

Eastern Area Workforce Development Board
Workforce Innovation and Opportunity Act
Policy 12-12 On-the-Job Training (OJT)

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Contact: Inquiries regarding this document should be directed to Administrative Staff of the EAWDB at (575)208-2210.

REFERENCES:

- Title I of the Workforce Innovation and Opportunities Act (WIOA) of 2014, as amended (29 U.S.C. 2801 et seq.);
- WIOA Regulations, 20 CFR Part 652 et al, 29 CFR Part 95-97;
- Office of Management and Budget (OMB) cost principles codified in 2 CFR Part 220, Part 225 and Part 230;
- Department of Labor (DOL) Employment and Training Administration (ETA) Training and Employment Guidance Letter (TEGL) No. 19-16;
- NMSA 1978, Section 50-14-1 *et seq.*, NMAC 11.2.12;
- WIOA Regulation, 20 CFR 681.540 (a)

1. PURPOSE:

To provide clarification for the Eastern Area Workforce Development Board (EAWDB) WIOA subrecipients regarding NMAC 11.2.12 as it relates to the execution of OJT training and to establish requirements for the delivery of on-the-job-training services under the EAWDB. In the case of a conflict between NMAC 11.2.12 and this policy NMAC 11.2.12 shall be the prevailing guidance.

2. BACKGROUND:

OJT provides financial assistance to employers who agree to train suitable WIOA eligible individuals. The financial assistance is compensation for the extraordinary costs associated with training participants and the costs associated with lower productivity of new employees and is not an employer subsidy.

On the Job Training (OJT) is an allowable activity for adults, dislocated workers and eligible youth who after an objective assessment are determined to be appropriate for this activity. The intention for OJT training is to train in the highest skill occupation appropriate to the participant. OJT is not to be used for employment training for low-skill, low paying jobs or occupations with little or no potential for upward mobility. OJT training must be provided pursuant to an OJT contract instead of utilizing an ITA contract.

3. DEFINITIONS:

(A) On-the-Job-Training (OJT) means training by which the employer provides training to a paid participant while engaged in productive work in an occupation that:

- Provides knowledge or skills essential to the full and adequate performance of the job;
- Is made available through a program that provides reimbursement to the employer for a portion of the wages of the participant for the extraordinary costs for providing training and the additional supervision related to the training; and
- 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.

(B) Appropriate Commitment to hire an individual means an intent to maintain an employer-employee relationship meeting the requirements of the Fair Labor Standards Act (FLSA) for a minimum of one (1) year.

(C) High-priority Occupation (HPO) is an in-demand occupation that has higher skill needs and is likely to provide a self-sufficient wage. Statistical data, regional expertise, and local workforce area inputs are combined to determine whether or not an occupation meets the high-priority criteria.

(D) Incumbent Worker is an individual who is employed, meets FLSA requirements for an employer-employee relationship, and has established employment history with the employer for six (6) months or more.

(E) Incumbent Worker Training (IWT) is training provided to an incumbent that is designed to meet the needs of an employer or employers to:

- retain a skilled workforce or avert the need to lay off employees;
- increase the competitiveness of the employer or employee; and
- be conducted with a commitment by the employer to retain or avert the layoffs of the incumbent worker trained.

Such training may also include the upskilling of an employer's current workforce, which may lead to additional opportunities for potential jobseekers.

(F) In-Demand Industry Sector is an industry sector that has a substantial current or potential impact (including jobs that lead to economic self-sufficiency and opportunities for advancement) in the state, regional or local economy, as appropriate, and that contributes to the growth or stability of other supporting businesses, or the growth of other industry sectors.

Note: The determination of whether an industry sector or occupation is in-demand in a local area is made by the local board, as appropriate, using business and labor market projections and statistics. However, all HPOs and bonafide job offers are considered in-demand occupations and therefore, eligible for OJT training.

(G) Recent employee is an individual who is an employee, meets FLSA requirements for an employer-employee relationship and has established employment history with the employer for six (6) months or less.

(H) Occupational skills training is defined as an organized program of study that provides specific vocational skills that lead to proficiency in performing actual tasks and technical functions required by certain occupational fields at entry, intermediate, or advanced levels

(I) Part-time: Part-time workers are those who work fewer than 30 hours per week.

