

*Good morning – Chair Fagerhaug and members of the Board. For the record, I am Kris Nelson and I serve as the Chief of Workforce Investment Support Services (WISS) for the **Nevada Department of Employment, Training and Rehabilitation.***

*I am here today to present to the Board for consideration and possible action a **temporary variance** to the **state-specific** requirement in **State Compliance Policy 1.14**, which is **highlighted** on **page 15** of the policy in your meeting packets. Also included in your meeting packets for reference are a policy brief outlining the background and justification for this request and a copy of the local boards' formal request.*

### **BACKGROUND**

*In **August 2016**, this Board approved **State Compliance Policy 1.14**, which prescribed state policy for **on-the-job training (OJT)** and **customized training** in compliance with the requirements set forth in the*

*Workforce Innovation and Opportunity Act (WIOA), secs. 113-118 and 20 CFR § 680.700-770.*

*On **June 29, 2020**, the department received formal request from the two local boards – Workforce Connections and Nevadaworks - requesting consideration of a **temporary variance** to the **20% limitation for current staffing levels in OJT contracts for a scaled allowance** based on employee counts for **Program Year (PY) 2020** (July 1, 2020 – June 30, 2021).*

*As outlined in the local boards' request, the justification for this **temporary variance** is due to: (1) the need for the ability to align funding to address business necessities as a result of the current economic condition due to the effects of the COVID-19 pandemic; (2) the need for the ability of local boards to target OJT funding toward small businesses that were the most significantly impacted by the economic effects of the pandemic.*

*If approved, a **scaled temporary variance** for **current total staffing levels in OJT contracts** based on employee counts will be allowed as follows: (1) an employer with more than 20 employees cannot receive more than **20 percent of current total staffing levels in OJT contracts** (maintaining the current policy limitation); and (2) an employer with 20 employees or less cannot receive more than **40 percent of current total staffing levels in OJT contracts**.*

*If the temporary variance is approved, and conditions remain that the local boards need to request a continuance of said variance in **Program Year 2021** (July 1, 2021-June 30, 2022), the local boards will need to make that request to the department, who will then bring this matter back before this Board at its **March 2021** public meeting for consideration.*

*If said request is not made, the state-prescribed **limitation** that per program year, an employer cannot receive more than **20 percent of***

*current total staffing levels in OJT contracts is restored in **State Compliance Policy 1.14.***

*This completes my presentation and I am happy to answer any questions this Board may have; and, representatives from both local boards are also present for any questions.*

*Thank you.*



June 29, 2020

Kristine Nelson, ESD Program Chief  
DETR/Workforce Investment Support Services  
1923 N. Carson Street, Ste. 200  
Carson City, NV 89706

RE: SCP (1.14) On-the-Job Training (OJT) and Customized Training

Dear Ms. Nelson:

The local boards, Nevadaworks and Workforce Connections are requesting a revision on the limit of OJTs which can be provided to a single employer in the Adult and Dislocated Worker (ADW) programs. The local boards are requesting the 20% limitation on current staff levels for OJT to be adjusted to a sliding scale as follows:

- Businesses with more than twenty employees – 20% limitation
- Businesses with twenty or fewer employees – 40% limitation

The local boards believe OJT is an effective tool for training and serves a dual purpose of aligning strongly with business needs. The local boards intend to target small business with this waiver. As a result of the closure of non-essential businesses in Nevada, many small businesses were impacted. A recent survey by the New York Federal Reserve indicated that one in five small businesses reported they would fail if they had to operate two months without revenue. The local boards believe:

- The needs of businesses are better addressed before they fail, preventing further job losses.
- Layoffs in small businesses will drive the need for retraining.
- Many job functions will change requiring training.
- Current requirement is a burden on service providers because rural communities have fewer business and the businesses tend to be smaller in size.
- Reduced availability of training due to COVID-19 creates a need for more training opportunities.

The local boards share DETR's concern with long term sustainability and will continue to evaluate OJT placements for completion, employment, and retention. The local boards expect that the requested revision will increase the ability to serve participants and businesses in a customer focused manner. Your respectful consideration is appreciated and will have a beneficial impact on the participants at the local level.

Respectfully,

Jaime Cruz  
Executive Director, Workforce Connections

John H. Thurman

John Thurman  
CEO, Nevadaworks

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**Policy Brief**  
**Governor's Workforce Development Board**  
***Temporary Variance - State Compliance Policy (SCP) 1.14***  
**RE: Minimum Training Expenditure Average**

**Authority**

As part of its' responsibility to provide guidance and direction to the Local Workforce Development Areas (Local Areas), DETR follows federal guidance in creating policy to implement the Workforce Innovation and Opportunity Act (WIOA). These policies are necessary for efficient and stable operations of the workforce system in the State of Nevada. As such, DETR provides the following for the Governor's Workforce Development Board (GWDB) for consideration, review, and approval.

