportunities to assist with clean-up, recovery, and humanitarian efforts in areas impacted by disasters or emergency situations. The Disaster DWG also provides funds for employment and training services, where needed, to help impacted individuals return to full employment as quickly as possible. Individuals deemed eligible for assistance shall be employed part, or full time, with approved employers of record.

The American Job Center Hawaii (AJCH) staff will determine applicant eligibility, and then refer eligible individuals to the Staffing Agency contracted by the WDC. The Staffing Agency will be responsible for matching eligible workers with pre-approved businesses of record, and for

providing individual payroll services that include benefits, insurance, taxes, and workers compensation.

Eligible Disaster DWG projects include demolition, repair, renovation and reconstruction of damaged and destroyed structures, facilities and lands located within the disaster area and in offshore areas related to the emergency or disaster, as well as distribution of food, clothing, and other humanitarian assistance for disaster victims.

The Hawaii County WDB shall coordinate with the appropriate organizations, including state emergency management agencies and other federal response agencies, to ensure a comprehensive response and to prevent duplication of services.

## **Policy**

Effective immediately, instructions in Attachment 1, *Use of Disaster Dislocated Worker Grant Funding Policies and Procedures* are to be applied by the Hawaii County (WDB) and American Job Center Hawaii (AJCH) to enroll individuals in accordance with WIOA priority of service provisions.

## **Memorandum of Agreement (MOA)**

The Hawaii County WDB shall enter into an Memorandum of Agreement (MOA) with the WDC for reimbursement for costs associated with the provision of this Disaster DWG project.

## **Single Point of Contact Designation**

The Hawaii County WDB and AJCH shall designate a single point of contact responsible for coordinating and communicating with the Statewide Rapid Response Coordinator (Coordinator), all activities in conjunction with the Disaster DWG project.

## **Procurement**

All non-federal entities, including sub-recipients of a state, will follow Section §§200.318 General Procurement standards through 200.326 Contract provisions.

## **Inquiries**

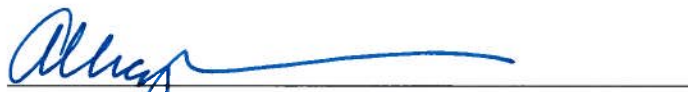
Inquiries regarding this bulletin may be directed to Kayla Rosenfeld at (808) 586-9283 or [Kayla.C.Rosenfeld@hawaii.gov](mailto:Kayla.C.Rosenfeld@hawaii.gov).

## **Attachments**

- Attachment 1, Use of Disaster Dislocated Worker Grant (DWG) Funding Policies and Procedures
- Attachment 2, Role of Disaster Unemployment Insurance (DUA)

## References

- TEGL 2-15, Operational Guidance for National Dislocated Worker Grants, pursuant to the Workforce Innovation and Opportunity Act  
[https://wdr.doleta.gov/directives/attach/TEGL/TEGL\\_02-15.pdf](https://wdr.doleta.gov/directives/attach/TEGL/TEGL_02-15.pdf) TEGL 17-14 "National Emergency Grant Revised Modification Process"  
<https://wdr.doleta.gov/directives/attach/TEGL/TEGL-17-14.pdf>
- TEGL 10-09, Guidance on Implementing Priority of Service, pursuant to the Workforce Innovation and Opportunity Act <https://wdr.doleta.gov/directives/attach/TEGL/TEGL10-09.pdf>
- TEGL 28-10, Federal Financial Management and Reporting Definitions, updated to include changes affected by the release of the Uniform Guidance at 2 CFR Part 200 and the DOL exceptions at 2 CFR Part 2900 <https://wdr.doleta.gov/directives/attach/TEGL/TEGL28-10ACC.pdf>
- WIOA §3(1), Administrative Costs
- WIOA §3(15), Definitions of Dislocated Worker
- WIOA §170(d)(2), Participant Eligibility
- WIOA §170(d)(4), Eligible Temporary Jobs
- WIOA §181(a)(1)(A), Participant Wages
- WIOA Section 181(b)(4), Health and Safety Standards
- Robert T. Stafford Disaster Relief and Emergency Assistance Act, paragraphs (1) and (2) of section 102, Emergencies and major disasters declared eligible for public assistance by the Federal Emergency Management Agency (FEMA) <https://www.fema.gov/robert-t-stafford-disaster-relief-and-emergency-assistance-act-public-law-93-288-amended>
- 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- 38 U.S.C. 4215, Priority of Service to Veterans and Eligible Spouses