4. ACTION:

OJT TRAINING SHALL:

(A) be for non-seasonal, permanent full-time employment, or may be for part-time employment when provided in conjunction with occupational skills or Apprenticeship training.

(i) full-time employment is defined at a minimum of 30 hours per week

(ii) waivers to the 30 hours per week requirement may be requested for individuals with disabilities who need the reasonable accommodation of a shorter work week in order to become self-sufficient

(B) be for training that pays the trainee at a minimum \$12.00 per hour;

(C) not be utilized for employed workers making more than the EAWDB's established self-sufficiency wage level prior to training.

5. EMPLOYER ELIGIBILITY:

Within the parameters of WIOA, One Stop Staff may engage in OJT opportunities with any public, private non-profit, private sector employer or registered sponsor with the following exceptions. OJT may not be utilized for:

(A) An employer who has been convicted of violating federal laws and regulations within the last two years of requesting and OJT regarding: submission of worker adjustment and retraining notification (WARN) notices, occupational safety and health administration (OSHA) and Americans with Disabilities Act (ADA) standards, equal employment opportunity (EEO) and wage and hour requirements, state unemployment insurance (UI) laws, and fair labor standards and collective bargaining agreements.

(B) An employer who has exhibited a pattern of not retaining OJT participants in permanent positions upon satisfactory completion of training. For the purposes of this policy “a pattern of not retaining OJT participants is defined as three trainees in any twelve-month period”.

(C) An employer that has demonstrated deficiencies in the quality of training or the training environment. This determination may be made on training, employment or environmental practices observed by NMWCC staff during worksite visits or through a combination of reporting of deficiencies by the trainee and investigation by NMWCC or board staff.

(C) An establishment which is presently suspended or barred from doing procurement business with any branch of government.

(D) An employer providing workers on a temporary basis to employers for which they receive compensation from the employer.

(E) An employer who has exhibited a pattern of failing to provide OJT participants with continued long-term employment with wages, benefits, and working conditions that are equal to those provided to regular employees who have worked a similar length of time and are doing the same type of work.

(F) An establishment that plans to use the WIOA to relocate from another area, or locate new branches, subsidiaries, or affiliates.

(G) Business in which the participants will be employed to carry out the construction, operation, or maintenance of any part of a facility that is used or to be used for sectarian instruction or as a place of religious worship. 29 CFR 37.6(F).

(H) A business which has relocated within the last 120 days and dislocated or laid off workers at its previous location.

If an employer is established as ineligible for OJT funding by the office then the employer can submit a written request for reconsideration to the One Stop Systems Committee of the EAWDB.

6. OCCUPATIONAL ELIGIBILITY

OJT may not be utilized for any of the following occupations:

(A) Occupations dependent on commission or draw as a primary source of income.

(B) Intermittent seasonal occupations.

(C) Part-time occupations except as noted when in conjunction with Apprenticeships or Occupational skills training.

(D) Occupations temporary in design.

(D) Occupations which have not traditionally required specific occupational training as a prerequisite for performance, such as porters, janitors, stackers, laborers, restaurant workers, etc. (entry level).

(E) Occupations whose prior training, certification or license make the individual qualified to perform the occupation, such as school teacher, cosmetologist, LPN, RN, etc., unless they are unable to enter or retain employment without additional on-the-job-training due to occupational skill gaps.

(F) Any occupation whose training time is less than 160 hours.

(G) When an employer has laid off workers in substantially equivalent positions or where the OJT will impair any existing labor agreements, contracts for services or promotional opportunities for current employees. For the purposes of the OJT, “substantially equivalent position” is one in which the job responsibilities and skill, experience, and performance requirements have remained unchanged since the time of the layoff. To provide evidence that the position has “substantially changed”, there should be a new and different job description for the position.

(H) Any position or occupation which is vacant because the former occupant is on strike or is being locked out in the course of a labor dispute, or the filling of which is otherwise an issue in a labor dispute involving a work stoppage.

(I) Any position or occupation that promotes or supports the use, possession or distribution of marijuana.

