

## Operational Policy NO. OP- 411, Change 4

**Subject: Customized Training**

**Effective: PY18 10/22/2018**

**PURPOSE.** The purpose of this policy is to provide direction to Central Region's Service Provider regarding the permissible use of adult and dislocated worker funds for customized training activities.

### **REFERENCES.**

- Workforce Innovation and Opportunity Act (WIOA), July 22, 2014, §108, §122, §134, §181 and §194.
- WIOA Final Rules – U.S. Department of Labor (Title I): 20 CFR §680.760, §680.830, and §680.840.
- Office of Management and Budget (OMB), Uniform Guidance at 2 CFR §200, et al., Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- Training and Employment Guidance Letter WIOA No. 19-16 Operating Guidance for the Workforce Innovation and Opportunity Act.
- Fair Labor Standards Act (FLSA) §203.

### **BACKGROUND.**

The Workforce Innovation and Opportunity Act (WIOA) of 2014 explicitly allows for the use of customized training contracts as a workforce strategy. This training strategy is designed to meet the special requirements of an employer (including groups of employers) with the commitment that the employer(s) hire an individual upon successful completion of the training.

### **DEFINITIONS.**

- **Appropriate Commitment** to hire an individual means to maintain an employer-employee relationship meeting the requirements of the Fair Labor Standards Act for a minimum of one (1) year.
- **Customized Training** is a 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)** 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 development area inputs are combined to determine whether or not an occupation meets the high-priority criteria.
- **Incumbent Worker** is an individual who is employed, meets Fair Labor Standards Act 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)*** is 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*** is 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*** is 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: 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. Customized Training must lead to an in-demand occupation, but does not necessarily have to lead to an HPO. However, all HPOs are considered in-demand occupations, and therefore, eligible for customized training.*

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

## **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 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.

WCCNM Service Providers will 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 placement 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 at all employers, including employers with seasonal or intermittent employee size fluctuations.

### **RESTRICTIONS.**

WCCNM will comply 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.

### **ELIGIBILITY CRITERIA.**

## **Customized Training Agreement**

WCCNM will address the following factors when developing a customized training agreement:

- 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 individual upon successful completion of the training;
- Curriculum;
- Performance and;
- A clearly stated goal.

WCCNM Service Providers will document the factors that were considered in approving a customized training agreement with an employer (or group of employers).

## **Employer Eligibility**

WCCNM will consider the following factors when determining the eligibility of employers to receive the WIOA customized training funds.

1. The strategy of the LWDB in fulfilling the vision and goals established for the local area (i.e., the local plan)
2. 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 skill gain that results in retention or advancement).
3. The quality of the training (e.g., industry-recognized credentials, advancement opportunities, etc.).
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 as determined by workforce development area-specific labor market information.
7. Employer's industry status. Is the employer in:
  1. An in-demand industry as defined by WIOA Section 3(23) and determined by labor market information; or
  2. A stable industry as determined by labor market information; or
  3. A declining industry, but there are compelling reasons (e.g., evidence of long-term viability of the employer) justifying investment in customized training?
8. Recent lay-offs and relocations. The employer must not have laid off workers within 120 days to relocate from another state.
9. Employer's unemployment insurance and workers' compensation status. The employer must be current on unemployment insurance and workers' compensation taxes, penalties, and/or interest or related payment plan (including timely Quarterly Reports).
10. Be located in and have operations in the Central Workforce Region.
11. Employ at least one full-time employee.

12. Keep accurate records of the project's implementation process for audit purposes for a minimum of five years.

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

### **Employed Worker Eligibility**

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 (less than six months) 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 or higher than previous employment.

### **PERFORMANCE ACCOUNTABILITY.**

Due to the unique eligibility requirements in WIOA sec. 134, individuals who receive only customized training are reportable individuals, but not participants required for inclusion in the WIOA performance accountability calculations. As a result, an individual who only receives customized training and does not become a core program participant will not be included in the calculation of the primary indicators of performance for negotiations and accountability purposes. However, LWDBs are required to collect and report the outcomes of individuals in receipt of customized training on the primary indicators of performance, among other required elements.

### **CONFLICT OF INTEREST.**

State and local board members and members of standing committees may not vote or 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 benefit to that member or the member's immediate family. For example, a Central Region Board member who is also an employer who wants to use services on a fee-for-service basis would be prohibited from voting to approve the use of local area services, facilities, or equipment for employment and training activities to such board member's workers. Neither membership on the state board, local board, or standing committee, nor receipt of WIOA funds to provide training and related services, by itself, violates these conflict of interest provisions. In accordance with §200.112 of the Uniform Guidance, recipients of federal awards must disclose in writing any potential conflicts of interest. Sub-recipients must disclose in writing any potential conflict of interest to the recipient of grant funds.

## **PROCESS FOR CONTRACTING**

### **Process**

While customized training 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 customized training documentation shall be kept on file with the service provider, business and Workforce Connection Online System (WCOS). Service providers shall make all files and documentation available for monitoring, audits and date validation as required.

1. Eligibility shall be determined and eligibility documents shall be compiled and kept on file with the service provider and business.
2. An individual employment plan shall be completed for each participant identifying the need for customized training and kept on file with the service provider and business.
3. Customized training processes can include the following.
  - a. Service providers may work with an employer to provide the eligibility documentation on potential trainees (staff-assisted service without significant staff involvement). Special attention shall be paid to eligibility documentation requirements to ensure all data validation requirements are met.
  - b. Once eligibility is determined, the service provider may work with the employer to complete an individual employment plan for each participant, identifying the need for customized training. For purposes of the customized training activity, an individual employment plan may consist of the employment goal, achievement objective and services to achieve the employment goals.
  - c. Service providers do not have to maintain individual file folders for each participant as long as all required information and documentation is kept on file collectively for each customized training contract by the service provider and business.

