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Policy Number: WIOA I-B – 3.4, Change 1

Effective Date: October 20, 2020

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## On-the-Job Training

**PURPOSE:** The purpose of this policy is to describe and to detail the regulations concerning on-the-job training (OJT), in accordance with the rules and regulations of Workforce Innovation and Opportunity Act of 2014 (WIOA), the WIOA Final Rule, Training and Employment Guidance Letters (TEGLs) published by the Employment and Training Administration of the U.S. Department of Labor (ETA), and policies of the Arkansas Workforce Development Board (AWDB).

### REFERENCE:

WIOA §§ 3(24), 3(44), 134(c)(3), & 188(a)(3)

20 CFR 680, 681, & 683

Comments in WIOA Final Rule concerning §680.320

29 CFR part 2, subpart D

TEGLs 10-16, Change 1; 13-16; 19-16; & 14-18

Arkansas State Plan 2020-2023

Most recent version of the following policies and procedures:

ADWS Policy No. WIOA I-B – 1.2 (Definitions)

ADWS Policy No. WIOA I-B – 2.8 (Priority for Individuals with Barriers to Employment)

ADWS Policy No. WIOA I-B – 3.1 (Services for Adults and Dislocated Workers)

ADWS Policy No. WIOA I-B – 3.6 (Incumbent Worker Training)

ADWS Policy No. WIOA I-B – 3.3 (Occupational Skills Training)

ADWS Policy No. WIOA I-B – 3.5 (Registered Apprenticeships)

ADWS Policy No. WIOA I-B – 3.7 (Customized Training)

ADWS Policy No. WIOA I-B – 3.8 (Work Experience)

ADWS Certification of Local Workforce Development Boards

### POLICY:

On-the-job training (OJT) is occupational training that is provided under a contract with an employer or registered apprenticeship program sponsor [20 CFR 680.700 (a)]. It is considered a training service for adults and dislocated workers and a work experience for youth [20 CFR 681.460(a)(3); 681.600(c)]. As a Youth work experience, OJT qualifies for the 20% minimum that local areas must spend on work experience [20 CFR 681.590(a)]. Although on-the-job training is classified as a work experience for the Youth program, the guidelines and policies for youth follow those for adults and dislocated workers [20 CFR 681.600(c)(4)]. adult and dislocated worker OJT participants are included in the Milestones Measurable Skills Gain performance indicator [TEGLs 10-16, Change 1, & 14-18].

OJT is training provided by an employer to a paid participant who is engaged in productive work in a job that:

- (a) provides knowledge or skills essentially 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% of the wage rate of the participant (except in some cases where it may be as high as 90%) 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 training, 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 § (3)(44); WIOA § 134(c)(3)(H); Arkansas State Plan 2020-2023)].

Employers are not required to document the extraordinary costs [20 CFR 680.720(b)].

### **Adult and Dislocated Worker Participant Requirements for OJT**

For adults and dislocated workers, eligibility for this training is the same as for all other training services. The individual must have met all requirements to become a participant in the particular program. The participant must have been determined, after an interview, evaluation, or assessment, and career planning to be

- (a) unable or unlikely to obtain or retain employment leading to economic self-sufficiency or wages comparable to or higher than wages from previous employment without the training,
- (b) in need of training services to obtain or retain employment leading to economic self-sufficiency or wages comparable to or higher than wages from previous employment (and the OJT can result in that),
- (c) has the skills and qualifications to participate successfully in training services, and
- (d) is unable to obtain assistance from other sources to pay the costs of the training [20 CFR 680.210].

See ADWS Policy No. WIOA I-B – 3.1 (*Services for Adults and Dislocated Workers*) or 20 CFR 680.210 for complete eligibility requirements.

Special rules apply if an OJT contract is written for an employed worker. An OJT contract may be written for an eligible employed worker (an employed worker who meets eligibility criteria for the particular program) only when all other program eligibility requirements and other OJT requirements are met (as described in this policy), and when the employee meets all of the following requirements [20 CFR 680.210 & 680.710]:

- (a) The employee meets basic requirements to receive training services, as listed above, in 20 CFR 680.210, and in ADWS Policy No. WIOA I-B – 3.1 (*Services for Adults and Dislocated Workers*);
- (b) The employee is not earning a self-sufficient wage, as determined by the LWDB, or wages compared to or higher than wages from previous employment;
- (c) All other OJT requirements are met; and
- (d) 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, along with increased wages.

For the purpose of determining eligibility for OJT, “employment status” is determined at the time of eligibility determination for the training and is defined in ADWS Policy No. WIOA I-B – 1.2 (*Definitions*). Eligibility for OJT may be determined at the time of program entry, or it may be made after other services or activities have been provided and participant needs OJT. Note that an individual who is in the military, is in a Registered Apprenticeship program, or is self-employed is considered as employed [TEGLs 10-16 & 13-16].

