

Excluded Worker Fund Program

12 NYCRR Part 704 (New Part within Chapter X - General Rules)

704.1 Application Documents Generally

(a) Documents shall be provided to the Department of Labor within the form, manner, and deadlines prescribed by the Commissioner.

(b) The Commissioner may, at any time prior to the approval of an application or as part of any investigation resulting out of an application, require that an applicant produce or present documentation described in Part EEE of Chapter 59 of the Laws of 2021 or this Part at the Department's offices, or through electronic means, as prescribed by the Commissioner. Failure to do so in the time period prescribed shall serve as a basis for the denial of an application.

(c) Documents submitted by an applicant to establish identity shall be:

- (1) certified by the issuing agency;
- (2) unexpired unless specifically noted;
- (3) in English or accompanied by a certified English language translation; and
- (4) not mutilated or damaged.

(d) Documents that do not meet the requirements of Part EEE of Chapter 59 of the Laws of 2021 or this Part shall not be considered in their entirety or in part, unless otherwise noted in this Part. The Commissioner may, in her sole discretion, contact an applicant or the purported source of a document for clarification or verification of documents, and may establish procedures for making such contact.

704.2 Work-Related Earnings or Household Income Loss

(a) For purposes of satisfying the definition of "excluded worker" in subsection 1 of section 2 of Part EEE of Chapter 59 of the Laws of 2021 an applicant must have experienced:

- (1) loss of work-related earnings of at least 50% per week from the week beginning February 23, 2020; or
- (2) loss of household income of at least 50% per week from the week beginning February 23, 2020.

(b) The term "work-related earnings" as used Part EEE of Chapter 59 of the Laws of 2021 shall mean income from work performed by an individual who is at least 18 years of age at the time of application.

(c) The term "disability" as used in subparagraph (ii) of paragraph (c) of subsection 1 of section 2 of Part EEE of Chapter 59 of the Laws of 2021 shall mean an injury or sickness that makes the

individual unable to perform the regular duties of his or her work or work for which the individual is reasonably qualified by training an experience. “Disability” encompasses all types of disability, including mental and physical disability; permanent and temporary disability; and partial and total disability. “Disability” shall not be limited to disability caused by COVID-19 and also includes disability caused by or in connection with pregnancy.

(d) The term “breadwinner or major source of income for a household” as used in subparagraph (ii) of paragraph (c) of subsection 1 of section 2 of Part EEE of Chapter 59 of the Laws of 2021 shall mean a member of the applicant’s household that, prior to dying or becoming disabled, contributed at least 50% of the financial support to the household and was at least 18 years old at the time of death or at the time of becoming disabled.

(e) The following documents must be provided with an application for benefits if the applicant becomes the breadwinner or major source of income for a household:

(1) Death certificate of the previous breadwinner or major source of income for the household, including the date of death; or

(2) Proof of disability of the previous breadwinner or major source of income for the household, including the date and nature of the disability, including:

(i) Statements, records, or letters from a medical professional licensed in New York State that provides, or has provided, medical treatment or evaluation for the mental or physical injury or illness that prevents the individual from performing the regular duties of his or her work. Such documentation must address the individual’s ability to perform work-related activities, such as sitting, standing, walking, lifting, carrying, handling objects, hearing, speaking, and traveling. In cases involving mental impairments, the documentation must describe the individual’s ability to understand, to carry out and remember instructions, and to respond appropriately to supervision, coworkers, and work pressures in a work setting.

A licensed medical professional includes:

(A) a licensed physician, including a medical or osteopathic doctor;

(B) a licensed psychologist, including a licensed or certified psychologist at the independent practice level; and a licensed or certified school psychologist, or other licensed or certified individual with another title who performs the same function as a school psychologist in a school setting, for impairments of intellectual disability, learning disabilities, and borderline intellectual functioning only;

(C) a licensed optometrist for impairments of visual disorders, or measurement of visual acuity and visual fields within the licensed scope of practice only;

(D) a licensed podiatrist for impairments of the foot, or foot and ankle within the licensed scope of practice only;

(E) a licensed audiologist for impairments of hearing loss, auditory processing disorders, and balance disorders within the licensed scope of practice only;

(F) a licensed advanced practice registered nurse (APRN), advanced practice nurse (APN), and advanced registered nurse practitioner (ARNP) for impairments within the licensed scope of practice only;

(G) a licensed physician assistant for impairments within the licensed scope of practice only; or

(H) any other source specified by the Commissioner.

(ii) Statements, records, or letters from an agency, authority, board, or commission of New York State, a government agency or authority of a political subdivision within New York State, or an agency of the federal government that issues or provides disability benefits showing the individual is entitled to such benefits based on his or her mental or physical condition; or

(iii) Statements, records, or letters from a private vocational rehabilitation or other counselor that issues or provides disability benefits or services showing the individual is entitled to such benefits based on his or her mental or physical condition; or

(iv) Any other documentation specified by the Commissioner.

