



**WORKFORCE INNOVATION AND OPPORTUNITY ACT (WIOA)
PROGRAM POLICY NOTICE NO. 23 Rev. 2**

EFFECTIVE DATE: February 23, 2022

SUBJECT: ON-THE-JOB TRAINING (OJT)

REFERENCES

- Workforce Innovation and Opportunity Act (**WIOA**), Title I of the Workforce Innovation and Opportunity Act of 2014, as amended (**29 U.S.C. § 3101 et seq.**)
- WIOA Regulations, **20 CFR Part 652 et seq.** and **29 CFR Parts 95–97**
- Office of Management and Budget (**OMB**) Cost Principles, **2 CFR Parts 220, 225, and 230**
- Office of Management and Budget (**OMB**) Uniform Guidance, **2 CFR Part 200 et seq.** – *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*
- U.S. Department of Labor (**DOL**) Employment and Training Administration (ETA), Training and Employment Guidance Letter (**TEGL**) **No. 17-05**
- Training and Employment Guidance Letter (**TEGL**) **No. 19-16**, *Operating Guidance for the Workforce Innovation and Opportunity Act*
- New Mexico Statutes Annotated (**NMSA**) **1978**, § 50-14-1 et seq.
- New Mexico Department of Workforce Solutions (**NMDWS**) **Policy No. 18-006**, *On-the-Job Training*, Change 2
- **WIOA Section 3(44)** – Definition of On-the-Job Training
- **Fair Labor Standards Act (FLSA)**, § 203
- **U.S. Bureau of Labor Statistics (BLS)**

PURPOSE

To provide clarification for the Northern Area Local Workforce Development Board (NALWDB) WIOA sub recipients regarding NMDWS 18-006 as it relates to the execution of OJT training and to establish requirements for the delivery of on-the-job-training services under the NALWDB. In the case of a conflict between NMDWS 18-006 and this policy NMDWS 18-006 shall be the prevailing guidance.



BACKGROUND

OJT provides financial assistance to employers who agree to train suitable WIOA eligible individuals. Financial assistance is compensation for the extraordinary costs associated with training participants and the costs associated with lower productivity of new employees and is not an employer subsidy.

On-the-Job Training (OJT) is an allowable activity for adults, dislocated workers and eligible enrolled youth who after an objective assessment are determined to be appropriate for this activity. The intention for OJT training is to train in the highest skill occupation appropriate to the participant. OJT is not to be used for employment training for low-skill, low paying jobs or occupations with little or no potential for upward mobility.

ACTION

OJT TRAINING SHALL:

- (A) be for non-seasonal, permanent full-time employment
 - (i) Full-time employment is defined as a minimum of 30 hours per week
 - (ii) waivers to the 30 hours per week requirement may be requested for individuals with disabilities who need reasonable accommodation of a shorter work week to become self-sufficient
- (B) be for training that pays the trainee at the Federal or State minimum wage identified in the area (whichever is higher) the participant will be employed at. Trainees making more than the NALWDB's established self-sufficiency level prior to training will not be eligible for OJT.

EMPLOYER ELIGIBILITY

Within the parameters of WIOA, One Stop Staff may engage in OJT opportunities with any public, private non-profit, or private sector employer with the following exceptions.

- A.) An employer who has been convicted of violating federal laws and regulations within the last two years of requesting and OJT regarding: submission of worker adjustment and retraining notification (WARN) notices, occupational safety and health administration (OSHA) and Americans with Disabilities Act (ADA) standards, equal employment opportunity (EEO) and wage and hour requirements, state unemployment insurance (UI) laws, and fair labor standards and collective



bargaining agreements.