7. ADDITIONAL RESTRICTIONS

Following are imitations and prohibitions on the use of WIOA Title I-B funds as directed under Part 680 of federal regulations:

(A) WIOA funds cannot be used to pay the wages of employees during their participation in an economic development activity provided through a statewide workforce development system.

- (B) WIOA work-based training funds may not be used to directly or indirectly assist, promote or deter union organizing.
- (C) WIOA work based training funds must not be used to provide supportive services.

8. PARTICIPANT ELIGIBILITY:

On-the-job training is available to adults, eligible youth and dislocated workers as defined by the WIOA, who are unemployed or underemployed and meet all of the following requirements.

- (A) Participant meets all WIOA eligibility requirements for training services.
- (B) Participant is enrolled into WIOA prior to beginning training under an OJT contract.
- (C) Participant was determined to be in need of training in order to become employed in a job which leads to a self-sufficient level of income and this is reflected in the Individual Employment Plan (IEP).
- (D) Participant was determined to be a good candidate for the particular vocation and position for which they are to receive OJT and the rationale for the determination is reflected in their IEP.
- (E) OJT contracts may be written for an employed worker as long as they meet all the requirements above and are not earning a self-sufficient wage as defined by local board policy at the time of enrollment and the employer verifies that the OJT will relate to the introduction of new technologies, introduction to new production or service procedures, or is an upgrade to a new job that requires additional skills.
- (H) OJT is an allowable activity for youth but should be discouraged when it conflicts with educational goals and/or achievement.
- (I) Priority of Service must be given as defined in federal and state policy.

The following are considerations that may be used to identify participants likely to benefit from OJT

- Less than two years total work experience
- Five or more jobs in the last two years
- No work experience in the last two years
- Classroom training but no work experience
- Is a returning citizen from the justice system
- Review of participants’ employment history and educational background in the New Mexico Workforce Connection Online System (NMWCOS)

9. REVERSE REFERRAL:

Any individual referred to a center by an employer (commonly referred to as a “reverse referral”) shall go through the system in the same manner as other job seekers and be determined to be eligible and in need of training in order to participate in OJT. This process shall be completed prior to the start date of the OJT training. A referral by an employer for an OJT position does not disqualify an individual, but neither shall it be considered to give higher priority to the individuals over other eligible candidates. The final selection of an eligible individual for OJT should be a joint decision of the employer and the local service provider.

10. COORDINATION WITH APPRENTICESHIPS

An OJT contract may be developed with an Apprenticeship, Pre-Apprenticeship and Registered Apprenticeship program for training participants. Apprenticeships generally involve both classroom and on the job instruction. OJT contracts are made with the employer for the on the job instruction and may be utilized in conjunction with an ITA for the classroom instruction. The OJT contract may be made to support some or all of the OJT portions of the apprenticeship as allowed. If the apprentice is employed at the time of the program enrollment, the requirements for employed workers must be followed. Apprentices can participate in part-time OJTs if they are in conjunction with the Apprenticeship training.

11. CONFLICT OF INTEREST

State and Local board members and members of standing committees may not vote on nor participate in any decisions regarding the provision of services by such members or any organization they directly represent, nor on any matter

that would provide any direct financial benefits to that member or the member's immediate family. Neither membership on the state or local board or standing committee nor receiving of funds to provide training and related services by itself violates these conflict of interest provisions. In Accordance with 200.112 of Uniform Guidance, these potential conflicts of interest must be disclosed in writing. In the case of EAWDB board members a waiver request must have been submitted to the board for consideration prior to entering into an OJT relationship with Title I sub-recipients and they must abstain from voting and/or discussion regarding policy and provision of those services. Sub-recipients must ensure through EAWDB staff that appropriate waiver requests have been made and are current.

12. OJT OUTREACH

Local offices must ensure that both the business services function and the job seeker services functions include information around OJT opportunities and that outreach activities are being conducted in a manner that minimizes the chances of multiple staff contacting the same employer. All office employer outreach activities must be documented and offered in a manner that ensures that equitable opportunities are provided to employers in the local area. Outreach conducted outside the NMWCOS that results in an OJT placement must have a coresponding job order entered in the NMWCOS.

