

On-the-Job Training (OJT) Federal Regulation Requirements under Workforce Investment Act (WIA)

*This document is a tool for WIA OJT administrators and monitoring staff to use as guidance when implementing or reviewing OJT as a training option. Administrators should assure that policies and procedures are in place to ensure compliance with these requirements.**

Eligibility for OJT

1. Training under WIA may be established for an individual and that person may then be referred to any number of training options. When the State OJT provider or local OJT provider needs to check specific requirements in law and regulation related to eligibility for OJT, the following would apply:
 - a. **20 CFR 663.240: Are there particular intensive services an individual must receive before receiving training services under WIA section 134(d)(4)(A)(i)?**
 - i.) Yes, at a minimum, an individual must receive at least one intensive service, such as development of an individual employment plan with a case manager or individual counseling and career planning, before the individual may receive training services.
 - ii.) The case file must contain a determination of need for training services under § 663.310, as identified in the individual employment plan, comprehensive assessment, or through any other intensive service received.
 - b. **20 CFR 663.245: What is the individual employment plan?** The individual employment plan is an ongoing strategy jointly developed by the participant and the case manager that identifies the participant's employment goals, the appropriate achievement objectives, and the appropriate combination of services for the participant to achieve the employment goals.
 - c. **20 CFR 663.250: How long must an individual participant be in intensive services to be eligible for training services?** There is no Federally-required minimum time period for participation in intensive services before receiving training services. The period of time an individual spends in intensive services should be sufficient to prepare the individual for training or employment. (WIA sec. 134(d)(4)(A)(i))
 - d. **20 CFR 663.310: Who may receive training services?** Training services may be made available to employed and unemployed adults and dislocated workers who: (a) Have met the eligibility requirements for intensive services, received at least one intensive service under 20 CFR 663.240, and been determined to be unable to obtain or retain employment through such services; (b) After an interview, evaluation, or assessment, and case management, have been determined by an One-Stop operator or One-Stop partner, to be in need of training services and to have the skills and qualifications to successfully complete the selected training program.
- Note:** For OJT NEGs, eligibility is limited to dislocated workers only.
- e. **20 CFR 664.460(d): What are work experiences for youth?** In most cases, OJT is not an appropriate work experiences activity for youth participants under age 18. Local program operators may choose, however, to use this service strategy for eligible youth when it is appropriate based on the needs identified by the objective assessment of an individual youth participant. (WIA sec. 129(c)(2)(D))

** Please Note: Users of this checklist should be aware that these eligibility provisions apply to WIA OJT and that requirements for OJT funded through other programs (e.g., Trade Adjustment Assistance (TAA), American Recovery and Reinvestment Act*

Employer Eligibility

2. Prior to entering a contract for OJT with an employer, the OJT provider must assure the employer is eligible. The following requirements apply:

a. 20 CFR 663.700: What are the requirements for OJT?

(i.) On-the-job training (OJT) is defined at WIA section 101(31). OJT is provided by an employer in the public, private non-profit, or private sector. A contract may be developed between the employer and the local program that provides occupational training for the WIA participant in exchange for the reimbursement of up to 50 percent of the wage rate to compensate for the employer's extraordinary costs. (WIA section 101(31)(B))

Note: For OJT NEGs, OJT positions may not be created with public sector employers.

(ii.) The local program must not contract with an employer who has previously 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. (WIA section 195(4))

(iii.) An OJT contract 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. (WIA section 101(31)(C))

Note: For OJT NEGs cap OJT duration at 6 months.

b. 20 CFR 667.260: May WIA title I funds be spent for construction? WIA title I funds must not be spent on construction or purchase of facilities or buildings except:

- (i.) To meet a recipient's, as the term is defined in 29 CFR 37.4, obligation to provide physical and programmatic accessibility and reasonable accommodation, as required by section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended;
- (ii.) To fund repairs, renovations, alterations and capital improvements of property, including: (a.) SESA real property, identified at WIA section 193, using a formula that assesses costs proportionate to space utilized; (b.) Job Training Partnership Act (JTPA) owned property which is transferred to WIA title I programs; (iii.) Job Corps facilities, as authorized by WIA section 160(3)(B); and
- (iii.) To fund disaster relief employment on projects for demolition, cleaning, repair, renovation, and reconstruction of damaged and destroyed structures, facilities, and lands located within a disaster area. (WIA sec. 173(d))

- c. **20 CFR 667.268: What prohibitions apply to the use of WIA title I funds to encourage business relocation?** WIA funds may not be used or proposed to be used for:
- (i.) 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;
 - (ii.) Customized training, skill training, or OJT or company specific assessments of job applicants or employees of a business or a 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 jobs at the original location.

