

Local Policy 2024-09, Change 1 Local Workforce Development Area 2 (LWDA2) WIOA Title I Adult and Dislocated Worker On-the-Job Training (OJT)

Purpose: This policy provides guidance on the implementation and operation of the LWDA2s OJT program funded by the WIOA Title I Adult and Dislocated Worker programs.

Recission: Local Policy 2024-09 Workforce Innovation and Opportunity Act (WIOA) Title I Adult and Dislocated Worker On-the-Job Training (OJT)

References:

- DWD Policy 2022-02 *Workforce Innovation and Opportunity Act (WIOA) Title I Adult and Dislocated Worker On-the Job Training (OJT)* (All references within this policy are included by default)

Change Summary:

- Update to expenditure (\$13,000) and wage figures (\$13.50 per hour or \$35,360 annual salary) for OJT experiences.

Content:

Definitions:

- 1.) On-the-Job Training (OJT):** Training by an employer that is provided to a paid participant while engaged in productive work in a job that:
 - A.** Provides knowledge or skills essential to the full and adequate performance of the job;
 - B.** Provides reimbursement to the employer of 50% (or up to 75% under certain conditions) of the wage rate of the participant 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 trained, considering the content of the training, the prior work experience of the participant, and the service strategy of the participant, as appropriate.
- 2.) Individual Training Accounts (ITA):** The primary method used for procuring training services under WIOA.

3.) Training Contracts: Contracts for services may be used instead of ITAs only when one or more exceptions apply, and NIWB has fulfilled the consumer choice requirements. If this process is chosen, it must be added into the local plan. Exceptions allowing training contracts:

- When the services provided are OJT, customized training, incumbent worker training, or transitional jobs;
- When Northern Indiana Workforce Board (NIWB) determines that there are an insufficient number of eligible training providers to accomplish the purpose of a system of ITAs;
- When NIWB determines that there is a training services program of demonstrated effectiveness offered in the area by a community-based organization or another private organization to serve individuals with barriers to employment. NIWB would develop criteria to be used in determining demonstrated effectiveness, particularly as it applies to the individuals with barriers to employment to be served.
- It would be most appropriate to contract with an institution of higher education or other provider of training services to facilitate the training of multiple individuals in in-demand industry sectors or occupations, provided that the contract does not limit consumer choice; or
- Use of a Pay-for-Performance contract strategy.

4.) OJT Reimbursement Rate: NIWB will allow subrecipient and subcontractors to increase the reimbursement rate for OJT up to 75%, when considering the following factors:

- The participants are individuals with barriers to employment. Subrecipients and subcontractors may provide a higher rate of reimbursement for individuals who will require more intensive training than individuals without barriers;
- The size of the employer, with an emphasis on small business. NIWB encourages providing a higher wage reimbursement to smaller employers;
- 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
- Subrecipients and subcontractors may also determine to be appropriate, the number of employees participating, wage and benefit levels, and/or relation of the training to the competitiveness of the participant.

OJT is provided under a contract with an employer or registered apprenticeship program sponsor in the public, non-profit, or private sectors. 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, for the extraordinary costs of providing the training and supervision related to the training. The maximum duration for WIOA-funded OJT is six (6) months. However, exceptions may be approved on a case-by-case basis by NIWB.

Priority of Service

Section 134(c)(3)(E) of WIOA establishes a priority requirement with respect to funds allocated for individualized employment and training activities funded by the WIOA Title I Adult Program. Additionally, veterans and eligible spouses continue to receive priority of service for all United States Department of Labor (USDOL) funded job training programs. Veterans must meet each program's eligibility criteria to receive services under the respective employment and training program.

OJT Participant Eligibility, Requirements, and Restrictions

OJT participants must meet program eligibility requirements for each funding source (e.g., WIOA Adult or Dislocated Worker) and must have been determined to need training services. NIWB requires that staff assess the potential OJT participant to ensure suitability and desire for the training. The assessment, at a minimum, shall include the relevant occupation's specific skill requirements, the participant's academic and occupational skill level, prior work experience and the participant's Individual Employment Plan (IEP). The IEP must reference the lack of skills and the need for OJT.

Participants may only be provided OJT one time in any twelve-month period. An exception can be made if an OJT participant has successfully completed the training and was subsequently laid off through no fault of their own. Prior to beginning an OJT program, participants may be required to pass a drug screen consistent with employer, state, and/or local policies.

An individual may **not** participate in an OJT if:

- Any other individual is currently on layoff from the same or any substantially equivalent job with the employer;
- The employer has terminated the employment of any regular employee or caused an involuntary reduction in its workforce with the intention of filling the vacancy with OJT participants; or
- The OJT position is created in a promotional line that infringes in any way on the promotional opportunities of currently employed workers.

OJT for Employed Workers

OJT contracts may be written for eligible employed workers when:

- The employee is not earning a self-sufficient wage, or wages comparable to or higher than wages from previous employment, as determined by local policy.
- All applicable OJT requirements have been met; and the OJT relates to one or more of the following:
 - The introduction of new technologies; or
 - The introduction of new production or service procedures; or
 - Upgrading to new jobs that require additional skills, workplace literacy, or other appropriate purposes identified by NIWB.