Potential employer outreach activities include but are not limited to:

- Chamber of Commerce presentations
- Engaging employers in targeted partner meetings
- Information provided during job fairs and hiring events
- Regular employer and job seeker outreach activities provided in the local office
- Open and available jobs

13. EMPLOYER ORIENTATION:

An official employer orientation shall be provided and documented before the OJT contract period begins. A pre-award review checklist shall be completed to determine employer eligibility. This provides an additional opportunity to share information about OJT and learn about the needs of the employer. The orientation shall include the following.

- (A) A review of the OJT contract, OJT training plan, OJT progress report and invoice forms and contact information for the career coach.
- (B) Employers will be informed about the role they play in developing a structured training plan based on the skill gaps possessed by the OJT participant. Employers are informed of the importance of having experienced employees act as trainers for optimum results with predictable training outcomes.
- (C) Benefits of OJT are explained including OJT provider assurances, contract terms and conditions including terms and conditions of employer reimbursement.
- (D) Employers are informed about the requirements for local, state and possibly federal monitoring of the program.
- (E) Employers are informed about records maintenance requirements.

14. TRAINEE ORIENTATION:

An official participant orientation shall be provided and documented before the OJT contract period begins. At a minimum the orientation should include the following.

- (A) OJT training plan review.
- (B) Participation requirements.
- (C) Timesheet tracking and payroll verification requirements including the OJT progress report and invoice form.
- (D) Information regarding additional services and activities, including supportive services available through the workforce system, to ensure successful participation.

15. OJT PARTICIPANTS ALLOWED WITH AN EMPLOYER:

No more than 50% of the number of the employer's full-time work force at the location where training is to take place may be trained under OJT at any one time. Once a participant has been trained and retained by the employer, he/she is counted in the regular full-time work force number and additional individuals may be trained. An employer having a regular full-time work force of one may train one individual under OJT.

A projected work force number may be used for new or expanding business. The projected number shall be attained within twelve months. If the projected number is not attained, appropriate adjustments in the number of OJT trainees allowed in further training should be made.

16. OJT WAGES AND GENERAL WORKING CONDITIONS:

(A) Wage reimbursement. New employees hired under OJT shall at a minimum be paid the employer's usual entrance wage rate for the occupation in which they are to be trained and employed, which shall not be lower than the \$12.00 per hour established by the EAWDB. Participants shall be paid the same entry wage rate as non-WIOA funded employees in the same occupation. The reimbursement for training cost will be based on the employer's normal full-time work week, which must be at least 30 hours per week. When training is provided in conjunction with an Apprenticeship or Occupational Skills training, hours may be lower than 30 hours but no less than 10 hours. Reimbursement will not include non-regular wages such as; premium pay, shift differential and must not be claimed for time which the OJT trainee is absent from training, including illness, holiday, plant downtime, or other events during which no training occurs.

(B) Workers' compensation. Where state workers' compensation law is applicable, workers' compensation benefits in accordance with such law shall be available to all participants on the same basis as the compensation is provided to other individuals in the same employment. Health and safety standards established under Federal and State law otherwise applicable to working conditions of employees and equally applicable to OJT participants.

17. OJT CONTRACT:

An OJT contract shall include the sections outlined below. The OJT pre-award review, training contract, and training plan shall be signed by all required parties prior to any participant's training start date. Providers must use the EAWDB created forms provided by board staff. Modifications may be made to the forms as needed by requesting the modifications through board staff.

(A) OJT requirements

- (1)** OJT employer contract.
- (2)** OJT training plan.
- (3)** OJT pre-award review.
- (4)** Progress report and invoice form.
- (5)** OJT contract and/or training plan modification (if applicable).
- (6)** OJT contract assurances.

(B) OJT training plan

The OJT training plan shall be included in the OJT training contract. An OJT training plan shall be modified if a change is needed in any part of the original OJT training plan.

- (1)** The OJT training plan will be developed with the employer to establish training outcomes.
- (2)** The gap between the skills of a participant and the skills needed for the job will determine the number of training hours for which an employer will be reimbursed.
- (3)** An analysis of the OJT position will be conducted based on information from the employer combined with occupational information network (ONET) details or comparable information regarding specific qualifications and skill required for the OJT position.
- (4)** The training plan shall reflect the results of individual skill assessment and an analysis of employer job performance requirements to determine what training is needed.