An OJT contract may be entered into with registered apprenticeship program sponsors or participating employers in registered apprenticeship programs for some or all of the OJT portion of the registered apprenticeship program, consistent with the guidelines of this policy [TEGL 19-16]. Depending on the length of the registered apprenticeship and local policies, the OJT may last for some or all of the registered apprenticeship training [20 CFR 680.740(a)]. Some information concerning the connection between an OJT and a registered apprenticeship (RA) are included in this policy. Additional information is contained in ADWS Policy No. WIOA I-B – 3.5 (*Registered Apprenticeships*).

When an OJT contract is written for participation in a registered apprenticeship program, all eligibility requirements and other OJT requirements must be met. This means that if the apprentice is employed at the time of participation in the OJT:

- (a) He or she must not be receiving a wage leading to self-sufficiency (or wages lower than wages from previous employment) before the OJT contract;
- (b) He or she must expect to receive a wage leading to self-sufficiency (or wages comparable to or higher than wages from previous employment) because of the OJT;
- (c) The OJT must be related 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;
- (d) The participant is unable to obtain or retain employment without the training; and
- (e) The participant is unable to obtain assistance from other sources to pay the costs of the training [20 CFR 680.210, 680.720, & 680.740].

Incumbent worker training may be an option for upskilling apprentices who already have an established working/training relationship with the RA program [TEGL 19-16]. See ADWS Policy No. WIOA I-B – 3.6 (*Incumbent Worker Training*) for more information.

More information concerning options for participants in a Registered Apprenticeship program may be found in ADWS Policy No. WIOA I-B – 3.5 (*Registered Apprenticeships*).

### **Participant Requirements for Youth**

OJT is classified as a paid work experience under Program Element 3 of the Youth Program. Each youth who has been determined eligible either as an In-school Youth or an Out-of-school Youth may receive OJT if appropriate, as determined by the local area. The appropriateness of this program element for an eligible youth is established through the participant’s objective assessment and individual service strategy [20 CFR 681.460(b)]. Although OJT is a training service for adults/dislocated workers and a work experience for youth, the guidelines and policies for both are the same [20 CFR 681.600(c)(4)].

## **Employer Requirements for OJT**

An OJT may be provided under contract with an employer or RA sponsor in the public, private non-profit, or private sector [20 CFR 680.700(a)]. More information concerning the entities with which RA contracts are written is found in ADWS Policy No. WIOA I-B – 3.5 (*Registered Apprenticeships*).

Providers of on-the-job training are not subject to the requirements applicable to entities listed on the eligible training provider list, and they are not included on the state list of eligible training providers and programs [20 CFR 680.530], unless they are included for other reasons, such as being registered apprenticeship programs [20 CFR 680.470]. If the State, however, decides to impose performance regulations, local areas must collect required performance data and identify providers that meet required performance levels [20 CFR 680.530].

OJT contracts under Title I must not be entered into with an employer who has received payments under WIOA or the Workforce Investment Act (WIA) and has established a pattern of not providing OJT participants with continued long-term employment and the same wages, benefits, and working conditions as other employees working a similar length of time and doing the same type of work [20 CFR 680.700(b)].

## **Training Requirements**

An OJT contract must be limited to the period of time required for the participant to become proficient in the occupation for which the training is being provided, considering the skill requirements of the occupation, the academic and occupational skill level of the participant, the participant's prior work experience, and the individual employment plan of the participant [20 CFR 680.700(c)].

When OJT contracts are written with RA sponsors or participating employers in RA programs for the OJT portion of the RA program, the length of the OJT is limited to the time requirements given in the previous paragraph and the policies of the local area. Depending on the length of the RA and local OJT policies, these funds may cover some or all of the registered apprenticeship training. All other regulations concerning OJT participants and contracts apply [20 CFR 680.740].

In some cases, a combination of individual training accounts (ITAs) and contracts is the most effective approach to serve participants [TEGL 19-16]. There is no prohibition on the combination of ITAs with OJTs if conditions for both services are met [20 CFR 680.750]. An OJT may be combined with an ITA to support a participant in a registered apprenticeship program if conditions for all three programs are met (See ADWS Policy No. WIOA I-B – 3.3 *Occupational Skills Training* or 20 CFR 680.330 for additional information concerning using an ITA to support participants in registered apprenticeship) [20 CFR 680.750].

An OJT contract may also be written for the on-the-job training portion of customized training, incumbent worker training, or transitional jobs [TEGL 19-16]. When this is done, regulations concerning both types of services must be met. See ADWS Policies No. WIOA I-B – 3.7 (*Customized Training*), 3.6 (*Incumbent Worker Training*), and 3.8 (*Work Experience*) for more information.