- B.) An employer who has exhibited a pattern of not retaining OJT participants in permanent positions upon satisfactory completion of training. For the purposes of this policy "pattern of not retaining OJT participants is defined as three trainees in any twelve-month period".
- C.) An establishment which is presently suspended or barred from doing procurement business with any branch of government.
- D.) An employer that provides workers to other employees on a temporary basis and receives compensation from those employers.
- E.) An employer who has exhibited a pattern of failing to provide OJT participants with continued long-term employment (retaining less than 3 OJT participants in a calendar year establishes a pattern of failure) 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.
- F.) An establishment that plans to use the WIOA to relocate from another area, or locate new branches, subsidiaries, or affiliates.
- G.) A business which has relocated within the last 120 days and dislocated workers at its previous location.
- H.) Business in which the participants will 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 of religious worship. 29 CFR 37.6(F).

*If an employer is established as ineligible for OJT funding by the office, then the employer can submit a written request for reconsideration to the NALWDB Administrative Office, **112 West San Francisco Street, Santa Fe, New Mexico 87505.***

PATTERN OF FAILURE

The NALWDB stipulates that any business demonstrating a pattern of failure will be barred from continued access to WIOA funding for a period of one year with respect to future On-the-Job Training (OJT) contracts. If such a pattern is identified during an active program, the existing contract may be terminated at the discretion of the Executive Director.

PATTERN OF FAILURE CONSTITUTES:

- 1.) If a business does not retain employees after completion of the OJT contract (up to 3} in a program year they have demonstrated a pattern of failure. They can no longer have OJT contracts for the remainder of the program year and can reapply as a business the following program year



2.) New Mexico Department of Workforce Solutions requires that all employers receiving a work-based training contract must be registered and current on unemployment insurance taxes, penalties and interest or related payment plan. Verification requests can be emailed to UITax.Support@state.nm.us

3.)

- This email is monitored throughout regular business hour Monday through Friday 8 AM to 5 PM
- Email Subject Title: 'VOSS REG Zip Code'
- Email contents will contain only the Federal Employer Identification Number (FEIN) and employer name
- If the employer is using their SSN as a FEIN number, do not include the SSN in the email. Only list the employer's name, include the fact that the SSN is being utilized, provide a name and phone number so the information can be provided telephonically. UI Tax unit will conduct the employer UI Tax Status check

It is the responsibility of the subgrant recipient to verify that all businesses eligible for an On-the-Job Training (OJT) contract are registered with and current in the Unemployment Insurance (UI) Tax Unit. The State UI Department applies a *de minimis* rule for liens of \$50 or less. Businesses with overdue UI tax amounts under \$50 may still receive services; however, if the outstanding amount exceeds \$50, the lien must be resolved before initiating or continuing an OJT contract.

RESTRICTIONS:

- A. 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.
- B. WIOA work-based training funds may not be used to directly or indirectly assist, promote or deter union organization.
- C. 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 during a labor dispute, or the filling of which is otherwise an issue in a labor dispute involving a work stoppage.
- D. WIOA work-based training funds may not be used, either directly or indirectly, to provide **supportive services** as described in **20 CFR §680.900** or **§681.570**.
- E. WIOA funds may not be used to help employers to fill positions that promote or support the use, possession, or distribution of marijuana.



OCCUPATIONAL ELIGIBILITY

OJT may not be utilized for any of the following occupations:

- a. Occupations dependent on commission or draw as a primary source of income.
- b. Intermittent seasonal occupations.
- c. Part-time occupations except as noted when in conjunction with Apprenticeships or Occupational Skills training.
- d. Occupations temporary by design.
- e. Occupations which have not traditionally required specific occupational training as a prerequisite for performance, such as porters, janitors, stackers, laborers, restaurant workers, etc. (entry level.
- f. Occupations whose prior training, certification or license make the individual qualified to perform the occupation, such as schoolteacher, cosmetologist, LPN, RN, etc., unless they are unable to enter employment without additional on-the-job-training due to occupational skill gaps.
- g. Any occupation whose training time is less than 160 hours.
- h. When an employer has laid off workers in substantially equivalent positions or where the OJT will impair any existing labor agreements, contracts for services or promotional opportunities for current employees. For the purposes of the OJT, "substantially equivalent position" is one in which the job responsibilities and skill, experience, and performance requirements have remained unchanged since the time of the layoff. To provide evidence that the position has "substantially changed", there should be a new and different job description for the position.