- (5) The training plan shall be maintained and updated as needed.

(C) OJT training duration.

- (1) The basis for contract training duration shall clearly be documented.
- (2) The maximum duration for an OJT contracts is six months. (1040 training hours)
- (3) Determining length of training should include the following.
 - (a) Skill gap is defined as the gap between the skills of an individual participant and the skills needed for a job. The skill gap will determine the number of training hours for which an employer will be reimbursed. The skill gap shall be clearly defined and incorporate the use of recognized skill assessment tools and occupational evaluation tools. An individual training plan shall be developed consistent with the duration of the contract. For example, a contract written for six months shall include a training plan that outlines six months of specific training to be provided by the employer which in turn should be consistent with the documented skill gap for the individual.
 - (b) Specific vocational preparation (SVP) is defined as the amount of time required by a typical worker to learn the techniques, acquire the information, and develop the expertise needed for average performance in a specific job. A table reflecting SVP levels is included below.

SVP	Number of Training Hours
2	160
3	480
4	640
5	800
6	960
7	1040

EXCEPTION: The hours can exceed the maximum hours for the SVP code for the occupation or the 1040 based on the need for individuals with a documented disability to obtain the skills necessary for the job. The additional hours required may be established at the beginning of training or as training progresses and is indicated through progress reports.

(D) OJT reimbursement rate.

Employers will be reimbursed for the extraordinary cost of training OJT Dislocated Worker and Youth participants in an amount up to 75% of the applicable wage consistent with WIOA. Employers will be reimbursed for the extraordinary cost of training OJT Adult participants in an amount of 50% of applicable wages consistent with WIOA regardless of employer size.

The EAWDB will utilize the following scale for employer reimbursement based on employer size:

- 1) up to 75% for employers with 50 or fewer employees; and
- 2) up to 50% for employers with 51 or more employees.

Payroll records shall be used to document employer size or a penalty of law statement on the Pre-Award Checklist attesting to the number of current employees.

The reimbursement frequency should be negotiated with individual employers to ensure greatest benefit to the employer and the OJT participant.

- (1) Participants shall be paid the higher of federal, state, or local minimum wage, or the prevailing rate of pay, including periodic increases, as other trainees or employees who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills,

pursuant to WIOA, 29 U.S.C. 2931(a)(1)(A), and 20 C.F.R. 667.272. Provisions for wages under the amendments to the Fair Labor Standards Act (FLSA) apply to all participants employed.

- (2) Participants may work overtime (subject to regulations of the Fair Labor Standards Act with respect to the level of compensation), provided that this is part of the training plan and consistent with other employees in comparable positions. Although overtime hours worked can be used to determine the reimbursement for a given period, an overtime wage rate cannot be used to calculate the reimbursement amount. To calculate the reimbursement, the provider would apply the standard wage rate to both the regular and the overtime hours.
- (3) USDOL approved waivers can provide greater flexibility in the level of employer reimbursement. The state currently has a waiver that permits local boards to reimburse employers at a rate of up to 75% of the applicable wage level based on employer size. As long as this waiver is in effect, local boards will use the following sliding scale for employer reimbursement based on employer size:
 - (a) 50 or fewer employees - up to 75% and
 - (b) 51+ employees – the standard WIOA provision which allows up to 50% will apply.

(D) Progress report and invoice form.

A progress report and invoice form shall be completed at least monthly throughout the life of the OJT training. This provides a trainee evaluation of progress and documents hours worked and skills developed.

An invoice system is in place to reimburse the employer the cost of providing the training and any additional supervision related to the training.

18. Supporting Documentation

- (A) OJT pre-award checklist
- (B) OJT employer contract
- (C) OJT training plan
- (D) DOJT Training plan modification as needed
- (E) OJT Progress report and invoice forms
- (F) Case notes (recorded in NM VOSS or other state designated system)

CONTACT ENTITY: Inquiries regarding this rule should be directed to the EAWDB’s administrative entity.