

Eastern Area Workforce Development Board  
Workforce Innovation and Opportunity Act  
Policy 13-12 Customized Training

Effective Date: April 9, 2013

Revision Date: 09/18/2018

Revision Number: 1

Revision effective Date: 9/18/18

Approval Date: 09/18/18

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## **REFERENCES:**

Workforce Innovation and Opportunity Act (WIOA), July 22/2014: §108, §122, §134, §181 and §194; 2 CFR §200, et al, 20 CFR §80.760, §680.830 and §680.840; and NMDWS Workforce Guidance Letter 17-001.

### **1. PURPOSE:**

To provide clarification for the Eastern Area Workforce Development Board (EAWDB) WIOA subrecipients regarding NMDWS Guidance 17-001 as it relates the use of Customized Training and to establish requirements for the delivery of customized training services under the EAWDB. In the case of a conflict between NMDWS Guidance 17-001 and this policy, NMDWS Guidance shall be the prevailing guidance.

### **2. BACKGROUND:**

The WIOA of 2014 allows for the use of customized training as a strategy to meet the needs of local employers. Customized Training (CT) is training designed to meet the needs of a specific employer, or group of employers with the commitment that the employer(s) hire or retain an individual upon successful completion of training. It can provide for the introduction of new technologies, introduction to new production or service procedures, upgrading existing skills, workplace literacy, or other appropriate purposes.

### **3. DEFINITIONS:**

- **Appropriate Commitment** - A commitment to maintain an employer-employee relationship meeting the requirements of the Fair Labor Standards Act (FLSA) for a minimum of one (1) year.
- **Customized Training** – Training by an employer or group of employers generally for the hiring of new or recent employees and not for retraining existing employees.
- **High Priority Occupation (HPO)** – An in-demand occupation that has higher skill needs and is likely to provide self-sufficient wage. Statistical data, regional expertise, and low workforce development area inputs are combined to determine whether or not an occupation meets the high priority criteria.
- **Incumbent Worker** – An individual who is employed, meets FLSA requirements for an employer-employee relationship, and has an established employment history with the employer for six (6) months or more.
- **Incumbent Worker Training (IWT)** – Training provided to an incumbent worker that is designed to meet the needs of an employer(s) 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.
- **In-Demand Industry Sector** – An industry sector that has a substantial current or potential impact (including jobs that lead to economic self-sufficiency and opportunities for advancement) on 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.
- **In-Demand Occupation** – An occupation that currently has or is projected to have a number of positions (including positions that lead to economic self-sufficiency and opportunities for advancement) in an industry sector so as to have a significant impact on the state, regional, or local economy as appropriate.

Note: See EAWDB Policy 11B-12 Demand Occupations.

- Recent Employee – An individual who is employed, meets Fair Labor Standards Act Requirements for an employee-employer relationship, and has an established employment history with the employer for six (6) months or less.

#### 4. ACTION

##### A. Employer Payment of Significant Cost of Training

Employers receiving funds for customized training are required to pay a significant cost of the customized training. This can be done through both cash and fairly evaluated in-kind contributions.

Rules for matching funds can be found in the Uniform Guidance at 2CFR 200.306 and 2 CFR 2900.8.

The share of the cost of training can include elements such as the expenses related to the:

- Instruction or the instructor
- Curriculum development
- Course materials or books

Expenses that are not permissible under the match and are not reimbursable through a customized training contract include:

- Equipment purchases
- Administration
- Facility upgrades/ renovations
- Travel and incidentals

The employer share is based on the size of the workforce unless the Title 1 Adult/Dislocated Worker (DW) subrecipient program director, the EAWDB or its staff establishes limited funding for CT. In times of limited funding the employer will be required to pay at least 50% of the cost of training. When funding is not limited the employer share will be apportioned as follows:

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

Title I staff must track and document employer cost share contributions.

The employer size means the number of employees currently employed at the local operation where the customized training placements will be made. Employer size is determined by the number of employees at the time of the execution of the customized training contract. This applies to all employers, including employers with seasonal or intermittent employee size fluctuations.

##### B. Restrictions

Title I subrecipients must be familiar with the limitations and prohibitions on the use of funds allocated to the local area under WIOA title I-B §181 and Part 680 of federal regulations, as follows:

- 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.

- When a relocation of a business results in the loss of employment of any employee of such business, no funds provided for employment training can be used for customized training until after 120 days has passed since the relocation that caused the loss of employment at an original business location in the United States.
- WIOA work-based training funds must not be used to directly or indirectly assist, promote, or deter union organizing.
- WIOA work-based training funds may not be used to directly or indirectly aid in the filling of a job opening 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.
- WIOA work-based training funds must not be used to directly or indirectly provide supportive services described in §680.900 or §681.570.