EMPLOYER ORIENTATION

1. An official employer orientation must be provided and documented before the OJT contract period begins. Orientation should begin at recruitment when the potential employer is informed about the responsibilities of providing structured on-the-job-training at the worksite as described in this section under "employer recruitment".

2. A pre-award review must be completed to determine employer eligibility. This provides an additional opportunity to share information about OJT and learn about the needs of the employer. Pre- award checklist must be submitted with the review (refer to Pre-Award Checklist)



3. The orientation must include a review of the OJT Contract, OJT Training Plan, OJT Progress Report and Invoice Forms and contact information for the case manager and administration of the WIOA programs.
4. Employers will be informed about the role they play in developing a structured training plan based on the skill gaps possessed by the OJT participant. Employers are informed of the importance of having experienced employees act as trainers for optimum results with predictable training outcomes.
5. Benefits of OJT are explained including OJT provider assurances, contract terms and conditions including terms and conditions of employer reimbursement.
6. Employers are informed about the requirements for local, state and possibly federal monitoring of the program and records maintenance requirements.

PARTICIPANT ELIGIBILITY

On-the-job training is available to adults, co-enrolled eligible youth and dislocated workers as defined by the WIOA, who are unemployed or underemployed and meet all the following requirements.

1. The participant must meet all eligibility requirements for **WIOA Title I** and applicable **training services** prior to enrollment. Eligibility determination shall be conducted in accordance with **WIOA Sections 3(15), 3(36), 3(44), and 134**, and **20 CFR §§680.200–680.230**, which define the criteria for participation in adult, dislocated worker, and youth programs.

Eligibility documentation must verify that the participant meets one or more of the following conditions:

Is authorized to work in the United States; meets age, residency, and selective service registration requirements; qualifies under income or employment status criteria applicable to the specific WIOA program (e.g., unemployed, underemployed, public assistance recipient, or low-income status); and has been determined to benefit from and be suitable for participation in training activities under **20 CFR §680.220**.

All determinations must be supported by appropriate documentation in the participant file, including verification of identity, income, employment status, and other eligibility factors required by the **New Mexico Department of Workforce Solutions (NMDWS) Policy No. 18-002** and **NALWDB Policy No. 01**. No training services may be provided until eligibility is fully established and documented in



accordance with federal and state regulations.

2. Participants are enrolled into WIOA prior to beginning training under an OJT contract
3. Participants were determined to need training to become employed in a job which leads to a self-sufficient level of income
4. Participants were determined to be a good candidate for the vocation and position for which they are to receive OJT as evidenced in their individual employment plan or comparable document
5. OJT contracts may be written for an employed worker if they meet all the requirements above and are not earning a self-sufficient wage at time of enrollment as defined by state and local board policy
6. If an **On-the-Job Training (OJT)** contract is established with a participant's current employer, the employer must provide verification that the training meets the criteria set forth under **20 CFR §680.700(b)** and relevant state and local policy. Specifically, the employer must demonstrate that the OJT is not intended to subsidize routine training or orientation that would otherwise be provided to a new or existing employee.
7. **On-the-Job Training (OJT)** is an allowable activity for eligible youth under **WIOA Section 129(c)(2)(C)** and **20 CFR §681.600**. OJT provides paid, work-based learning that combines hands-on job experience with occupational skill development aligned to the participant's **Individual Service Strategy (ISS)**. All youth OJT agreements must comply with **20 CFR §§680.700–680.730**, including documentation of the training plan, duration, and skill outcomes. Training must align with the youth's career goals and lead to increased employability or a recognized credential.
8. Priority of service must be applied in accordance with all applicable federal and state laws, regulations, and policies. Under **WIOA Section 134(c)(3)(E)** and **20 CFR §§680.600–680.640**, priority for individualized career and training services shall be given to recipients of public assistance, other low-income individuals, and individuals who are basic skills deficient. In addition, veterans and eligible spouses are entitled to priority of service as outlined in the **Jobs for Veterans Act (38 U.S.C. 4215)** and **20 CFR §§1010.200–1010.330**. Guidance on implementation is further provided in Training and Employment Guidance Letter **(TEGL) No. 19-16**.
At the state level, the New Mexico Department of Workforce Solutions (NMDWS) Priority of Service Policy No. 18-001 establishes the procedures and