(f) An applicant applying for benefits based on the death or disability of a breadwinner or major source of income for a household shall establish eligibility for the benefits in paragraph (a) or paragraph (b) of subsection 3 of section 2 of Part EEE of Chapter 59 of the Laws of 2021 by providing work-related eligibility documents as specified in this Part reflecting the work history of the breadwinner or major source of income for a household.

(g) If an applicant applies for benefits based on the disability of a breadwinner or major source of income for a household, an application may not also be made by the breadwinner or major source of income for a household.

704.3 Proof of Identity

In addition to the proof of identity documents listed in paragraph (a) of subsection 5 of section 2 of Part EEE of Chapter 59 of the Laws of 2021, an applicant may provide the following documentation to the Commissioner to establish at least four points of proof of identify:

(a) For three points:

(1) New York State learner's permit issued by the Department of Motor Vehicles;

(2) U.S. Military ID card issued to active, reserve, and retired military personnel only;

(3) Photo identification card issued by an agency, authority, board, or commission of New York State, a government agency or authority of a political subdivision within New

York State, including a school district, or an agency of the federal government, provided, however, that identification cards that are marked “not for identification purposes” or set forth similar language shall not be considered; or

(4) Photo identification card issued by an educational institution, including a university, college, or post-secondary school, subject to the regulation of the State Education Department or Board of Regents.

(b) For two points:

(1) United States or foreign passport, which may be expired by not more than two years;

(2) Foreign drivers’ license with a photo, which may be expired by not more than two years;

(3) Federal documents issued by United States Citizenship and Immigration Services including Form I-94, Form I-797, I-797A, or I-797D; or

(4) United States individual taxpayer identification number (ITIN) Assignment Letter.

(b) For one point:

(1) Non-photo identification card issued by an agency, authority, board, or commission of New York State, a government agency or authority of a political subdivision within the New York State, including a school district, or an agency of the federal government, provided, however, that identification cards that are marked “not for identification purposes” or set forth similar language shall not be considered;

(2) Photo identification card issued by an employer or entity associated with an employer, including photo identification cards required to access secure facilities and buildings;

(3) Photo identification card issued by a charitable organization registered with the charities bureau of the New York State Office of the Attorney General relating to eligibility for services or participation in the programs administered by the charitable organization in the ordinary course and for which eligibility was established prior to April 19, 2021; or

(4) A written employment offer, pay stubs, or notice of pay documents provided to the applicant by an employer.

704.4 Proof of Residency

In addition to the proof of residency documents listed in paragraph (b) of subsection 5 of section 2 of Part EEE of Chapter 59 of the Laws of 2021, an applicant may provide the following documentation to the Commissioner to establish proof of residency in New York State prior to March 27, 2020 and ongoing or current residency, through documents containing the name and New York State address of the applicant, and, in the case of documents establishing ongoing or current residency, dated no earlier than March 20, 2021, except for documents described in subsections (a) and (c):

- (a) State or federal tax filing or return, with proof of filing, including e-filing acknowledgment from the Department of Taxation and Finance or the Internal Revenue Service;
- (b) Pay stub;
- (c) New York State learner's permit issued by the Department of Motor Vehicles;
- (d) Employment offer or notice of pay that documents employer provided housing located in the state, including seasonal housing;
- (e) Statement, bill, or record from a health institution or insurance company (including health insurance, homeowner's insurance, renter's insurance, life insurance, or automobile insurance);
- (f) Bank or credit card statement;
- (g) Jury summons, court order, or other document from a state, federal, or local court or administrative law forum within New York State;
- (h) Letter from a domestic violence residential care program, or a government agency, non-profit organization, or religious institution that provides services to domestic violence survivor;
- (i) Letter from a non-profit organization or religious institution that provides services to homeless individuals;
- (j) Letter attesting to the residency of an applicant issued by a charitable organization registered with the charities bureau of the New York State Office of the Attorney General and that provided services to the applicant in the ordinary course and for which eligibility was established prior to April 19, 2021; or
- (k) Document from an agency, authority, board or commission of the New York State, a government agency or authority of a political subdivision within New York State, including a school district, or an agency of the federal government, except letters issued by the Department of Labor related to an application under Part EEE of Chapter 59 of the Laws of 2021.

704.5 Proof of Work-Related Eligibility

(a) Applicants must establish proof of work-related eligibility to qualify for benefits described in paragraphs (a) and (b) of subsection 3 of section 2 of Part EEE of Chapter 59 of the Laws of 2021 by submitting documentation to the Commissioner. For benefits under paragraph (a) of subsection 3 of section 2 of Part EEE of Chapter 59 of the Laws of 2021, applicants must provide five points of proof, including, for applicants who do not provide any of the documents listed in paragraphs (j) and (k) of subsection 3 of section 2 of Part EEE of Chapter 59 of the Laws of 2021, at least three points from a document described in subparagraph (c)(2) of this subsection. For benefits under paragraph (b) of subsection 3 of section 2 of Part EEE of Chapter 59 of the Laws of 2021, applicants must provide at least three points of proof.

