



**Crater Regional Workforce Development Board
LWDA-15**

**Policy Number 2016-012
Effective Date: October 5, 2016**

Title: On-The-Job Training Policy:

Service Providers shall comply with the State of Virginia Commission and WIA section 101 in providing on-the-job training to participants. Occupations that are among the demand occupations for the region, as well as apprenticeable trades/occupations and training for women in those occupations, which considered non-traditional, are important to CRWDB.

Background:

On-the-Job training (OJT) under the Workforce Innovation and Opportunity Act (WIOA) is provided under a contract with an employer in the public, private non-profit, or private sector. This training arrangement is an exception to the Individual Training Account (ITA) requirement specified in Section 134. 20 CFR § 680.720(b) allows employers to be reimbursed up to 50% of the wage rate of an OJT participant for the extraordinary costs of providing the training and additional supervision related to the OJT. As described later in the policy, employers that meet the criteria listed in 20 CFR § 680.730 may be reimbursed up to 75% of the wage rate for extraordinary costs of providing the training and additional supervision related to OJT.

Policy:

WIOA and implementing regulations establish minimal requirements for on-the-job training contracts. Agreements for on-the-job training services must be in writing and must ensure that participants are provided a structured training opportunity in which to gain the knowledge and competencies necessary to be successful in the occupation in which they receive training. The training services shall be provided in a manner that maximizes consumer choice in the selection of an eligible provider of such services.

Definition -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:

- 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. (WIOA Section 3(44))

Adult Programs -Training services for adults and dislocated workers may include on-the-job training opportunities. (WIOA Section 134(c)(3)(D)(ii))

OJT may be provided pursuant to a contract for services in lieu of an individual training account (WIOA Section 134(c)(3)(G)(ii))

General Restrictions and Guidelines- OJT contracts should not be entered into with employers who received payments under WIOA or the Workforce Investment Act 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 and working conditions on 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 Section 194(4))

Each program under WIOA shall provide employment and training opportunities to those who can benefit from, and who are most in need of, such opportunities (WIOA Section 194(1))

WIOA Section 134(c)(3)(E) requires that priority for OJT must be given to recipients of public assistance, other low-income individuals (The term “low-income individual” means an individual who— (i) receives, or in the past 6 months has received, or is a member of a family that is receiving or in the past 6 months has received, assistance through the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.), the program of block grants to States for temporary assistance for needy families program under part A of title IV of the Social Security Act, or the supplemental security income program established under title XVI of the Social Security Act, or State or local income-based public assistance; (ii) is in a family with total family income that does not exceed the higher of— (I) the poverty line; or (II) 70 percent of the lower living standard income level; (iii) is a homeless individual – WIOA Section 3(36)) **and**;

individuals who are basic skills deficient (The term “basic skills deficient” means, with respect to an individual— (A) who is a youth, that the individual has English reading, writing, or computing skills at or below the 8th grade level on a generally accepted standardized test; or (B) who is a youth or adult, that the individual is unable to compute or solve problems, or read, write, or speak English, at a level necessary to function on the job, in the individual’s family, or in society – WIOA Section 3(5))

Funds for Registered Apprenticeship Programs - OJT contracts may be written with registered apprenticeship programs or participating employers in registered apprenticeship programs for the OJT 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. (20 CFR § 680.740)

On-the-Job Training Contract Requirements:

OJT contracts shall be procured in accordance with all federal, state and local procurement policies and at a minimum shall contain or address the following information:

A. 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.(WIOA Section 134(c)(3)(G)(iii))

B. Length Of Time The Training Will Be Provided – The length of OJT in Crater Area XV shall be based on the skill gap assessment, and is limited to a maximum of six months or 1040 hours of work, whichever comes first. Skill 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

There are several recognized skill assessment tools that are useful in determining the skills necessary for specific occupations and industries.

Some of these include:

- Industries: Competency Model Clearinghouse www.CareerOneStop.org/CompetencyModel. Includes competency models for bioscience, construction, automation, and more
- Occupations: **O*NET OnLine** <http://online.onetcenter.org>. Occupational Competency Profiles contain: tasks, knowledge, skills, abilities, detailed work activities
- Certification Finder: www.careerinfonet.org/certifications_new/default.aspx. Includes certifications for hundreds of occupations.

In most instances in Virginia, the O*NET assessment shall be used, but the other tools listed above are acceptable.

The duration 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 (20 CFR § 680.700(c)). Local policies for determining duration must be documented in the local policies or plans (WIOA Section 108(b) (4) (B))

C. *Wage Rate To Be Paid To The Trainee* – Individuals participating in on-the-job training must 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. The rates may not be lower than the higher of the federal or state minimum wage. (WIOA Section 181(a) (1))

D. *Reimbursement for On-the-Job Training* -OJT 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.¹⁶ Typically, the reimbursement rate may be up to 50 percent of extraordinary costs.