documentation requirements for applying these provisions. The Northern Area Local Workforce Development Board (NALWDB) Policy No. 18, consistent with federal and state directives, ensures that all subrecipients and service providers apply priority of service uniformly throughout the region.

REVERSE REFERRAL

Any individual referred to a Workforce Center by an employer—commonly referred to as a “reverse referral”, must go through the standard intake and eligibility determination process in the same manner as any other job seeker. The individual must be determined to be eligible and in need of training prior to participating in an On-the-Job Training (OJT) activity. This eligibility process must be completed before the OJT start date.

A referral by an employer for an OJT position does not disqualify an individual from participation; however, it also does not confer priority over other eligible candidates. The final selection of an eligible individual for OJT shall be a joint decision between the employer and the local service provider, in accordance with **WIOA Section 134(c)(3)(H)** and **20 CFR §§680.700–680.710**.

PARTICIPANT ORIENTATION

An official participant orientation must be provided and documented before the OJT contract period begins. At a minimum the orientation should include the following:

1. OJT Training Plan Review

During the participant orientation, the OJT Training Plan must be thoroughly reviewed with the participant to ensure full understanding of the training objectives, expected outcomes, and performance standards. The review shall include an explanation of the occupational skills to be developed, the duration of training, the method of evaluation, and the participant’s responsibilities throughout the OJT period.

The participant must also be informed of the connection between the Training Plan and their Individual Employment Plan (**IEP**) or Individual Service Strategy (**ISS**), ensuring that the OJT aligns with their identified career goals and long-term employment objectives in accordance with **WIOA Section 134(c)(3)(H)** and **20 CFR §680.700–§680.710**.

2. During orientation, staff must review all workplace safety requirements with the



participant to ensure understanding of the employer's safety policies and procedures. Participants must be informed of their right to a safe work environment and the proper steps for reporting accidents or unsafe conditions. Orientation should include a review of relevant Occupational Safety and Health Administration (**OSHA**) standards and any employer-specific safety training. Documentation of this review must be maintained in the participant's file in accordance with **WIOA Section 134(c)(3)(H)** and **20 CFR §§680.700–680.710**.

3. Participants and employers are required to maintain accurate **timesheet records** documenting all hours worked under the On-the-Job Training (OJT) agreement. Timesheets must be verified by both the participant and the employer to ensure accuracy and compliance with the terms of the OJT Training Plan.

Employers are responsible for submitting **OJT Progress Reports** and **Invoice Forms** in accordance with program policy. These forms must include verified timesheets, payroll documentation, and a summary of the participant's progress toward skill attainment. The documentation is used to authorize reimbursement to the employer for allowable OJT wages and to confirm that training objectives are being met.

All payroll and timesheet records must align with the **WIOA Section 134(c)(3)(H)** and **20 CFR §§680.700–680.720** requirements, as well as local fiscal and monitoring policies established by the **NALWDB**

4. During orientation, participants must be informed of the additional services and activities available through the workforce development system. This includes information on supportive services, training opportunities, and referrals designed to assist participants in successfully completing their On-the-Job Training (**OJT**) and achieving long-term employment goals.

Supportive services may include assistance with transportation, childcare, work-related tools or uniforms, and other resources necessary to enable participation in training or employment, as outlined in **WIOA Section 134(d)(2)** and **20 CFR §§680.900–§680.970**. Staff must review available programs and coordinate referrals to ensure that participants understand how to access these services through the American Job Center (**AJC**) network or partner agencies.