**Background**

In **August 2016**, the Governor's Workforce Development Board approved **State Compliance Policy 1.14**, which prescribed state policy for **on-the-job training (OJT) and customized training** that corresponds with WIOA requirements set forth in secs. 113-128; 20 CFR § 680.700-770.

Within **SCP 1.14**, the state prescribed **additional requirements** (i.e., state-specific; not a federal requirement) designating that per program year, an employer cannot receive more than **20 percent of current total staffing levels in OJT contracts**. The intent of this state-specific requirement is to ensure that businesses receiving funding for staffing that is funded by OJT contracts can **sustain** staffing levels beyond OJT contract funding.

**For Consideration – Possible Action by the GWDB**

On **June 29, 2020**, Nevada's two local workforce development boards – Workforce Connections, representing the southern Nevada designated local area; and, Nevadaworks, representing the northern Nevada designated area – submitted a formal request for Board consideration of a *temporary variance* to the **20%** limitation of current staffing levels in OJT contracts based on employee counts as follows:

- Businesses with *more than 20* employees – maintain the **20% of current total staffing levels in OJT contracts** limitation.
- Businesses with *20 or less* employees – allow up to **40% of current total staffing levels in OJT contracts**.

**Justification Highlights** (*see LWDB's formal request, attached*)

A temporary scaled variance to the current limitation would allow the local boards to address business needs as a result of the current economic condition due to the effects of the COVID-19 pandemic as follows:

1. Align OJT funding to business needs due to significant business challenges; and,
2. Provide the local boards the ability to target OJT funding toward small businesses that were the most significantly impacted.

**DETR/ESD/ WISS**

**Nevada Department of Employment, Training and Rehabilitation  
(DETR)  
State Compliance Policy (SCP)**

**Policy Number:** 1.14

**Originating Office:** DETR; Workforce Investment Support Services (WISS)

**Subject:** On-the-Job Training (OJT) and Customized Training

**Issued:** August 2016; July 15, 2020, revision

**Purpose:** To provide the Workforce Innovation and Opportunity Act (WIOA) requirements for Work-based Training programs of On-the-Job Training and Customized Training.

**State Imposed Requirements:** This directive contains some state-imposed requirements. These requirements are printed in **bold, italic type**.

**Authorities/References:** Workforce Innovation and Opportunity Act (WIOA) P.L. secs. 113-128; Final Rule, 20 CFR §680.700-770; TEGL 3-15.

**ACTION REQUIRED:**

Upon issuance bring this guidance to the attention of all WIOA service providers, local workforce development board (LWDB) members and any other concerned parties. Any LWDB's policies, procedures, and/or contracts affected by this guidance are required to be updated accordingly.

**Background:**

Work-based training is employer-driven with the goal of unsubsidized employment after participation. Generally, work-based training involves a commitment by an employer or employers to fully employ successful participants after they have completed the program.

Work-based training can be an effective training strategy that can provide additional opportunities for participants and employers in both finding high-quality work and in developing a high-quality workforce. Each of these work-based models can be effectively used to target different job seeker and employer needs. Providers of work-based training must be providing the highest quality training to participants and are subject to performance and dissemination requirements of WIOA sec. 134(a)(2)(B)(v) and 122(h), separate from that of the Eligible Training Provider List (ETPL).

**On-the-Job Training (OJT)**—OJT is available to youth, adults and dislocated workers. OJT is a type of training that is provided by a private, private nonprofit, or public sector employer to a participant. During the training, the participant is engaged in productive work in a job for which he or she is paid, and the training provides the knowledge or skills essential to the full and adequate performance of the job.

**Customized Training**— designed to provide local areas with flexibility to ensure that training meets the unique needs of the job seekers, employers or groups of employers and is conducted

with a commitment by the employer to employ all individuals upon successful completion of training. It is generally designed so that the participants are trained by a third party and are generally classroom-based for the employer. Credentialing is encouraged, but not required.

### **Policy and Procedure:**

#### **On-the-Job Training**

#### **WIOA sec. 3(44)**

ON-THE-JOB TRAINING. —The term “on-the-job training” means training by an employer that is provided to a paid participant while engaged in productive work in a job that—

- (A) provides knowledge or skills essential to the full and adequate performance of the job;
- (B) is made available through a program that provides reimbursement to the employer of up to 50 percent of the wage rate of the participant, except as provided in WIOA section 134(c)(3)(H), for the extraordinary costs of providing the training and additional supervision related to the training; and
- (C) is limited in duration as appropriate to the occupation for which the participant is being trained, taking into account the content of the training, the prior work experience of the participant, and the service strategy of the participant, as appropriate.