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Executive Director

C: AJC WIOA Unit

## ATTACHMENT 1

### Use of Disaster Dislocated Worker Grant (DWG) Funding Policies and Procedures

National Disaster Dislocated Worker Grant (Disaster DWG) projects create temporary jobs for eligible individuals to assist with clean-up, recovery, and humanitarian efforts in areas impacted by disasters or emergency situations as outlined in the Workforce Innovation and Opportunity Act (WIOA), (P.L. 113-128), §170(d)(1-4). Funds may be used to provide disaster relief employment on projects that provide food, clothing, shelter, and other humanitarian assistance for emergency disaster victims, and projects that require demolition, cleaning, repair, renovation, and reconstruction of damage and destroyed structures, facilities, and lands located within the disaster area, and in offshore areas related to the emergency or disaster.

Disaster DWG projects also provide funds for employment and training services, where needed, to help impacted individuals return to full employment as quickly as possible. Through a jobs-first approach, it is imperative the individual be told, and understand, the type of work they will be doing (i.e. debris removal, worker will be outside in high temperatures and rain; lift 20 pounds, etc.).

### Eligibility

Individual dislocated workers must be determined eligible for services and assistance as defined in WIOA §170(d)(2). The following eligibility requirements apply to individuals residing within the declared disaster area, or to individuals forced to relocate due to the disaster or emergency event:

1. Individuals who are temporarily or permanently laid off as a consequence of the disaster;
2. Other eligible dislocated workers as defined in WIOA §3(15);
3. Long-term unemployed workers, as defined by the state; and
4. Self-employed individuals who become unemployed or significantly underemployed as a consequence of the emergency or disaster, including farmers and ranchers.

### Eligibility Documentation

Disaster DWG participants must comply with current requirements of the WIOA Dislocated Worker program. WDC interprets temporary employment related to this Disaster DWG grant as substantially equivalent to Work Experience. Therefore, full eligibility documentation is required, including proof of layoff or termination.

- If an applicant is receiving Disaster Unemployment Assistance (DUA), no other documentation of layoff from the disaster affected employer is required. A DUA claim is the most solid documentation possible. (Attachment 2).
- If there is no Unemployment Compensation claim, staff must secure documentation to support the fact that the applicant worked for an impacted company. Ideally, this would be in the form of paystubs or other payroll records.

- Self-employed individuals may document self-employment by providing copies of the most recent 1) General Excise Tax (GET) forms, or 2) State and Federal tax returns.
- Self-certification: The participant file must document the participant's eligibility. Because of the circumstances surrounding the disaster, documentation of eligibility may be difficult to obtain during the initial stages. An individual's signed certification that they meet the eligibility criteria is acceptable. However, the American Job Center Hawaii (AJCH) must verify eligibility for individuals once better data are available. Within 45 days of the application, the AJCH must confirm the participant's eligibility by obtaining the required information and documents.

### **Allowable Disaster Dislocated Worker Grant Activities as outlined in TEGL 2-15**

Career and Training Services - For Disaster DWG, projects provide career and training services for grant participants already enrolled in the temporary jobs component of a Disaster DWG project, who are unlikely to return to their prior employment.

- DWG funds may provide employment and training services concurrently with participation in the temporary jobs component.
- Clean-up and recovery activities take precedence when offered in conjunction with career and training activities. Disaster DWGs for emergencies or disaster situations of national significance that could result in a large loss of employment, but which may not cause physical damage, are authorized to provide career and training services only, depending on the circumstances of the specific event.
- Generally, Disaster DWG serving individuals relocated from a disaster area will provide career and training services as the primary service, because participants are relocated outside of the disaster area. These grants may also include disaster relief employment or humanitarian assistance.

Supportive Services - For Disaster DWG, supportive services are allowable for participants to participate in disaster relief employment and career and training services, including reimbursement or payment for such costs as child care and transportation to and from the job site.