Documentation of this discussion and any referrals made must be recorded in the participant's file and linked to their Individual Service Strategy (**ISS**) to demonstrate compliance with WIOA and local policy.



OJT PARTICIPANTS ALLOWED WITH AN EMPLOYER:

No more than 50 percent of the employer's full-time workforce at the location where the training is conducted may be participating in On-the-Job Training (**OJT**) at any given time. Once a participant has completed training and is retained by the employer, that individual is then counted as part of the regular full-time workforce, allowing additional participants to be trained under OJT.

An employer with a full-time workforce of one may train one OJT participant. For new or expanding businesses, a projected workforce number may be used to determine the allowable number of trainees; however, the projected workforce must be achieved within twelve (12) months. If the projected number is not met within this period, the number of allowable OJT trainees in future contracts must be adjusted accordingly.

This policy is established to ensure compliance with **WIOA Section 134(c)(3)(H)** and **20 CFR §§680.700–680.720**, which require that OJT activities represent a legitimate training opportunity and not result in displacement or subsidization of the employer's existing workforce.

OJT WAGES AND GENERAL WORKING CONDITIONS

- (A) Wage reimbursement. New employees hired under OJT shall at a minimum be paid the employer's usual entrance wage rate for the occupation in which they are to be trained and employed, which shall not be lower than the Federal or State minimum wage identified in the area (whichever is higher) the participant will be employed at. Participants shall be paid the same wage rate as non-WIOA funded employees in the same occupation. The reimbursement for training costs will be based on the number of hours worked and will not include overtime, shift differential, premium pay, and other non-regular wages paid by the employer. Reimbursement shall not be claimed for time which the OJT trainee is absent from training, including illness, holiday, plant downtime, or other events during which no training occurs.
- (B) Workers' compensation. Where state workers' compensation law is applicable, workers' compensation benefits in accordance with such law shall be available to all participants on the same basis as the compensation is provided to other individuals in the same employment.

OJT CONTRACT

An OJT contract shall include the sections outlined below. The OJT pre-award review, training contract, and training plan shall be signed by all required parties prior to any participant's training start date. Providers may use the OJT forms included in the state technical assistance guide or may



create their own if all the information referenced herein is included:

- (1) OJT requirements
- 2) OJT employer contract.
- 3) OJT training plan.
- 4) OJT pre-award review.
- 5) Progress report and invoice form.
- 6) OJT training plan modification (if applicable).
- 7) OJT contract assurances.
- 8) OJT training plan
 - i) The On-the-Job Training (**OJT**) Training Plan shall be an integral part of the OJT Training Contract and must be completed prior to the start of training. The Training Plan outlines the specific skills to be taught, performance expectations, duration of training, and methods of evaluation.
 - ii) The Training Plan must be developed collaboratively with the employer to establish measurable training outcomes that align with both the employer's job performance requirements and the participant's Individual Service Strategy (**ISS**) or Individual Employment Plan (**IEP**).
 - iii) If any changes occur that affect the content, duration, or structure of the original Training Plan, such as job duty revisions, skill adjustments, or updated learning objectives—the plan must be formally modified to reflect these updates. All modifications shall be reviewed and approved by authorized program staff to ensure continued compliance with **WIOA Section 134(c)(3)(H)** and **20 CFR §§680.700–680.710**.
 - iv) The updated Training Plan must be signed and dated by both the employer and the participant, with copies maintained in the participant's case file and the OJT contract file in accordance with recordkeeping and monitoring requirements.
 - v) The gap between the skills of a participant and the skills needed for the job will determine the number of training hours for which an employer will be reimbursed.
 - vi) An analysis of the OJT position will be conducted based on information from the employer combined with occupational information network (ONET) details or comparable information regarding specific qualifications and skill required for the OJT position.
 - vii) The training plan shall reflect the results of the Individual Skill Assessment (**ISA**) and an analysis of the employer's job performance requirements to determine the



specific training needed. The plan must align with the participant's Individual Service Strategy (**ISS**) or Individual Employment Plan (**IEP**) to ensure that the training directly supports the participant's career goals and skill development objectives, in accordance with **WIOA Section 134(c)(3)(H)** and **20 CFR §§680.700–680.710**.