### **Customized training agreement provisions**

Customized training agreements shall at a minimum include the following elements:

1. The occupation for which training will be provided; the skills and competencies to be achieved and the length of time for the training.
2. The name of each employee to be trained, social security number, date of birth, gender, selective service registration, I-9 on file with employer, hourly pay, hours per week, and employee start date.
3. The employer's assurance that customized training is needed based upon the individual skill sets of trainees.
4. Training outline.
5. Method and maximum amount of reimbursement.

6. The cost and documented description of any ancillary items or supportive services that may be needed.
7. Other appropriate training outcomes related to the training (includes obtainment of veteran status, highest grade completed, household/family size and increases in earnings after training if applicable).
8. Appropriate assurances and certifications as defined in the agreement:
  - a. Employer shall provide worker's compensation coverage for the participants on the same basis as the compensation is provided to other individuals in the same employment. 20 CFR 680.700 (b).
  - b. Employer shall verify that the training 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, work place literacy, or other appropriate identified by the local WDB. 20 CFR 680.710 (C).
  - c. Employer certifies that the company is financially solvent on the date of the contract, and the employer's best projection is that they will remain financially able to meet contract obligations at the end of the training period, including training participant retention.
  - d. Employer agrees that wage and labor standards will be adhered to and to pay the participants at the same rates, including increases, and benefits as trainees or employees who are situated in similar jobs. Such rates shall be in accordance with applicable law, but in no event less than the higher rate specified in section 6(a) (1) of the Fair Labor Standards Act of 1938 (and as amended in 1996) or the applicable state or local minimum wage law and WIOA 20 CFR Part 683.275.
  - e. Conditions of employment and training will be in full accordance with all applicable federal, state, and local laws and ordinances (including but not limited to anti-discrimination, labor and employment laws, environmental laws or health and safety laws), 29 CFR part 38.
  - f. Employer certifies that the training will not impair existing agreements for services or collective bargaining agreements and that either it has the concurrence of the appropriate labor organization as to the design and conduct of training, or it has no collective bargaining agreement with a labor organization that covers the participants' position.
  - g. Employer assures that they are not debarred or suspended in regard to federal funding. 29CFR 180 Sub Part H, (Verifiable at <https://www.sam.gov/portal/SAM/#1#1>).
  - h. Employer further assures that federal funds will not be used to assist, promote or deter union organizing, 20 CFR 663.730.

- i. Employer certifies that no member of the training participant's immediate family will directly supervise the participant. For the purpose of this contract, immediate family is defined as spouse, children, parents, grandparents, grandchildren, brothers, sisters or person bearing the same relationship to the participant's spouse, 20 CFR 683.200 (a).
- j. Employer assures that the participants will not 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 for religious worship, 29 CFR part 2, Subpart D.
- k. Employer assures that the participant(s) has not been hired into or will remain working in any position when any other person is on layoff from the same or a substantially equivalent job within the same organizational unit or has been bumped and has recall rights to that position, nor if the training is created in a promotional line that infringes on opportunities of current employees, 20 CFR 680.710.
- l. Employer is committed to employ and/or retain the individual upon successful completion of the training for a minimum of twelve months as specified in section 680.760 (b), WIOA July 22, 2014.

#### **Customized training documentation.**

The Customized Training Agreement and its related information and documentation may be kept by the service provider and business. The local board and service provider are responsible for ensuring the information and documentation is available for monitoring and review as required:

1. Customized Training Agreement and supporting documentation.
2. Customized Training Plan.
3. Customized Training Modification(s), if applicable.
4. Customized Training Progress Report and Invoice.
5. All Provider and Participant Files required documentation submitted in the Workforce Connection Online System (WCOS).

#### **ACTIONS REQUIRED**

LWDBs must establish a local customized training policy that outlines the following;

1. Criteria for determining employer eligibility.
2. How the significant cost of the training' will be established;
3. Define what constitutes an appropriate commitment to hire the individual on behalf of the employer.
4. The process for collecting, from the employer, performance information and data entry into the Workforce Connection Online System.
5. Contracting process with employers providing customized training.



**LIMITATIONS:**

For employers identified as being a first-tier industry, funding for any first-year project may not exceed \$150,000. Subsequent year(s) funding may not exceed an additional \$75,000 per year with a maximum funding amount of \$300,000. However, the WCCNM, on a case-by-case basis, may review and approve subsequent contracts which exceed the \$300,000 maximum. Following the \$300,000 maximum, should the employer request an amount that exceeds the maximum, they will be required to make a presentation to the WCCNM for consideration of such request.

For employers identified as being a second-tier industry, funding for any first-year project may not exceed \$75,000. Subsequent year(s) funding may not exceed an additional \$25,000 per year with a maximum funding amount of \$125,000. However, the WCCNM, on a case-by-case basis, may review and approve subsequent contracts which exceed the \$125,000 maximum. The company will be required to make a presentation to the WCCNM. Following the \$125,000 maximum, should the employer request an amount that exceeds the maximum, they will be required to make a presentation to the WCCNM for consideration of such request.

**APPLICABILITY:**

All WCCNM –initiated customized training contracts and all service provider-initiated customized training contracts.

**INQUIRIES:**

WIOA Manager 505-247-1750