#### **20 CFR §680.700**

- (a) On-the-job training (OJT) is defined at WIOA sec. 3(44). OJT is provided under a contract with an employer in the public, private nonprofit, or private sector. Through the OJT contract, occupational training is provided for the WIOA participant in exchange for the reimbursement, typically up to 50 percent of the wage rate of the participant, for the extraordinary costs of providing the training and supervision related to the training. In limited circumstances, as provided in WIOA sec. 134(c)(3)(h) and 20 CFR §680.730, the reimbursement may be up to 75 percent of the wage rate of the participant.
- (b) On-the-job training contracts under WIOA title I, must not be entered into with an employer who has received payments under previous contracts under WIOA or WIA if the employer has exhibited a pattern of failing to provide on- the-job training participants with continued long-term employment as regular employees with wages and employment benefits (including health 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 sec. 194(4))
- (c) An OJT contract must be limited to the period of time required for a participant to become proficient in the occupation for which the training is being provided. In determining the appropriate length of the contract, consideration should be given to the skill requirements of the occupation, the academic and occupational skill level of the participant, prior work experience, and the participant’s individual employment plan. (WIOA sec. 3(44)(C))



**WIOA sec. 181**

**(a) BENEFITS. —**

**(1) WAGES. —**

**(A) IN GENERAL.**—Individuals in on-the-job training or individuals employed in activities under this title shall be compensated at the same rates, including periodic increases, as trainees or 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 section 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.

**(B) RULE OF CONSTRUCTION.**—The reference in subparagraph (A) to section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) shall not be applicable for individuals in territorial jurisdictions in which section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) does not apply.

**(2) TREATMENT OF ALLOWANCES, EARNINGS, AND PAYMENTS.**—Allowances, earnings, and payments to individuals participating in programs under this title shall not be considered as income for the purposes of determining eligibility for and the amount of income transfer and in-kind aid furnished under any Federal or federally assisted program based on need, other than as provided under the Social Security Act. (42 U.S.C. 301 et seq.)

**(b) LABOR STANDARDS. —**

**(1) LIMITATIONS ON ACTIVITIES THAT IMPACT WAGES OF EMPLOYEES.** —No funds provided under this title shall be used to pay the wages of incumbent employees during their participation in economic development activities provided through a statewide workforce development system.

**(2) DISPLACEMENT. —**

**(A) PROHIBITION.**—A participant in a program or activity authorized under this title (referred to in this section as a “specified activity”) shall not displace (including a partial displacement, such as a reduction in the hours of non-overtime work, wages, or employment benefits) any currently employed employee (as of the date of the participation).

**(B) PROHIBITION ON IMPAIRMENT OF CONTRACTS.** —A specified activity shall not impair an existing contract for services or collective bargaining agreement, and no such activity that would be inconsistent with the terms of a collective bargaining agreement shall be undertaken without the written concurrence of the labor organization and employer concerned.

- (3) OTHER PROHIBITIONS. —A participant in a specified activity shall not be employed in a job if—
  - (A) any other individual is on layoff from the same or any substantially equivalent job;
  - (B) the employer has terminated the employment of any regular employee or otherwise reduced the workforce of the employer with the intention of filling the vacancy so created with the participant; or
  - (C) the job is created in a promotional line that will infringe in any way upon the promotional opportunities of currently employed individuals (as of the date of the participation).
- (4) HEALTH AND SAFETY. —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.
- (5) EMPLOYMENT CONDITIONS.—Individuals in on-the-job training or individuals employed in programs and activities under this title shall be provided benefits and working conditions at the same level and to the same extent as other trainees or employees working a similar length of time and doing the same type of work.

**WIOA sec. 181(b)(7)**

NO IMPACT ON UNION ORGANIZING. —Each recipient of funds under this title shall provide to the Secretary assurances that none of such funds will be used to assist, promote, or deter union organizing.

**Requirements for OJT Training Contracts for Employed Workers (20 CFR 680.710)**

OJT contracts may be written for eligible employed workers when:

- (a) The employee is not earning a self-sufficient wage as determined by LWDB policy;
- (b) The requirements in 20 CFR §680.700 are met; and
- (c) The OJT relates to the introduction of new technologies, introduction to new production or service procedures, upgrading to new jobs that require additional skills, workplace literacy, or other appropriate purposes identified by the LWDB.