- viii) (4) The training plan shall be maintained and updated as needed to reflect participant progress, modifications in job duties, or changes in training objectives. All updates must remain consistent with the participant's ISS/IEP and comply with the documentation standards established under **20 CFR §§680.230** and **§680.730**, as well as applicable state and local policies.
- ix) The basis for determining the duration of the On-the-Job Training (OJT) contract shall be clearly documented in the participant's case file and within the OJT Training Plan. The duration must be directly related to the skill requirements of the occupation, the participant's existing skill level as identified through the Individual Skill Assessment (ISA), and the competencies to be acquired during training. The maximum duration for an OJT contract is six months. (1040 training hours)
- x) Determining length of training should include the following:
 - (i) Skill gap is defined as the gap between the skills of an individual participant and the skills needed for a job. The skill gap will determine the number of training hours for which an employer will be reimbursed. The skill gap shall be clearly defined and incorporate the use of recognized skill assessment tools and occupational evaluation tools. An individual training plan shall be developed consistently with the duration of the contract. For example, a contract written for six months shall include a training plan that outlines six months of specific training to be provided by the employer which in turn should be consistent with the documented skill gap for the individual.
 - (ii) **Specific Vocational Preparation (SVP)** is defined as the amount of time required for a typical worker to learn the techniques, acquire the information, and develop the proficiency needed for average performance in a specific occupation. The SVP level determines the reasonable duration of an **On-the-Job Training (OJT)** contract.
 - (iii) Training hours must align with the SVP level identified for the occupation and may not exceed 1,040 hours (six months) unless otherwise justified and approved in accordance with **WIOA Section 134(c)(3)(H)** and **20 CFR §§680.700–680.710**.



Level	Training Timeframe	Approximate Hours
1	Short demonstration only	Up to 80 hours
2	Beyond short demonstration, up to 1 month	Up to 160 hours
3	Over 1 month, up to 3 months	160–480 hours
4	Over 3 months, up to 6 months	480–1,040 hours
5+	Over 6 months	<i>Requires justification and approval</i>

9) OJT REIMBURSEMENT RATE

- i. Employers will be reimbursed for the extraordinary costs of training On-the-Job Training (OJT) participants at a rate consistent with the Workforce Innovation and Opportunity Act (WIOA). The Northern Area Local Workforce Development Board (NALWDB) utilizes the following scale for employer reimbursement based on employer size:
- ii. Up to 75% of the applicable wage for employers with 50 or fewer employees; and
- iii. Up to 50% of the participant's applicable wage is for employers with 51 or more employees.
- iv. Employer size shall be determined using verified payroll records. The reimbursement frequency will be negotiated individually with each employer to ensure the greatest benefit to both the employer and the OJT participant.
- v. All reimbursement requests must include signed timesheets, payroll verification, OJT Progress Reports, and invoices reflecting wages paid to the participant during the training period. Documentation must demonstrate compliance with the approved OJT Training Plan and verification of the participant's progress toward required skill competencies.
- vi. **Wage Reimbursements**
 - i) Participants must be paid no less than the federal or state minimum wage applicable in the area (whichever is higher), or the prevailing rate of pay for employees in similar occupations who have comparable training, experience, and skills with the same employer. This requirement is established pursuant to **WIOA, 29 U.S.C. §2931(a)(1)(A)** and **20 CFR §667.272**. All provisions of the **Fair Labor Standards Act (FLSA)** apply to OJT participants.