### **Limitations on Duration of Participation**

As outlined in WIOA §170(d)(3)(A), temporary jobs created under this Disaster DWG shall be in public or private non-profit agencies. No individual shall be employed for more than 2,080 hours in recovery work from a single emergency or disaster. If cleanup work remains on a project after a participant reaches their temporary employment limit, the WDB and AJCH must bring in new eligible workers to replace those who have used up their eligibility.

## **Enrolling Disaster DWG Participants**

After completing the standard WIOA intake and evaluation process on HireNet, case managers shall perform two new additional steps to enroll applicants in this Hawaii County Disaster DWG. They are:

- WIOA Grant Eligibility section - National Dislocated Worker Grant - SELECT: YES
- Grant Type - (HI – Disaster, Hawaii County Volcano Eruption) - SELECT: ADD
  - Local Grant Code - HI999

## **Participant Compensation**

### **Rate of Pay**

In accordance with WIOA §181(a)(1)(A), generally, participants shall be compensated at the same rates, including periodic increases, as employees who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills, and such rates shall be in accordance with applicable law, but in no event less than the higher of the rate specified in 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) or the applicable State or local minimum wage law.

### **Overtime**

Participants may work overtime (subject to regulations of the Fair Labor Standards Act with respect to level of compensation), provided that this is part of the project design and regular employees of the employer in question are also working overtime, subject to the limit on duration of participation for workers under this project.

Fair Labor Standards Act Amendment for Major Disasters-Pursuant to P.L. 115- 141, Division H, Title I, Section 109, additional language will be applied to the Fair Labor Standards Act of 1938 in the "Maximum Hours Worked" section.

## **Benefits and Working Conditions**

All participants shall be provided benefits and working conditions at the same level and to the same extent as other employees working a similar length of time and doing the same type of work [WIOA §181(b)(5)]. If the employer has different policies for temporary employees than for full-time employees, these policies may apply to these participants since the jobs under this grant are classified as temporary.

Fringe benefits should be paid in accordance with the policies of the employer of record. Where the local project operator or another approved worksite employer hires temporary workers for positions for which wage levels have not been established and supervision of the temporary workers is performed by another agency, the agency performing the supervisory responsibilities could be considered the worksite employer for purposes of determining the appropriate wage for the temporary worker. In such a case, the temporary worker's wage could be established based on similar or same work performance by employees of the worksite employer.

Health and Safety Standards - Health and safety standards established under Federal and State law otherwise applicable to working conditions of employees shall be equally applicable to working conditions of participants engaged in specified activities. To the extent that a State workers' compensation law applies, workers' compensation shall be provided to participants on the same basis as the compensation is provided to other individuals in the State in similar employment [WIOA 181(b)(4)]. Where a participant is not covered under a state workers' compensation law, the participant shall be provided with adequate on-site medical and accident insurance for work-related activities.

Safety Training -To ensure compliance with the Occupational Safety and Health Act of 1970 and to assure safe working conditions for all temporary job participants, the employer must ensure that temporary job participants receive appropriate safety training.

### **Permitted Businesses of Record (Employers)**

All Businesses of Record must be registered, and compliant, with Hawaii Compliance Express (<https://vendors.ehawaii.gov/hce/splash/welcome.html>). This site documents business compliance with the Hawaii Department of Taxation, the Internal Revenue Service (Government Contracts), Hawaii Department of Commerce and Consumer Affairs, and the Hawaii Department of Labor. The Hawaii County WDB and AJCH must ensure that Disaster DWG funding for temporary wages is apportioned only to entities approved as official employers of record.

Businesses of record will provide the WDC and Staffing Agency a matrix of worksites, job titles and descriptions, number of positions, and wages per job title. The Staffing Agency will match eligible workers with pre-approved business of record, and for provide individual payroll services that include benefits, insurance, taxes, and workers compensation. The Staffing Agency and businesses of record will collaboratively determine how individuals will access and deliver signed bi-weekly timesheets to the Staffing Agency.

Separately, the business of record will provide the Staffing Agency signed confirmation that each worksite will be staffed with a qualified worksite supervision. This will be written into the businesses' contracts with the Staffing Agency.

Prohibition on Contracting with Corporations with Unpaid Tax Liabilities-Pursuant to P.L. 115-141, Division E, Title VII, §745, the recipient may not knowingly enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, any corporation that has any unpaid Federal tax liability.