**OJT Payments to Employers (20 CFR 680.720)**

- (a) On-the-job training payments to employers are deemed to be compensation for the extraordinary costs associated with training participants and potentially lower productivity of the participants while in the OJT.
- (b) Employers may be reimbursed up to 50 percent of the wage rate of an OJT participant, and up to 75 percent using the criteria in 20 CFR §680.730, for the extraordinary costs of

providing the training and additional supervision related to the OJT. (WIOA secs. 3(44) and 134(c)(3)(H)(i))

(c) Employers are not required to document such extraordinary costs.

**Reimbursement Rate Increased to 75% (20 CFR §680.730)**

(a) The Governor may increase the reimbursement rate for OJT contracts funded through the statewide employment and training activities described in 20 CFR §682.210 up to 75 percent, and the Local Board may also increase the reimbursement rate for OJT contracts described in 20 C F R §680.320(a)(1) up to 75 percent, when taking into account the following factors: (WIOA sec. 134(c)(H)(ii))

- (1) The characteristics of the participants taking into consideration whether they are “individuals with barriers to employment,” as defined in WIOA sec. 3(24);
- (2) The size of the employer, with an emphasis on small businesses;
- (3) The quality of employer-provided training and advancement opportunities, for example if the OJT contract is for an in-demand occupation and will lead to an industry-recognized credential; and
- (4) Other factors the Governor or Local Board may determine to be appropriate, which may include the number of employees participating, wage and benefit levels of the employees (both at present and after completion), and relation of the training to the competitiveness of the participant.

(b) Governors or LWDBs must document the factors used when deciding to increase the wage reimbursement levels above 50 percent up to 75 percent.

**OJT and Registered Apprenticeship Programs (20 CFR 680.740)**

(a) OJT contracts may be written with registered apprenticeship programs or participating employers in registered apprenticeship programs for the on-the-job training portion of the registered apprenticeship program consistent with 20 CFR §680.700. Depending on the length of the registered apprenticeship and State and local OJT policies, these funds may cover some or all of the registered apprenticeship training.

(b) If the apprentice is unemployed at the time of participation, the OJT must be conducted as described in 20 CFR §680.700. If the apprentice is employed at the time of participation, the OJT must be conducted as described in 20 CFR §680.700.

**NOTE:** Local boards must have written policy to detail the OJT process to include: a fully executed contract, job description, progress reports, financial activities, file, and management information system (MIS) content. All items listed above must be available during file monitoring review.

**Combining Individual Training Accounts and OJT Funds (20 CFR §680.750)**

There is no Federal prohibition on using both Individual Training Accounts (ITA) and OJT funds when placing participants into a registered apprenticeship program. See 20 CFR §680.330 on using ITAs to support participants in registered apprenticeship. Reference TEGl 3-15.

### **Work-Based Training Performance and Dissemination Requirements**

Providers of work-based training must be providing the highest quality training to participants and are subject to performance and dissemination requirements of WIOA sec. 134(a)(2)(B)(v)(II) and 122(h).

#### **WIOA sec. 122(h)(1)-(2)**

- (1) **IN GENERAL.** —Providers of on-the-job training, customized training, incumbent worker training, internships, and paid or unpaid work experience opportunities, or transitional employment shall not be subject to the requirements of subsections (a) through (f). Does not need to be an Eligible Training Provider (ETP) or be on the ETPL to provide said training.
- (2) **COLLECTION AND DISSEMINATION OF INFORMATION.**—A one-stop operator in a local area shall collect such performance information from providers of on-the-job training, customized training, incumbent worker training, internships, paid or unpaid work experience opportunities, and transitional employment as the Governor may require and use the information to determine whether the providers meet such performance criteria as the Governor may require. The one-stop operator shall disseminate information identifying such providers that meet the criteria as eligible providers, and the performance information, through the one-stop delivery system. Providers determined to meet the criteria shall be considered to be identified as eligible providers of these training services.

### **OJT Eligibility Requirements**

#### **Participant Eligibility:**

- The participant has received at least one career service and has been unable to gain or retain employment and has been determined to need training; and
- Has an Individual Employment Plan (IEP/ISS), wherein the participant's interests, abilities and needs are identified and related to the OJT employment; **OR**
  - If employed, earn less than the self-sufficiency hourly wage and includes a skills gap assessment; and
  - Has an Individual Employment Plan (IEP/ISS), wherein the participant's interests, abilities and needs are identified and related to the OJT employment; and
  - Training relates to the introduction of new technologies; or
  - Training relates to the introduction of new production or service procedures; or
  - Training relates to an employment promotion requiring additional skills or workplace literacy.