- ii) **Overtime Policy:** Participants may work overtime, subject to FLSA regulations regarding compensation levels, provided that such work is included in the OJT Training Plan and consistent with the practices for other employees in comparable positions. While overtime hours worked may be counted toward reimbursement calculations for a given period, an overtime wage rate may not be used to calculate the reimbursement amount. The standard hourly wage rate must be applied to both regular and overtime hours for reimbursement purposes.

iii)

This policy is established in accordance with **WIOA Section 134(c)(3)(H)** and **20 CFR §§680.700–680.730**, which govern reimbursement for work-based training activities and ensure compliance with federal wage and labor standards.

10) **PROGRESS REPORT AND INVOICE FORM**

- i. A progress report (timesheet) and invoice form shall be completed at least monthly throughout the life of the OJT training. This provides a trainee evaluation of progress and documents hours worked and skills developed.
- ii. Contract assurances summary
- iii. 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.
- iv. When training employed workers, employer shall verify that the on-the-job 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.
- v. 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 on- the-job-training participant retention.
- vi. Employers agree that wage and labor standards will be adhered to and 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)(I) of the Fair Labor Standards Act of 1938** or the applicable state or local minimum wage law. WIOA.
- vii. 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). In accordance with **29 CFR §37.38(b)**, all recipients and subrecipients must disclose any civil rights findings, investigations, or pending discrimination-related complaints or lawsuits within the past two years involving employment practices or program operations. Documentation must be maintained and made available for review during compliance monitoring.

- viii. Employer certifies that the on-the-job-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 customized training, or it has no collective bargaining agreement with a labor organization that covers the participants' position.
- ix. The employer assures that it is not debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from participation in federal assistance programs or activities. This assurance is required under the U.S. Department of Labor's implementation of the government-wide Debarment and Suspension regulations at **29 CFR Part 98**, which adopt the provisions of **2 CFR Part 180**.
- x. The employer further assures that no federal funds provided under this agreement will be used to assist, promote, or deter union organizing activities, in accordance with **20 CFR §663.730** and the Workforce Innovation and Opportunity Act (**WIOA**). This provision ensures compliance with federal restrictions on the use of WIOA funds and maintains employer neutrality regarding labor organization and collective bargaining activities.
- xi. The employer certifies that no member of the On-the-Job Training (OJT) participant's immediate family will directly supervise or exercise authority over the participant during the training period. For the purposes of this contract, *immediate family* is defined as a spouse, parent, child, grandparent, grandchild, brother, sister, or any person bearing the same relationship to the participant's spouse. This requirement is established in accordance with **20 CFR §667.200(g)** to prevent conflicts of interest and ensure fair and impartial training oversight.
- xii. The employer assures that participants will not be employed to carry out the construction, operation, or maintenance of any part of a facility that is used, or is to be used, for sectarian instruction or as a place of religious worship, in accordance with **29 CFR §37.6(f)** and the **nondiscrimination provisions of WIOA Section 188**.
- xiii. Employer The employer assures that the OJT participant has not been hired into, and will not remain employed in, any position where another individual is currently



on layoff from the same or a substantially equivalent job within the same organizational unit, or where any other employee has been bumped and retains recall rights to that position.

Furthermore, the OJT position must not be created within a promotional line that would infringe upon the promotional opportunities or employment rights of the employer's existing workforce. This assurance is required under **20 CFR §667.270**, which prohibits displacement of regular employees as a result of participation in WIOA-funded programs.

xiv. **SUPPORTING DOCUMENTATION**

- (B) OJT pre-award checklist
- (C) OJT employer contract
- (D) OJT training plan
- (E) OJT Training plan modification as needed
- (F) OJT Progress Reports and Invoice
- (G) Case notes
- (H) Employer acknowledgement form
- (I) Six month checklist form (employer)



Coordination With Registered Apprenticeships

An On-the-Job Training (OJT) contract may be developed in coordination with an Apprenticeship Pathway, Pre-Apprenticeship, or Registered Apprenticeship Program to provide structured training opportunities for eligible participants. OJT contracts are executed directly with the employer and may be used to support some or all the on-the-job learning components of the apprenticeship program, in accordance with **WIOA Section 134(c)(3)(H) and 20 CFR §§680.700–680.720**.