The Governor or local board may increase the amount of the reimbursement from 50 percent up to 75 percent of the wage rate of a participant for a program if: 1. The Governor approves the increase with respect to a program carried out with funds reserved by the state; or 2. The local board approves the increase with respect to a program carried out with funds allocated to a local area. (WIOA Section 134(c) (3) (H) (i))

In making the determination of whether to increase the reimbursement amount, the Governor or the local board must take into account factors consisting of

1. The characteristics of the participants taking into consideration whether they are “individuals with barriers to employment” as defined by WIOA Section 3(24); (The term “individual with a barrier to employment” means a member of 1 or more of the following populations: (A) Displaced homemakers. (B) Low-income individuals. (C) Indians, Alaska Natives, and Native Hawaiians, as such terms are defined in section 166. (D) Individuals with disabilities, including youth who are individuals with disabilities. (E) Older individuals. (F) Ex-offenders. (G) Homeless individuals or homeless children and youths. (H) Youth who are in or have aged out of the foster care system. (I) Individuals who are English language learners, individuals who have low levels of literacy, and individuals facing substantial cultural barriers. (J) Eligible migrant and seasonal farmworkers, as defined in section 167(i). (K) Individuals within 2 years of exhausting lifetime eligibility under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.). (L) Single parents (including single pregnant women). (M) Long-term unemployed individuals. (N) Such other groups as the Governor involved determines to have barriers to employment.)

2. The size of the employer;
3. The quality of the employer-provided training and advancement opportunities; and
4. Such other factors as the Governor or local board, respectively, may determine to be appropriate, which may include,
i. The number of employees participating in the training;
ii. Wage and benefit levels of those employees (at present and anticipated upon completion of the training); and
iii. Relation of the training to the competitiveness of a participant. (WIOA Section 134(c)(3)(H)(ii); 20 CFR § 680.730)

The Governor or local board must document the factors used when deciding to increase the wage reimbursement levels above 50 percent.(20 CFR § 680.730)

E. *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.

F. *Other Classroom Training* – An outline of any other separate classroom training may be provided by the employer.

G. *Employer's Agreement To Maintain And Make Available Accurate And Complete Time And Attendance, Payroll And Other Records To Support Amounts Claimed By The Employer For Reimbursement Under The Contract* – 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.

H. *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.(20 CFR § 710)

OJT contracts must include several standard assurances that are designed to acknowledge a contractor's 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.(WIOA Section 181(b)(5))
3. Funds provided to employers for OJT must not be used to directly or indirectly assist, promote or deter union organizing. (WIOA Section 181(b) (7))

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.(20 CFR § 679.430)

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. (WIOA Section 181(b) (4))

6. The trainee will not conduct political or sectarian activities at work while under the provisions of the OJT contract. (WIOA Section 194(6))

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 Workforce Investment Act Title I-financially assisted program or activity. (WIOA Section 188(a) (1))

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. (41 U.S.C. § 8102)

10. The employer is in compliance with all State and local laws regarding taxation and licensing.

11. 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). (WIOA Section 181(b) (1))

12. 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. (20 CFR § 683.270(c))

13. 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. (WIOA Section 181(d) (2))

a) No WIOA funds shall be used for customized or skilled training, on-the-job training, or company-specific assessments of job applicants or employees, for any establishment or part thereof, that has relocated, until 120 days after the commencement or expansion of

commercial operations of a relocating establish, at a new or expanded location, if the relocation of such establishment or art thereof results in a loss of employment for any employee of such establishment at the original location

b) Contracts will only be written where an employer requires the incentive of reimbursement in order to hire and train the individual

14. 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. (20 CFR § 683.270(b))

15. No person or organization may charge a participant a fee for the placement or referral of such individual to a WIOA training activity

16. In no case shall an individual who is fully skilled in an occupation be placed as an OJT participant in that occupation.

17. During OJT, participants should not be terminated from their OJT work duties without prior notice and a reasonable opportunity to correct and/or improve performance. After OJT period is completed, the employer is expected to hire and retain the participant in the occupation for which he/she was trained.

18. Employers may not require participants to sign non-competitive agreements or any other agreements, which limit the participant's future employment opportunities. Further, employers who require participants to sign noncompetitive or other limiting agreements to employment after the OJT period has concluded, will not be eligible for future OJT contracts so long as this practice continues.

19, OJT employers shall make reasonable efforts to resolve grievance arising out of OJT activities and refrain from actions, which harass, antagonize, intimidate, coerce, threaten, discriminate, or otherwise take reprisal against a participant filing a complaint concerning WIOA programs or activities.

Applicability:

CRWDB service providers/ For more information, refer to the One-Stop OJT Manual

Note: This policy is based on NDOL's reading of the statute along with the Notice of Proposed Rulemaking released by USDOL. This policy may be subject to change as additional federal regulations and TEGs are released. This policy is not intended to be permanent and should be viewed as a placeholder until final federal regulations and state guidelines are released in 2016