### **C. Criteria:**

The following items must be considered when determining the appropriateness of the training:

1. The training must be in alignment with the goals and strategies of the local area as described in the local plan.
2. The quality of the training it should result in positive outcomes (e.g., industry-recognized credentials, advancement opportunities, etc.).
3. The characteristics of the workers to be trained (i.e., the extent to which these individuals historically represent individuals with barriers to employment as defined in WIOA Section 3(24), and how such individuals would benefit from a skills gain that results in retention or advancement).
4. The number of participants the employer plans to train.
5. The wage and benefit levels of participants (before and after training).
6. The occupation(s) for which customized training is being provided must be in-demand as defined by WIOA Section 3(23) and local board policy.
7. Employer's industry status. Is the employer in:
  - a. An in-demand industry as defined by WIOA Section 3(23) and determined by labor market information or local board policy; or
  - b. A stable industry as determined by labor market information; or
  - c. A declining industry, but there are compelling reasons (e.g., evidence of long-term viability of the employer) justifying investment in customized training?

### **D. Employer Eligibility**

In order to be eligible to receive assistance with WIOA CT funds an employer must:

- Not have experienced any layoffs in the last six months;
- Be located in and have operations in the Eastern Board area or economic development Regions;
- Agree to retain the employees for a period of at least one year after training (excludes resignations and termination for cause);
- Provide a complete list of demographic data for the individuals to be trained, including SSN, start date and rate of pay,
- Submit reimbursement requests with required documentation as described in their agreement;
- Not have laid off any employees in another state in the last 120 days to relocate to New Mexico,
- Have a valid and current workers' compensation policy (to be uploaded to the participants' e-file)
- Be current on unemployment insurance and workers compensation taxes, penalties, and/or interest or related payment plan;

- Must agree to receive a quarterly follow-up employment verification form to be completed and returned to the office with documentation of individuals that received training and are no longer employed (this information will then be uploaded to the participants' e-file); and
- Not have a negative history with retaining employees hired on an On the Job Training contract.

Staff must document the employer eligibility factors and upload to the employers' NMWCOS file.

**E. Trainee Eligibility Criteria:**

Customized Training funds may be used to provide training to eligible employed workers for an employer (or group of employers) when the following conditions are met:

- Employee is not earning a self-sufficient wage;
- All other provisions of Customized Training are met; and
- Customized Training relates to the introduction of new technologies, introduction to new production or service procedures, upgrading to new jobs that require additional skills or workplace literacy.

Exception: Customized training is generally for hiring new or recent employees and not for retraining existing employees which is reserved for incumbent worker training, although there may be instances where customized training is appropriate in that circumstance. In those instances customized training may be used for individuals making more than self-sufficient wages if all appropriate criteria are met and it leads to comparable to or higher than previous employment.

**F. Customized training processes:**

While CT is a service that focuses on the needs of business, it shall still follow all the regular requirements for providing individual participant training. All required CT documentation shall be kept on file in the participants' electronic file in the New Mexico Workforce Connection Online System (NMWCOS).

- A. Eligibility shall be determined and eligibility documents shall be compiled and maintained in the electronic file within the NMWCOS.
- B. Staff will send AE staff the pertinent information to create a CT contract number and enter the provider information into the NMWCOS.
- C. An individual employment plan (IEP) shall be completed for each participant identifying the goal/purpose of the training and maintained in the participants' electronic file.
- D. Streamlined CT processes can include the following:
  - (1) Staff may work with an employer to provide the eligibility documentation on potential participants. Special attention shall be paid to eligibility documentation requirements to ensure all data validation requirements are met.
  - (2) Once eligibility is determined, staff must work with the employer to complete an overall IEP for each participant, identifying the need for CT (individualized career service) which may be uploaded in the NMWCOS for each participant. For the purposes of the CT an abbreviated IEP may consist of the employment goal and achievement objective and can be a paper document included for all participants or recorded electronically in the NMWCOS plan at the discretion of the subrecipient program director.

**G. Contracts**

Title 1 service providers must address the following factors when developing a customized training contract:

- Special training requirements of the employer (or group of employers);
- Agreement that the employer will pay for the significant cost of the training;
- Agreement that an appropriate commitment is made by the employer to employ the individuals upon successful completion of the training;

- Performance outcomes;
- Description of and agreement on the curriculum; and
- A clearly stated goal.

Staff must document the factors that were considered in approving a customized training contract with an employer (or group of employers).

**H. Customized training documentation:**

The CT agreement, related information and documentation must be kept by the Title I service provider. The service provider is responsible for ensuring the information and documentation is uploaded and available for monitoring and review as required.

- A. Customized training agreement/contract
- B. Assurances
- C. Customized training plan
- D. Customized training plan modification (if applicable)
- E. Case notes to track customer interaction (recorded in NMWCOS).