#### **Employer Eligibility: (WIOA secs. 181 and 194; 20 CFRs §680.700-730, and §683.200)**

Potentially eligible employers able to participate in OJT contracting include: private-for-profit businesses, private non-profit organizations, and public sector employers.

***A Pre-Award Employer Evaluation must be conducted, in writing, on all potential OJT employers per Local Board written policy and available at time of program monitoring. The policy, at a minimum, should cover the following items and include timeframes where applicable:***

1. Whether the employer is a new or established business. If the company has operated at the current location less than 120 days and the business relocated from another area in the U.S., verify that employees were not laid off at the previous location as a result of the relocation. (WIOA sec. 181(d)(2))
2. The Employer size. The number of employees currently employed at the local operation where the OJT placements will be made at time of pre-award evaluation. The policy should detail acceptable data collection methods and sources.
3. ***If the applicant has worked for the employer at any time in the past and, if so, the dates and circumstances. Individuals shall not be considered eligible for services with the same employer in the same occupation unless there has been documented new technology, production or service procedures.***
4. The hiring practices of this employer in general, and for this position in particular and if the employer has exhibited a pattern of failing to provide OJT participants with continued long term employment as regular employees with wages and employment benefits and working conditions at the same level as other employees . Reference WIOA sec. 194(4). If the pay and benefits are equivalent to similar positions in the labor market and/or similar positions with the employer.
5. If the applicant is related to the employer, or an employee who works for the employer in an administrative or supervisory capacity. (20 CFR §683.200(g))
6. The employer's rate of employee turnover, and the turnover for this particular position. Contracting with employers who have high employee turnover rates should be avoided.
7. ***If the employer has incurred any layoffs in the past 12 months. Must verify that no Worker Adjustment and Retraining Notification Act (WARN) notices have been filed.***
8. If the position is full- or part-time, and if permanent, temporary, or seasonal. ***Contracts shall not be established for positions that do not or cannot have a trainer or supervisor present,*** or for temporary positions that are supplied to employers by temporary employment contractors.
9. If the position is covered by a collective bargaining agreement, and if the training is consistent with such agreement.
10. If there have been any OSHA, wage and hour, or child labor law violations in the past year.
11. If there have been any substantiated Equal Opportunity complaints.
12. ***What the minimum qualifications for the position are, and that there is a written job description.***
13. That the employer provides worker's compensation.

14. *That the employer's accounting system (especially payroll), personnel system, grievance system, etc., is adequate to administer the contract agreement.*

15. If the employer is presently disbarred or suspended from receiving federal contracts.

**NOTE:** Re-contracting is allowable with the same employer and certainly desirable when an employer/training provider has a high success rate of training and placement. However, re-contracting should not be entered into with employers who have received payments under previous contracts and have exhibited a pattern of failing to provide on-the-job training participants with continued long-term employment as regular employees with wages and employment benefits (including health 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. (20 CFR §680.700) Additionally, (WIOA sec.181 and 194; 20 CFR §680.700) an employer will NOT be eligible to receive WIOA OJT training reimbursements if:

- The employer has any other individual on layoff from the same or substantially equivalent position.
- The OJT would infringe upon the promotion of or displacement of any currently employed worker or a reduction in their hours.
- The same or a substantially equivalent position is open due to a hiring freeze.
- The positions are for seasonal employment.
- The employer is a private for-profit employment agency, i.e. temporary employment agency, employee leasing firm or staffing agency.
- The position is not full time, i.e. *minimum of 32 hours per week.*
- If the employer has exhibited a pattern of failing to provide on-the-job training participants with continued long-term employment as regular employees with wages and employment benefits (including health 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.

If an employer fails to provide a participant with long-term employment, wages, benefits and/or working conditions equal to those provided to regular employees, the employer has failed the OJT contract and will not be eligible for future contracts. Such employers may be provided another opportunity to participate in training if they make a request for reconsideration and if the circumstances attributed to the failure have changed. However, an employer who exhibits or has exhibited a pattern of failure will not be eligible to participate in future OJT contracts.

Occupational Eligibility (WIOA sec. 134):

OJT funding must be used for those occupations for which are in-demand within Nevada's industry sectors, in the area served, or in another area to which the trainee is willing to relocate, and which lead to employment opportunities enabling the participant to become economically self-sufficient and which will contribute to the occupational development and upward mobility of the participant.