## **Reimbursement Guidelines**

Through the OJT contract, occupational training is provided for the WIOA participant in exchange for the reimbursement, typically up to 50% of the wage rate of the participant, to compensate for the extraordinary costs of providing the training and supervision and the decreased productivity of the participant [WIOA § (3)(44); 20 CFR 680.700(a); 20 CFR 680.720; TEGL 19-16]. The employer does not have to

document the extraordinary costs [20 CFR 680.720(c)]. This rate may be increased to an amount of up to 75% if the LWDB approves the increase, taking into account the following factors [WIOA § 134(c)(3)(H); 20 CFR 680.700(a); 20 CFR 680.720(b); 20 CFR 680.730(a); TEGL 19-16]:

1. The characteristics of the participants, especially individuals with barriers to employment. See WIOA § 3(24), ADWS Policy No. WIOA I-B – 1.2 (*Definitions*), or ADWS Policy No. WIOA I-B – 2.8 (*Priority for Individuals with Barriers to Employment*) for more information concerning individuals with barriers to employment;
2. The size of the employer, with an emphasis on small businesses (The State specifies a business size of 51 – 250 employers for this level of reimbursement.) [Arkansas State Plan 2020-2023];
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 such factors as the LWDB may determine to be appropriate, which may include the number of employees participating in the training, wage and benefit levels of those employees (comparing pre-participation and post-participation earnings), and relation of the training to the competitiveness of a participant.

LWDBs must document the factors used when deciding to increase the wage reimbursement levels above 50% up to 75% [20 CFR 680.730(b); TEGL 19-16]. Documentation may be made in the form of LWDB minutes or similar documents.

Under a waiver requested by the State of Arkansas and approved by the U.S. Department of Labor until June 30, 2022, local areas may increase the reimbursement rate to up to 90% of the wage rate of the OJT participant(s) for businesses with 50 or fewer employees. If a local area wished to exercise this increased percentage, the local area must:

1. Adjust or provide an addendum to the local plan explaining the planned use of the waiver and
2. Provide an annual “outcome report,” due September 30 of each year that describes how the waiver was used and how effective the change was.

Such actions will allow the ADWS to monitor progress under this waiver, as required by the U.S. Department of Labor and the Arkansas State Plan [Arkansas State Plan 2020-2023].

### **Other Guidelines and Requirements**

The participant may not be employed to construct, operate, or maintain any part of a facility used for sectarian instruction or as a place for religious worship, with the exception of maintenance of facilities that are not used primarily for sectarian instruction or worship and are operated by organizations providing services to WIOA participants [WIOA § 188(a)(3); 20 CFR 683.255(a); 20 CFR 683.285(b)]. Special rules concerning training administered by religious organizations can be found in 29 CFR part 2, subpart D (*Equal Treatment in Department of Labor Programs for Religious Organizations, Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries*) [20 CFR 683.255(b); 20 CFR 683.285(b)].

No funds may be provided to employers for work-based training may be used directly or indirectly to assist, promote, or deter union organizing [20 CFR 680.830]. No funds may be provided to employers for work-based training to be used directly or indirectly to aid in the filling of a job opening that is vacant because the former employee is on strike, the former employee is being locked out in the course of a

labor dispute, or the job is vacant because of an issue in a labor dispute involving a work stoppage [20 CFR 680.840].

WIOA funds may not be used for the encouragement or inducement of a business or part of a business to relocate from any location in the United States if the relocation results in any employee losing his or her job at the original location. No individual may be placed in work experience in any business or part of a business that has relocated from any location in the United States until the company has operated at that location for 120 days if the relocation has resulted in any employee losing his or her job at the original location. To verify that a business that is new or expanding and is not, in fact, relocating employment from another area, a standardized Arkansas pre-award review criteria must be completed and documented jointly by the local area and the business (FORM WIOA I-B – 4.1 *Standardized Pre-Award Review Criteria*) [20 CFR 683.260].

A participant in any workforce training activity must not displace any currently employed employee, including a partial displacement, such as a reduction in the hours of non-overtime work, wages, or employment benefits. The workforce training activity must not impair existing contracts for services or collective bargaining agreements unless the appropriate labor organization and the employer provide written concurrence before the activity begins. The participant may not replace an unsubsidized employee who was laid off from the same or any substantially equivalent job or who was terminated with the intention of hiring the participant. The participant may not be placed in a promotional line that infringes in any way on the promotional opportunities of currently employed workers as of the date of the participation in the training activity [20 CFR 683.270].

No individual may be placed in a WIOA employment activity if a member of that person's immediate family is directly supervised by or directly supervises that individual [20 CFR 683.200(g)]. The Arkansas State definition of "immediate family" is (1) a spouse and (2) any other person residing in the same household as the participant, who is a dependent of the participant or of whom the participant is a dependent. Dependent means any person, whether or not related by blood or marriage, which receives from the participant, or provides to the participant, more than one-half of his/her financial support [ADWS *Certification of Local Workforce Development Boards*]. (This definition is different from the definition of "family" used for eligibility purposes.)

Participants must receive benefits and working conditions at the same level as other trainees or employees working a similar length of time and doing the same type of work [20 CFR 683.275]. Health and safety standards established under Federal and State law otherwise applicable to working conditions of employees are equally applicable to working conditions of participants. To the extent that a State workers' compensation law applies, workers' compensation must be provided to participants on the same basis as the compensation is provided to other individuals in the State in similar employment [20 CFR 683.280].