### **Worksite Selection**

Worksites must be located within the geographic area covered by a FEMA declaration eligible for public assistance or within the area subject to another Federal agency's declaration of an emergency or disaster situation of national significance. The worksites for temporary jobs must be prioritized so that the highest priority is given to public facilities which have been most severely damaged, consistent with the strategic plans of the community. Generally, worksites will be limited to public and private non-profit facilities.



Fish and Wildlife Service (FWS) - To ensure compliance with the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA) and to protect valuable habitats and endangered species, all disaster projects where participants will be entering or impacting natural areas must ensure that activities are not negatively affecting endangered species or their habitats. NEPA and ESA require Disaster DWG projects to either affirm to FWS that there are no endangered species or habitats within the project area, or to consult with FWS to mitigate negative impacts where there are endangered species or protected habitats before beginning any work in those areas. For more information, contact a local FWS field office ([www.fws.gov/offices](http://www.fws.gov/offices)).

### **Work on Private Property**

Under certain circumstances, work on private property is authorized to the extent that it achieves a greater positive benefit for the workers and the community being assisted. Work on private property must meet all the requirements outlined below.

Work on private property is limited to the following two circumstances:

1. Clean-up activities on private property may be performed by Disaster DWG participants if workers from units of general local government are also:
  - a. authorized to conduct such work; and
  - b. are performing such work.
2. As determined by the extenuating circumstances of the disaster for which Title I funds are being provided, repair and restoration activities are authorized on the private property of economically disadvantaged individuals, under the following specific conditions. To be authorized, all the following conditions must be met:
  - a. Work can only be performed on the homes of economically disadvantaged individuals who are eligible for the federally- funded weatherization program; and
  - b. Work may be performed on private land or homes of such individuals if the non- WIOA employees of the employing unit or state or local government workers are authorized to do the same work and are in fact engaged in performing the work using non-WIOA funds; and
  - c. Work on private land or buildings is performed to remove health and safety hazards to the larger community; and
  - d. The work is limited to returning a home to a safe and habitable level-not to make home improvements; and
  - e. Priority is given for service to the elderly and individuals with disabilities; and
  - f. WIOA funds cannot be used for the cost of materials to do repairs; and
  - g. Work must be disaster-related and not related to general home improvements authorized under the Federal Weatherization program; and
  - h. Work is coordinated with or supervised by the local agency responsible for the Federal Weatherization program.



## **Equipment**

FEMA or other federal, state, or local agencies provide assistance in obtaining equipment needed for temporary jobs participants to conduct clean up, renovation, restoration, and other allowable activities. In situations where the state is unable to obtain funding or equipment from another source, Disaster DWG funds may be used to lease or buy necessary equipment for worksites where Disaster DWG participants are employed to support clean-up and recovery activities. Purchase of equipment is subject to prior approval of the WDC and disposition requirements in 2 CFR 200 and 2 CFR 2900.

## **Cost Limitation Restrictions**

Administrative costs follow the definition in the WIOA at 20 CFR 683.215.

## ATTACHMENT 2

### Role of Disaster Unemployment Assistance (DUA)

A Disaster Unemployment Assistance (DUA) claim is the most solid documentation for determining individual eligibility for this Disaster DWG.

- No other documentation is required if the individual presents a DUA claim.

If no DUA or other Unemployment Insurance claim, the individual is required to present

- paystubs or other payroll records

OR

Individual can engage in the self-certification. This temporary option allows the individual to certify with a signature that they meet the grant eligibility criteria.

- Valid documentation is required within 45 days.

Generally, DUA is only determined by an in-person interview with the Unemployment Insurance Division. The Hawaii Island DUA application deadline is August 24, 2018.

DUA is available to individuals who:

- Worked or were self-employed or were scheduled to begin work or self-employment;
- Are not able to work or perform services because of physical damage or destruction to the place of employment as a direct result of the disaster;
- Can establish that the work or self-employment they can no longer perform was their principal source of income;
- Do not qualify for regular unemployment benefits from any state;
- Cannot perform work or self-employment because of an injury as a direct result of the disaster; or
- Became the breadwinner or major supporter of a household because of the death of the head of household.