OJT Contract Requirements (WIOA sec 134, 181, and 194; 20 CFR §680.700-750) OJT contracts shall at a minimum contain or address the following information:

1. Occupation(s) for Which Training Is to Be Provided

Training will be provided only for those occupations for which there is a demand in the area served, or in another area to which the trainee is willing to relocate.

2. Length of Time the Training Will Be Provided

The length of OJT shall be based on the skill gap assessment and duration required for the participant to become proficient in the occupation for which the training is being provided and per Local Board policy.

**NOTE:** Skills gap occurs where there is a gap between the skills of the individual and the skills needed for the targeted job. The skill gap is measured (and should be documented) by taking into consideration:

- the initial skills of the participant as determined by recognized skill assessment tools (not just educational attainment);
- skill level needed to perform the job as outlined in the Specific Vocational Preparation (SVP) level for the chosen occupation in the Dictionary of Occupational Titles (DOT).

3. Wage Rate to Be Paid to The Trainee

Individuals participating in on-the-job training must be compensated, by the employer, at the same rates, including periodic increases, as trainees or employees who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills. The rates may not be lower than the higher of the federal or state minimum wage.

4. Reimbursement for On-the-Job Training

The rate in which the employer will be reimbursed for the OJT Contract, based on 20 CFRs § 680.720 and 680.730; State and Board policy and communicated sufficiently in each contract.

5. Training Outline Listing Work Skills To Be Learned In the Position

A comprehensive list of work skills the trainee will learn during the contract period is a required part of the contract. Efforts should be made to develop programs which contribute to occupational development, upward mobility, development of new careers, and opportunities for nontraditional employment.

6. Other Classroom Training

An outline of any other separate classroom training, if applicable.

7. Employer's Agreement

The employer must preserve all trainee payroll, including reimbursement records, fringe benefit, and personnel records (including time and attendance sheets normally kept by the employer for employees) for three years from the close of the applicable program year or longer if any litigation or audit has begun or any claim is instituted which involves these records. In that case, the employer shall retain the records beyond the three-year period until the litigation, audit findings or claim has been resolved.

## 8. OJT Contracts for Employed Workers

OJT contracts may be written for eligible employed workers when:

- a. The employee is not earning a self-sufficient wage as determined by local board policy;
- b. The requirements of 20 CFR §680.700 are met; and
- c. The OJT relates to the introduction of new technologies, introduction to new production or service procedures, upgrading to new jobs that require additional skills, workplace literacy, or other appropriate purposes identified by the local board.

### Written Assurances (WIOA secs. 134, 181, and 194; 20 CFR § 680.700-750, WIOA Contract Assurances Attachment C)

OJT contracts must include several standard assurances that are designed to acknowledge a contractor's (employer) responsibilities in accepting public funds for training. The assurances should address these issues:

1. At the end of the training period, the employer intends to retain the trainee in the occupation and compensate the trainee for at least the hourly wage rate specified in the contract agreement. Retention will be subject to the employer's right to terminate the trainee for normal business or personnel reasons.
2. Individuals in on-the-job training must be provided benefits and working conditions at the same level and to the same extent as other trainees or employees working a similar length of time and doing the same type of work.
3. Funds provided to employers for OJT must not be used to directly or indirectly to assist, promote or deter union organizing.
4. No individual in a decision-making capacity including workforce development board members shall engage in any activity, including participation in the selection, award, or administration of a contract supported by WIOA funds if a conflict of interest would be involved.
5. The employer will provide worker's compensation coverage for the trainee and abide by health and safety standards established under State and Federal law.
6. The trainee will not conduct political or sectarian activities at work while under the provisions of the OJT contract.
7. The employer will not discriminate against any trainee on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and against beneficiaries on the basis of either citizenship/status as a lawfully admitted immigrant authorized to work in the United States or participation in any WIOA Title I-financially assisted program or activity.
8. The employer certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this contract by any Federal department or agency.
9. The employer certifies that it will provide a drug-free workplace as defined by the Drug-Free Workplace Act of 1988.