(b) All work-related eligibility documents must show that the applicant worked and received monetary earnings for a period of greater than six weeks in the six-month period prior to the date the applicant certifies that he or she became eligible for benefits. For the purposes of this Part:

(1) The “date the applicant certifies that he or she became eligible for benefits” shall mean the date when the applicant experienced a loss of work-related earnings or loss of household income, as defined in Section 704.2(a) of this Part.

(2) The term “monetary earnings for a period greater than six weeks” shall mean direct financial compensation received by an applicant in exchange for work in excess of fifteen hours per week. Monetary earnings must be demonstrated on a per week basis and shall not include:

- (i) Payments related to scholarships, awards, grants, gifts, dividends, investments, stipends, work-study programs, or similar payments;
- (ii) Payments from lottery or gambling winnings, prizes, or income derived from violations of State law, including the penal law;
- (iii) Payments from child support, spousal maintenance, alimony, or restitution;
- (iv) Payments from any insurance policy or trust fund;
- (v) Payments from waivers, settlements, or awards based on a legal claim or legal action filed in any court, including administrative forums;
- (vi) Payments from social security, pensions, deferred income, or retirement accounts;
- (vii) Payments from a governmental entity unrelated to the applicant’s work; or
- (viii) Any other payments specified by the Commissioner.

(c) Applicants may provide work-related eligibility documents to establish points of proof as follows:

(1) For five points:

(i) Any documents listed in paragraphs (j) and (k) of subsection 3 of section 2 of Part EEE of Chapter 59 of the Laws of 2021;

(ii) Filing New York State taxes, which must include (A) proof of filing a New York State tax return for either tax years 2018, 2019, or 2020 with the Department of Taxation and Finance through submission of an electronic confirmation of e-filing, Department of Taxation and Finance issued “TF assignment letter”, or a bank statement reflecting payments to or from the Department of Taxation and Finance; and (B) proof of a valid United States individual taxpayer identification number (ITIN) or a W-7 application for an ITIN and proof of submission or filing; or

(iii) A letter from an employer documenting the dates of work of the applicant and the reason the applicant is no longer employed by the employer pursuant to subparagraph (i) of paragraph (k) of subsection 5 of section 2 of Part EEE of Chapter 59 of the Laws of 2021, which must include:

(A) the employer's mailing address and the address of the site, within New York State, at which the applicant was employed;

(B) the employer's New York State Unemployment Insurance account number or Federal Employment Identification Number (FEIN); or

(C) contact information, including a phone number, for a representative of such employer who can verify the contents of the letter.

(2) For three points:

(i) A complaint, charge, or equivalent document filed with a local, state, or federal agency or court, and acknowledged by such entity, alleging that the applicant worked in New York State, prior to April 19, 2021 and received, or should have received, monetary earnings for a period of greater than six weeks in the six-month period prior to the date the applicant certifies that he or she became eligible for benefits;

(ii) Evidence, such as statements issued by a financial institution, receipts from a check cashing establishment or transaction logs from a payment app, of regular direct deposits, deposits, or transfers from an entity or from an unrelated individual (in each case that is not determined to not be an employer) to the applicant;

(3) For one point:

(i) Employer issued identification badge;

(ii) Emails, text messages, social media posts or messages, or other written communications relating to delivery order sheets, work invoices, point of sale receipts, directions or instructions from employers;

(iii) Emails, text messages, social media posts or messages, or other written communications between an applicant and an employer or hiring party establishing the existence of a work relationship;

(iv) Evidence, such as statements issued by a financial institution, receipts from a check cashing establishment or transaction logs from a payment app, of recurring cashing of paychecks and/or remittance of funds from income or earnings by the applicant;

(v) Documents or materials issued by an employer to an employee, including any materials containing the employer's mailing address, the employer's New York State Unemployment Insurance account number or Federal Employment

Identification Number (FEIN), and contact information, including a phone number, from a representative of such employer;

(vi) Receipts or records showing a consecutive pattern of commuting to and from a work location, such as toll records, parking receipts, or public transportation records; or

(vii) Letter attesting to the applicant's employment history issued by a charitable organization registered with the charities bureau of the New York State Office of the Attorney General and based on direct knowledge that the applicant worked for the required duration, acquired in the course of conducting intake, interviews, or other standard processes related to the provision of job-related direct services to the applicant prior to April 19, 2021;

(d) An applicant may satisfy the requisite points of proof of work-related eligibility through any combination of documents listed in subsection (c) of this section, but an applicant shall not be entitled to additional points for multiple documents in the same category. For example, if an applicant provides documentation of five emails and text messages between the applicant and the hiring party to establish the existence of a work relationship, such emails and text messages cumulatively are worth one point from subsection (c)(iv). If the same applicant also provides three different emails with work invoices reflecting specific work performed for the hiring party, such emails cumulatively are worth one point from subsection (c)(iii). In this example, the applicant has established two points of proof: one from subsection (c)(iv) and one from subsection (c)(iii).