Pre-award review. To verify that an establishment which is new or expanding is not, in fact, relocating employment from another area, standardized pre-award review criteria developed by the State must be completed and documented jointly by the local area with the establishment as a prerequisite to WIA assistance. (1) The review must include names under which the establishment does business, including predecessors and successors in interest; the name, title, and address of the company official certifying the information, and whether WIA assistance is sought in connection with past or impending job losses at other facilities, including a review of whether WARN notices relating to the employer have been filed. (2) The review may include consultations with labor organizations and others in the affected local area(s). (WIA sec. 181(d))

The OJT Contract

3. The OJT provider must insure its contracts with employers meet requirements of Federal regulations:
- a. **20 CFR 663.700: What are the requirements for the on-the-job training (OJT)?**
See section 2(a) above for OJT requirements at this section.
 - b. **20 CFR 663.705: What are the requirements for 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 in Sec. 663.700 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.

- c. **20 CFR 663.710: What conditions govern OJT reimbursements to employers?** (a) OJT payments to employers are deemed to be compensation for the extraordinary costs associated with training participants and the costs associated with the lower productivity of the participants. (b) Employers may be reimbursed up to 50 percent of the wage rate of an OJT participant for the extraordinary costs of providing the training and additional supervision related to the OJT. (WIA section 101(31)(B)) (c) Employers are not required to document such extraordinary costs.

Note: For OJT NEGs, The reimbursement amount will be a negotiated percentage of the wage being paid to the participant. The wage level on which the reimbursement is based cannot exceed the State's average hourly wage. For this NEG, the negotiated reimbursement percentage may be as high as 90 percent of the participant's hourly wage based on either of the following conditions:

Employer size: (1) up to 90 percent of the participant's wage rate for employers with 50 or fewer employees; and, (2) up to 75 percent of the participant's wage rate for employers with 51-250 employees. Employers with more than 250 employees are limited to the standard WIA cap of 50 percent.

Participant skills gap: Where there is an extraordinarily large gap between the skills of the individual and the skills needed for the job, a sliding scale up to 90 percent may be used to reflect the degree of the individual participant's skills gap.

- d. **20 CFR 663.730: May funds provided to employers for OJT or customized training be used to assist, promote, or deter union organizing?** No, funds provided to employers for OJT or customized training must not be used to directly or indirectly assist, promote or deter union organizing.
- e. **20 CFR 665.220: Who is an "incumbent worker" for purposes of state-wide workforce investment activities?** States may establish policies and definitions to determine which workers, or groups of workers, are eligible for incumbent worker services under this subpart. An incumbent worker is an individual who is employed, but an incumbent worker does not necessarily have to meet the eligibility requirements for intensive and training services for employed adults and dislocated workers at 20 CFR 663.220(b) and 663.310.
- f. **20 CFR 667.266: What are the limitations related to sectarian activities?**
- (i.) WIA title I funds may not be spent on the employment or training of participants in sectarian activities.
- (ii.)(1) 29 CFR part 2, subpart D governs the circumstances under which DOL support, including WIA Title I financial assistance, may be used to employ or train participants in religious activities. Under that subpart, such assistance may be used for such employment or training only when the assistance is provided indirectly within the meaning of the Establishment Clause of the U.S. Constitution, and not when the assistance is provided directly. As explained in that subpart, assistance provided through an Individual Training Account is generally considered indirect, and other mechanisms may also be considered indirect. See also 20 CFR 667.275 and 29 CFR 37.6(f)(1). 29 CFR part 2, subpart D also contains requirements related to equal treatment in Department of Labor programs for religious organizations, and to protecting the religious liberty of Department of Labor social service providers and beneficiaries. (2) Limitations on the employment of participants under WIA Title I to carry out the construction, operation, or maintenance of any part of any facility used or to be used for religious instruction or as a place for religious worship are described at 29 CFR 37.6(f)(2).

- g. 20 CFR 667.268: What prohibitions apply to the use of WIA title I funds to encourage business relocation?** (i.) WIA funds may not be used or proposed to be used for:
- (1) 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;
 - (2) Customized training, skill training, or OJT or company specific assessments of job applicants or employees of a business or a 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 jobs at the original location.
- (ii.) **Pre-award review.** To verify that an establishment which is new or expanding is not, in fact, relocating employment from another area, standardized pre-award review criteria developed by the State must be completed and documented jointly by the local area with the establishment as a prerequisite to WIA assistance. The review must include names under which the establishment does business, including predecessors and successors in interest; the name, title, and address of the company official certifying the information, and whether WIA assistance is sought in connection with past or impending job losses at other facilities, including a review of whether WARN notices relating to the employer have been filed. (WIA sec. 181(d))
- h. 20 CFR 667.270: What safeguards are there to ensure that participants in WIA employment and training activities do not displace other employees?**
- (i.) A participant in a program or activity authorized under title I of WIA must 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).
 - (ii.) A program or activity authorized under title I of WIA must not impair existing contracts for services or collective bargaining agreements. When a program or activity authorized under title I of WIA would be inconsistent with a collective bargaining agreement, the appropriate labor organization and employer must provide written concurrence before the program or activity begins.
 - (iii.) A participant in a program or activity under title I of WIA may not be employed in or assigned to a job if: (1) Any other individual is on layoff from the same or any substantially equivalent job; (2) 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 so created with the WIA participant; or (3) The job is created in a promotional line that infringes in any way on the promotional opportunities of currently employed workers.
 - (iv.) Regular employees and program participants alleging displacement may file a complaint under the applicable grievance procedures found at 667.600. (WIA sec. 181.)
- i. 20 CFR 667.272: What wage and labor standards apply to participants in activities under title I of WIA?**
- (i.) Individuals in OJT or individuals employed in activities under title I of WIA 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. Such rates must be in accordance with applicable law, but may not be less than the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) or the applicable State or local minimum wage law.
 - (ii.) Individuals in OJT or individuals employed in programs and activities under Title I of WIA 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.