10. The employer is in compliance with all State and local laws regarding taxation and licensing.
11. Trainees who are working as laborers/mechanics in any construction, alteration or repair (including painting and decorating) of public buildings or works must be compensated in compliance with the Davis-Bacon Act.
12. A trainee in an OJT program shall not displace (including a partial displacement, such as a reduction in the hours of non-overtime work, wages, or employment benefits) any currently employed employee (as of the date of the participation).
13. The employer agrees that no trainee shall be hired into or remain working in any position when any other individual is on layoff from the same or any substantially equivalent job. An OJT trainee may not be employed in a job if the employer has terminated the employment of any regular, unsubsidized employee or otherwise caused an involuntary reduction in its workforce with the intention of filling the vacancy with the WIOA participant. It is not allowable for an OJT job to be created in a promotional line that infringes in any way on the promotional opportunities of currently employed workers.
14. The contract will not encourage or induce the relocation, or an establishment or part thereof, that results in a loss of employment for any employee of such establishment at the original location.
15. Nothing in the OJT contract shall impair existing contracts for services or existing collective bargaining agreements unless the employer and the labor organization concur in writing.
16. The Contractor certifies that it is using and abiding by all state and federal employment authorization regulations for all new employees physically performing services within the State of Nevada.

#### Performance Information

Local boards will determine whether training providers meet acceptable performance levels, financial and regulatory requirements and the overall effectiveness of the OJT Contract. Local boards will have written policy detailing the provisions of OJT oversight. All provisions of OJT are subject to State monitoring and oversight efforts.

Providers of on-the-job training will not be subject to the eligible provider requirements (ETPL). However, local areas must collect performance information on providers of on-the-job training (20 CFR §680.530). At a minimum, this performance information should include:

- ***Data on placement of trainee at end of the contract***
- ***2nd quarter and 4th quarter employment retention rates***
- ***Rate of successful completion of On-the-Job Training***
- ***Wage of OJT Training Recipients and Wage after his/her training ends (increase or decrease)***

**Required Participant File Content** (WIOA secs. 134, 181, and 194; 20 CFR § 680.700- 750; Data Element Validation)

*The participant case file must contain at a minimum and per Local Board requirements:*

- *Administered assessments and the IEP/ISS wherein the participant's interests, abilities and needs are identified and related to the OJT employment.*
- *The OJT Contract; contract modification if any.*
- *The OJT Job Description.*
- *Progress Reports (content and interim per Local Board policy).*
- *Financial documentation (including time sheets, invoices and payroll records) as to costs associated with OJT.*

**Required Case Note/Comment**

- *The need for the training service has been properly documented.*
- *Co-enrollment details as to shared costs and services if any.*
- *Contact with participant/OJT Employer.*
- *Start and end dates, invoice details in time frames and costs.*
- *Receipt of progress reports, performance and necessary steps taken to improve below standard performance.*

**NOTE:** WIOA adds a requirement that at least 20 percent of formula funds at the local level be used on work-based training activities such as summer jobs, on-the-job training (OJT), and Apprenticeship for the Youth program. (WIOA sec. 129; Reference SCPs 2.1, 2.2, and 2.4.

**Customized Training**

WIOA sec. 3(14) and 134(c)(3)(g)(ii) requires contracts between the employer and the Local Board for Customized Training. Customized Training is designed to provide local areas with flexibility to ensure that training meets the unique needs of the job seekers and employers or groups of employers with a commitment by the employer to employ all individuals upon successful completion of training. It is generally designed so that participants are trained by a third party for the employer.

The employer must pay for a significant share of the cost of the training. Local boards must determine what a significant share of the cost of training would be. The U.S. Department of Labor considers wage gain an important measure that the local board may consider when determining if customized training would be appropriate.

Customized Training is generally for hiring new or recent employees and not for retaining existing employees although there may be instances where this is appropriate. In these instances, customized training may be used for individuals making more than self-sufficient wages, as a layoff aversion tactic, and if all appropriate criteria are met as long as it leads to comparable to or higher than previous employment.

**WIOA sec. 3(14), 20 CFR §680.760)**

The term “customized training” means training—

- (A) that is designed to meet the specific requirements of an employer (including a group of employers);
- (B) that is conducted with a commitment by the employer to employ an individual upon successful completion of the training; and
- (C) for which the employer pays—
  - (i) a significant portion of the cost of training, as determined by the local board involved, taking into account the size of the employer and such other factors as the local board determines to be appropriate, which may include the number of employees participating in training, wage and benefit levels of those employees (at present and anticipated upon completion of the training), relation of the training to the competitiveness of a participant, and other employer-provided training and advancement opportunities; and
  - (ii) in the case of customized training (as defined in subparagraphs (A) and (B)) involving an employer located in multiple local areas in the State, a significant portion of the cost of the training, as determined by the Governor of the State, taking into account the size of the employer and such other factors as the Governor determines to be appropriate.

**Customized Training Requirements (20 CFR §680.770)**

Customized training of an eligible employed individual may be provided for an employer or a group of employers when:

- (a) The employee is not earning a self-sufficient wage as determined by Local Board policy;
- (b) The requirements in 20 CFR §680.760 are met; and
- (c) The customized training relates to the purposes described in 20 CFR §680.710(c) [see below] or other appropriate purposes identified by the local board.