Apprenticeship programs generally include both classroom (related technical instruction) and on-the-job training, allowing participants to develop occupational skills while earning wages. Under this model, OJT hours may be less than 30 hours per week but must not fall below 10 hours per week, provided the arrangement is consistent with program objectives and participant needs.

If an apprentice is already employed at the time of enrollment, all applicable requirements for employed worker training, as outlined in **20 CFR §680.710** and relevant state or local policies—must be followed to ensure compliance and appropriate use of **WIOA** funds.

Conflict of Interest-Board Recipients and Sub Recipients

State and local workforce development board members, as well as members of standing committees, may not vote on or participate in any decision regarding the provision of services by that member or any organization the member directly represents. Members are also prohibited from voting on any matter that would provide a direct financial benefit to themselves or to an immediate family member, in accordance with **WIOA Section 107(h)(1) and 20 CFR §683.200(c)(5)(i)**.

For example, a NALWDB member who is also an employer seeking to utilize workforce services on a fee-for-service basis may not vote to approve or authorize the use of local area services, facilities, or equipment for employment or training activities for employer's workers.

However, membership on a state board, local board, or standing committee, or the receipt of WIOA funds to provide training or related services, does not in itself constitute a conflict of interest or a violation of these provisions.

In accordance with **2 CFR §200.112 (Uniform Guidance)**, all recipients of federal awards must disclose in writing any potential conflicts of interest to the awarding agency or pass-through entity. Subrecipients are likewise required to disclose potential conflicts of interest in writing to the primary recipient of grant funds.

These requirements ensure transparency, integrity, and accountability in the administration of WIOA programs and the expenditure of federal funds.



Job Orders

All On-the-Job Training (OJT) contracts must be communicated to the New Mexico Department of Workforce Solutions (DWS) Title II staff for the creation of a job order in the New Mexico Workforce Connection Online System. The DWS Area Manager must be notified of each new OJT request, at which point the manager will assign the task to the appropriate DWS staff member for entry.

Subgrant recipient staff (Title I) are required to report weekly to DWS Title III staff all active job orders associated with current OJT contracts. All communication between Title I and DWS staff must occur via email to ensure proper documentation and record retention.

Once a DWS staff member has been assigned a job order, they must confirm with the service provider or program staff that the job order has been entered into DWS Online System and provide the corresponding job order number for tracking and reporting purposes.

OJT Outreach

Local areas must demonstrate that a variety of employer outreach strategies were utilized to ensure that area employers are aware of opportunities, selected equitably and that a variety of employers were given sufficient opportunity to participate in OJTs.

These strategies should include but not be limited to:

- 1.) The local sector strategy plan
- 2.) Labor Market Information and identified needs within the community
- 3.) Working with other agencies to target high growth industries for regional outreach
- 4.) Educating employers about how the OJT model can enhance their business, cut waste, help train employees, reduce turnover and increase profits

The subgrant recipient **staff** shall ensure that both the Business Services **and** Job Seeker Services functions incorporate information about On-the-Job Training (**OJT**) opportunities. Outreach objectives should be defined regionally and tailored to local employment conditions, with a primary focus on high-growth and in-demand industries and occupations identified within the area's workforce development plan.

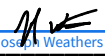
This requirement is established in accordance with **WIOA Section 134(c)** and **20 CFR §680.700**, which emphasize coordination of training and employment activities that align with regional labor market demand and support sector strategies for economic growth.

This policy **rescinds all previous NALWDB policies** related to this subject.

Inquiries:

For questions or additional information, contact the **WIOA Program Manager** at **(505) 986-0363**.





Joseph Weathers (Oct 24, 2025 22:26:24 MDT)
NALWDB CHAIR

10/24/25

DATE

OJT Policy ^N 23 Rev.2 10.15.25






(ruthie@nalwdb)

Final Audit Report

2025-10-25

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