- j. **20 CFR 667.274: What health and safety standards apply to the working conditions of participants in activities under title I of WIA?**
- (i.) 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 engaged in programs and activities under Title I of WIA.
 - (ii.)(1) To the extent that a State workers' compensation law applies, workers' compensation must be provided to participants in programs and activities under Title I of WIA on the same basis as the compensation is provided to other individuals in the State in similar employment.
 - (2) If a State workers' compensation law applies to a participant in work experience, workers' compensation benefits must be available with respect to injuries suffered by the participant in such work experience. If a State workers' compensation law does not apply to a participant in work experience, insurance coverage must be secured for injuries suffered by the participant in the course of such work experience.
- k. **20 CFR 667.275: What are a recipient's obligations to ensure nondiscrimination and equal opportunity, and what are a recipient's obligations with respect to religious activities?**
- (i.) (1) Recipients, including State and local workforce investment boards, One-Stop operators, service providers, vendors and subrecipients, must comply with the nondiscrimination and equal opportunity provisions of WIA section 188 and its implementing regulations.
 - (2) Nondiscrimination and equal opportunity requirements and procedures, including complaint processing and compliance reviews, are governed by the regulations implementing WIA sec. 188 and are administered and enforced by the Department of Labor Civil Rights Center.
 - (3) As described in Sec. 667.260(a), funds may be used to meet a recipient's obligation to provide physical and programmatic accessibility and reasonable accommodation in regard to the WIA program, as required by section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended.
 - (ii.) 29 CFR part 2, subpart D governs the circumstances under which DOL support, including WIA Title I financial assistance, may be used to employ or train participants in religious activities. Under that subpart, such assistance may be used for such employment or training only when the assistance is provided indirectly within the meaning of the Establishment Clause of the U.S. Constitution, and not when the assistance is provided directly. As explained in that subpart, assistance provided through an Individual Training Account is generally considered indirect, and other mechanisms may also be considered indirect.

See also §§667.266 and 667.275 of 20 CFR. 29 CFR part 2, subpart D also contains requirements related to equal treatment of religious organizations in Department of Labor programs, and to protection of religious liberty for Department of Labor social service providers and beneficiaries. Limitations on the employment of participants under WIA Title I to carry out the construction, operation, or maintenance of any part of any facility used or to be used for religious instruction or as a place of religious worship are described at 29 CFR 37.6(f)(2). See section 188(a)(3) of the WIA of 1998, 29 U.S.C. 2938(a)(3).

NOTES: Under that definition, the term "recipients" includes State and Local Workforce Investment Boards, One-Stop operators, service providers, vendors, and subrecipients, as well as other types of individuals and entities. As discussed in 29 CFR 37.6(f)(2), WIA financial assistance may be used for the maintenance of a facility that is not primarily or inherently devoted to sectarian instruction or religious worship if the organization operating the facility is part of an OJT or activity providing services to WIA participants. See WIA section 188(a)(3).

I. 20 CFR 37.20: What is a grant applicant's obligation to provide a written assurance?

(a)(1) Each application for financial assistance under Title I of WIA, as defined in 37.4, must include the following assurance: As a condition to the award of financial assistance from the Department of Labor under Title I of WIA, the grant applicant assures that it will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:

- Section 188 of WIA, which prohibits discrimination against all individuals in the United States 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 WIA Title financially assisted program or activity;
- Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the bases of race, color and national origin;
- Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities;
- The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and
- Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs.

The grant applicant also assures that it will comply with 29 CFR part 37 and all other regulations implementing the laws listed above. This assurance applies to the grant applicant's operation of the WIA Title I-financially assisted program or activity, and to all agreements the grant applicant makes to carry out the WIA Title I-financially assisted program or activity. The grant applicant understands that the United States has the right to seek judicial enforcement of this assurance.

(2) The assurance is considered incorporated by operation of law in the grant, cooperative agreement, contract or other arrangement whereby Federal financial assistance under Title I of the WIA is made available, whether or not it is physically incorporated in such document and whether or not there is a written agreement between the Department and the recipient, between the Department and the Governor, between the Governor and the recipient, or between recipients. The assurance also may be incorporated by reference in such grants, cooperative agreements, contracts, or other arrangements.

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