**Customized Training Policy Requirements: (WIOA secs. 3 and 134; 20 CFR §680.700-770)**

Local boards must have written policy should they choose to allow customized training. At a minimum, policy must consider the following factors for when customized training is to be used:

- The characteristics of individuals or groups of individuals to be trained, and how they would benefit;
- The quality of training (e.g., industry-recognized credentials; other credentials or exams validated by industry, trade or professional associations; advancement opportunities);
- The number of participants the employer plans to train or retrain;
- The wage and benefit levels of participants (before and after training); and
- The occupation(s) for which customized training is being provided must be in demand as defined by WIOA sec. 3(23) and as determined by workforce development area-specific labor market information.

Local boards must track and document employer cost share contributions. When determining a significant portion of the cost of training, local boards must take into account the size of the employer and other appropriate factors such as:

- The number of participants in training.
- Wage and benefit levels of these employees (before and after training).
- The skills assessment results of the participant in relation to the desired training outcome.
- Other employer provided training and advancement opportunities.

Local boards must have policy on cost sharing methodologies. One method for determining employer share of training costs, keeping in mind that the State Plan encourages the support of small business, is to base it on the size of the workforce. Wages paid to the participant while in training can be included as part of the share and the share can be provided as cash or in-kind that is fairly evaluated. An example of employer share would be:

- a. At least 10 percent of the cost for employers with 50 or fewer employees.
- b. At least 25 percent of the cost for employers with 51 to 100 employees.
- c. At least 50 percent of the cost for employers with more than 100 employees.

Another method is to cap training cost. For example, per trainee allowance may be capped at \$3,000 for business employing 50 or more, and \$6,000 for those employing less than 50 positions.

#### **Monitoring and Oversight (2 CFR §200; WIOA secs. 183 and 184)**

Local boards must have written policy relating to all provisions of this policy as to monitoring and oversight of contracted training providers. Sub-recipients in each local area must monitor training, invoice and reimbursement systems on a pre-determined systematic and documented basis.

Monitoring of OJT contracts must include review of prior hiring patterns to ensure compliance with WIOA sec. 188 regarding nondiscrimination as well as practices identified in Local Board written policy which may include training site visits. Regular contact with the participant and the employer is expected and must be recorded in the participant's file in the form of case notes/comments and evaluation records. Oversight should focus on all contract terms, identifying and resolving problems that might jeopardize the successful completion of the OJT.

The employer must preserve all trainee payroll, fringe benefit, and personnel records (including time and attendance sheets normally kept by the employer for employees) for three years from the close of the applicable program year or longer if any litigation or audit has begun or any claim is instituted which involves these records. In that case, the employer shall retain the records beyond the three-year period until the litigation, audit findings or claim has been resolved. The employer must allow access to those records by authorized entities.

#### **Local Board Policy Requirements Summary**

**Local boards must have written policy defining the following:**

- Eligibility of participant, where applicable, and training provider in each work- based training service.
- Contract requirements for local board with customized training providers and employer.

- Define “significant cost of training” for customized training.
- Documentation and reporting of performance and methods of dissemination of work-based training activities to the public.
- Definition of self-sufficient wage in the local area.
- Contract requirements for OJT providers and participants, including file, MIS, financial activities/records, and job descriptions specific to employment, progress reports.
- Monitoring of OJT contract with employer for performance, appropriate duration, and financial activities. **NOTE:** Local boards may not enter into contracts with employers who have failed to continue to employ OJT participants long-term (i.e., at least four quarters after exit), not providing wages, benefits and working conditions as other employees.
- Contract requirements for participants in OJT in an Apprenticeship program.
- Case note and MIS requirements to communicate each service administered, including costs and case work, in each work-based training activity.
- What method of skills-gap assessment will be used (i.e.; included in IEP/ISS), and how it will be documented for oversight purposes.
- Additional contract conditions as defined by the local board that might include duration of contracts, cap limits, etc.

#### **Additional Requirements**

- *Per program year, an employer cannot receive more than 20 percent of current total staffing levels in OJT contracts.*
- *For Program Year 2020 (PY20), a temporary variance for current staffing levels in OJT contracts based on employee counts will be allowed as follows:*
  - *An employer with more than 20 employees cannot receive more than 20 percent of current total staffing levels in OJT contracts.*
  - *An employer with 20 employees or less cannot receive more than 40 percent of current total staffing levels in OJT contracts.*

***This variance is effective July 1, 2020 through June 30, 2021.***