NOTE: Participant eligibility documentation, assessments, and the IEP must be documented and maintained in the approved case management system. The participant case note should also include which of the elements (i.e., new technology, etc.) is involved.

OJT Employer Eligibility, Requirements, and Restrictions

Employers must offer wages, benefits, and working conditions equal to those provided to regular employees who have worked for a similar length of time and who are performing the same type of work. The employer must comply with all applicable federal, state, and local laws and regulations, including providing safe and clean working conditions. Once the training has been successfully completed, it is expected that the employer will retain the participant for at least six (6) months.

Prior to entering into an OJT agreement with an employer, staff must determine and ensure that the employer meets OJT criteria and can provide both training and long-term employment to an OJT participant.

OJT contracts may **not** be established with employers that have previously exhibited a pattern of failing to provide OJT participants with continued long-term employment with wages, benefits (including health benefits), and working conditions that are equal to those provided to regular employees that have worked a similar length of time and are doing the same type of work.

Funds provided to employers for OJT must **not** be used to directly or indirectly assist, promote, or deter union organizing.

WIOA funds may **not** be used to provide OJT if the business has relocated from any location in the United States and the relocation resulted in any employees losing his or her job at the original location. This prohibition is no longer applicable after the company has operated at the new location for 120 days. To verify that an establishment (which is new or expanding) is not, in fact, relocating employment from another area:

- For new or expanding businesses, a standardized pre-award review must be completed and documented jointly by the staff member and the OJT employer as a prerequisite to WIOA 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;
 - Whether WIOA assistance is sought in connection with past or impending job losses at other facilities;
 - A review of whether a Worker Adjustment and Retraining Notification (WARN) notice relating to the employer has been filed; and
 - A search of the Indiana Secretary of State's Business Search to determine whether the business is properly registered without any irregularities in their registration.
 - The review may include consultants with labor organizations and others in the affected region or local area(s).

Additionally, WIOA funds may **not** be used for the encouragement of 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.

OJT providers are not subject to the requirements applicable to entities listed on the eligible training provider list and are not included on the state list of eligible training providers and programs.

OJT providers must provide sufficient evidence and documentation to justify invoices for OJT costs.

OJT and Registered Apprenticeship (RA)

OJT contracts may be entered into with RA program sponsors or participating employers in RA programs for the OJT portion of the program. Individual training accounts (ITAs) and OJT funds may be combined to support placing participants into an RA program. In these instances, an ITA could be used to support the classroom portion of the RA program, while the OJT contract funds the on-the-job training portion of the program.

There are several ways in which career and training services may be used in conjunction with these programs:

- ITAs can be used to support placing participants in RAs through:
 - Pre-apprenticeship training; and
 - Training services provided under an RA program.
- Supportive services and need-related payments may be provided.
- Work-based training options also may be used to support participants in RA programs.

If the apprentice is employed at the time of the OJT participation, the additional criteria in the *OJT for Employed Workers* section above must be met.

OJT Contracts

An OJT must be in an in-demand industry or occupation, as defined by INDemand Jobs on the Indiana Career Ready website, with a ranking of three (3) flames or higher. NIWB will continue to target priority industries identified in the local plan.

The expenditure for an individual OJT contract is limited to \$13,000 annually. OJT funds can only be used to pay for training for positions that pay a minimum of \$13.50 per hour, or \$35,360 annually for Adult or Dislocated Worker programs. To meet the needs of all potential OJT participants and employers, exceptions may be made to the minimum starting wage requirements.

Reimbursement to employers shall be managed by a system that clearly documents:

- The number of hours worked for each workday;
- The rate of pay; and
- Supporting documents that are either:
 - Signed by both the participant and the employer or

- Signed only by the employer if accompanying documentation (timesheets/timecards) are signed by the participant.

Only remuneration for hours worked by the participant will be reimbursed. No reimbursement will be provided to employers for compensation provided to participants for things such as overtime pay, holiday pay, sick pay, vacation pay, paid time off (PTO), or commissions.

NIWB requires documentation of the factors used when deciding to increase the wage reimbursement levels above 50% and up to 75%.

All OJT contracts must contain the following assurance language:

“The equal opportunity and nondiscrimination assurances at 29 CFR 38.25 apply to this contract/agreement.”

Determining the Appropriate Duration of an OJT

Training duration is negotiated with the OJT employer, with a maximum duration of six (6) months. However, to meet the needs of all potential OJT participants and employers, exceptions may be made to the maximum duration of training.

The duration should be of sufficient length to ensure the acquisition of skills and proficiency in the occupation for which the training is being provided without being excessive in length. A tool that may assist with identifying appropriate training length is O*Net's Specific Vocational Preparation (SVP) levels by occupation. The SVP is the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation. SVP levels should be used in combination with the employer's specific skill requirements, the academic and occupational skill level of the participant, the participant's prior work experience, and the participant's Individual Employment Plan (IEP). Written justification for the agreed-upon length of training should be documented in the written training plan.

OJT Training Plans

An OJT training plan and corresponding training is developed based on the occupation the participant has chosen. The plan is a formal written program of a structured job training, which will provide participants with an orderly combination of instruction in general employment competencies and occupational specific skills. The training plan becomes the statement of work in the contract and then is used as a guide when delivering training.

OJT Development

NIWB encourages the use of OJT by employers and job seekers. It is critical that the subrecipients and subcontractors develop and use procedures that are not overly burdensome yet aligned with all program requirements. NIWB provides the following minimum outline that must be followed when developing OJTs.

1. Work with new expanding employers to conduct the pre-award review. The subrecipient or subcontractor is responsible for validating information provided in the pre-award review during the mandatory on-site monitoring visit.
2. Work with the employer to determine the number of workers needed by the employer as well as the skills, experience, and other job requirements usually required for the position for which training will take place.
3. Work with employers to determine the appropriate training duration, not to exceed six (6) months.
4. Ensure job openings to be considered for OJT participants are listed on DWD's labor exchange system.
5. Work with the employer to recruit and select OJT participants for specific openings. Hiring determinations are made by the employer.
6. Work with the employer and OJT participants to determine skill gaps and to develop a training plan for the position. In addition to the OJT training plan, each participant must have a documented IEP and case noted in DWD's case management system.
7. Establish OJT contact(s) with the employer for each individual OJT participant.
8. Employers must provide regularly scheduled invoices for reimbursement.
9. Employer electronic signatures on OJT forms are authorized in accordance with IC 26-2-8, the Uniform Electronic Transaction Act.

When the employer hires a new worker, the OJT officially begins. An OJT for an employed worker officially begins when the training that was outlined in the OJT training plan begins. Service records must indicate the start date of the OJT.

Monitoring and Follow-up Requirements

NIWB requires that the subrecipient or subcontractor is proactive to monitoring the successful operation of the OJT contracts. NIWB requires check-ins with OJT companies and conducting at least one fully documented monitoring visit during the OJT contract. The primary purpose of these check-ins and the monitoring visits is to ensure that the OJT employer is following all specifications included in the OJT contract and that the OJT participant is making satisfactory progress.

Attachment A: *Recommended OJT Contract Provisions*

Attachment B: *OJT Training Plan Guidance*

For questions, contact:

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Attachment A

Recommended OJT Contract Provisions

The purpose of the OJT contract is to outline the duties of an OJT employer and the subrecipient or subcontractor as they relate to the provision of an OJT program.

NOTE: The items below are not an all-inclusive list but serve as an initial guideline. Furthermore, these points are not intended to replace or supersede mandates and guidelines in federal and state laws and regulations regarding procurement and contracting. At a minimum, each contract must contain the provisions included in this guidance.

Recommended OJT Contract Provisions

The following provisions are recommended to be included in OJT contracts:

- Identification of the parties involved in the contract;
- The beginning and ending dates of the contract;
- The total training hours of the OJT program;
- The rate of reimbursement;
- The total reimbursement for the entire OJT program;
- The wage rate for the WIOA participant;
- Types of tools, equipment, or classroom training needed for the training, and the employer or the WIOA program will pay for each cost;
- A copy of the participant's OJT Training Plan;
- Requirements for trainee retention;
- Assurances of safe working conditions;
- Assurances from employer of compliance with all federal, state, and local regulations, including WIOA;
- Assurances from the employer that include specific references to fair labor standards, benefits, nondiscrimination, non-sectarianism, lobbying restrictions, and political activity restrictions;
- Audit rights and access to records for NIWB and DWD;
- Record retention requirements;
- Default clauses for non-performance;
- Termination for convenience clause;
- Modification methodology;
- Payment and delivery terms; and
- A requirement that the employer must maintain time and attendance records and must produce these records to the WDB and DWD upon request.

Attachment B

OJT Training Plan Guidance

Training providers can use O*NET and/or a job description to develop a list of skills or tasks for the training plan. Keep each skill description concise. Individual tasks should be observable and measurable.

At a minimum, OJT training plans must contain the following:

- Occupation information, including:
 - Job title;
 - Job description; and
 - O*NET code/description;
- Training outline with training activities described clearly to show that the employer is obligated to conduct specific training, including:
 - Skills and activities needed to successfully reach or obtain employment in this occupation, and
 - Skills and activities in which participants will be trained or achieve proficiency, including an outline of any measurable skill gains to be achieved.
- The overall duration of the OJT;
- The length (in hours) of training time established for each identified skill or activity, with training times that are reasonable and geared to both the complexity of the job and the abilities of the trainee;
- The job title of the person(s) responsible for the training;
- Progress measurements that identify how the progress of the participant will be measured in the skills to be achieved (i.e., observation of lead worker or supervisor, demonstration of specific competencies, observation of specific tasks, etc.).

The OJT participant, supervisor, and/or trainer should be knowledgeable about its contents.