

**To:** Indiana's Workforce System

**From:** Indiana Department of Workforce Development (DWD)

**Date:** September 14, 2022

**Subject:** DWD Policy 2022-02, Change 1  
Workforce Innovation and Opportunity Act (WIOA) Title I Adult and Dislocated Worker On-the-Job Training (OJT)

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## Purpose

This policy provides guidance on the implementation and operation of regional OJT programs funded by the WIOA Title I Adult and Dislocated Worker programs.<sup>1</sup>

## Change 1 Summary

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

## Rescission

- DWD Policy 2022-02 *Workforce Innovation and Opportunity Act (WIOA) Title I Adult and Dislocated Worker On-the-Job Training (OJT)*

## References

- WIOA Sections 3, 134, 181, and 194
- 2 CFR 200.400(d)
- 20 CFR Parts 600, 680, and 683
- 20 CFR 663.730
- 29 CFR Parts 29 and 30
- TEGL 19-16 *Guidance on Services provided through the Adult and Dislocated Worker Programs under the Workforce Innovation and Opportunity Act (WIOA) and the Wagner-Peyser Act Employment Service (ES), as amended by title III of WIOA, and for Implementation of the WIOA Final Rules*

## Definitions

**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:

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<sup>1</sup> See DWD policy *Guidance on WIOA Title I Youth Work Experience* policy for guidance on Youth work-based learning.

- 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.

**Individual Training Accounts (ITA):** The primary method used for procuring training services under WIOA.

**Training Contracts:**<sup>2</sup> Contracts for services may be used instead of ITAs only when one or more exceptions apply, the local board has fulfilled the consumer choice requirements<sup>3</sup>, and the process to be used in selecting contract providers is described in the local plan. Exceptions allowing training contracts:

- When the services provided are OJT, customized training, incumbent worker training, or transitional jobs;
- When the Local WDB determines that there are an insufficient number of eligible training providers in the local area to accomplish the purpose of a system of ITAs;<sup>4</sup>
- When the Local WDB 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.<sup>5</sup> The Local WDB must develop criteria to be used in determining demonstrated effectiveness, particularly as it applies to the individuals with barriers to employment to be served.<sup>6</sup>
- 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.

**OJT Reimbursement Rate:**<sup>7</sup> Local boards may increase the reimbursement rate for OJT up 75%, when considering the following factors:

- The participants are individuals with barriers to employment. Local policy 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. Local areas may consider providing a higher wage reimbursement to smaller employers;<sup>8</sup>

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<sup>2</sup> 20 CFR 680.320.

<sup>3</sup> 20 CFR 680.340.

<sup>4</sup> The determination process must include a public comment period for interested providers of at least 30 days and be described in the Local Plan.

<sup>5</sup> WIOA 3(24).

<sup>6</sup> See 20 CFR 680.320(3) for example criteria.

<sup>7</sup> 20 CFR 680.730.

<sup>8</sup> For example, provide a 30% reimbursement to employers of 1,000 or more; 50% for employers of 500-999; 60% for employers of 50-499; and 75% for employers of less than 50.

- 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
- Other factors the local board may determine to be appropriate, which may include the number of employees participating, wage and benefit levels, and/or relation of the training to the competitiveness of the participant.

Local boards must include in their local OJT policies the elements and methodologies that will be used when deciding to increase wage reimbursement levels above 50% and up to 75%. Reasons for exceptions should be documented within participant case notes.

## Content

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.<sup>9</sup>

### *Priority of Service<sup>10</sup>*

Section 134(c)(3)(E) of WIOA<sup>11</sup> establishes a priority requirement with respect to funds allocated to a local area 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<sup>12</sup> for each funding source (e.g., WIOA Adult or Dislocated Worker) and must have been determined to need training services. The local area must also 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

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<sup>9</sup> Submit the exception request along with a brief explanation to [WIOATitle1@dwd.IN.gov](mailto:WIOATitle1@dwd.IN.gov).

<sup>10</sup> See DWD's *WIOA Title I Adult Priority of Service* and *Priority of Service for Veterans and Eligible Spouses in Indiana DWD's Integrated WorkOne Offices policies for Priority of Service Requirements* for additional guidance.

<sup>11</sup> "[p]riority shall be given to recipients of public assistance, other low- income individuals, and individuals who are basic skills deficient for receipt of career services described in paragraph (2)(A)(xii) and training services." WIOA, P.L. 113-128, Section 134(c)(3)(E).

<sup>12</sup> See DWD's *WIOA Title I Adult and Dislocated Worker Program Eligibility* policy for additional guidance.

fault of their own. Prior to beginning an OJT program, participants may be required to pass a drug screen consistent with employer, state,<sup>13</sup> 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 to new production or service procedures; or
  - Upgrading to new jobs that require additional skills, workplace literacy, or other appropriate purposes identified by the local area.

**NOTE:** Participant eligibility documentation, assessments, and the IEP must be documented and maintained in DWD's 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.<sup>14</sup>

Prior to entering into an OJT agreement with an employer, the local area must determine and ensure that the employer meets OJT criteria and can provide both training and long-term employment<sup>15</sup> to an OJT participant.<sup>16</sup>

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

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<sup>13</sup> See DWD's *Participant Drug Screening* policy for additional guidance.

<sup>14</sup> Hiring an OJT participant in an independent contractor role would not meet this expectation.

<sup>15</sup> At least six (6) months after the training is completed.

<sup>16</sup> OJT contracts may not be executed directly with staffing agencies, though third-party agreements are permissible.

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 employee losing his or her job at the original location.<sup>17</sup> 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,<sup>18</sup> a standardized pre-award review must be completed and documented jointly by the local area and the OJT employer as a prerequisite to WIOA assistance.<sup>19</sup>
  - 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 WARN notices relating to the employer have been filed; and
    - A search of the Indiana Secretary of State's Business Search<sup>20</sup> to determine whether the business is properly registered without any irregularities in their registration.
  - The review may include consultations with labor organizations and others in the affected region or local area(s).

Additionally, 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.

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.<sup>21</sup>

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<sup>17</sup> 20 CFR 683.260.

<sup>18</sup> 20 CFR 683.260(b).

<sup>19</sup> See DWD Technical Assistance *Example OJT Program Templates* for an example pre-award review form.

<sup>20</sup> <https://bsd.sos.in.gov/publicbusinesssearch>.

<sup>21</sup> Some sources of documentation may include, but are not limited to, time sheets and other payroll materials.

### ***OJT and Registered Apprenticeship (RA)***<sup>22</sup>

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 a 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 a RA program.
- Supportive services and needs-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 OJT participation, the additional criteria in the *OJT for Employed Workers* section above must be met.

### ***OJT Contracts***<sup>23</sup>

An OJT must be in an in-demand industry or occupation, as defined by INDemand Jobs on the Indiana Career Ready website,<sup>24</sup> with a ranking of three (3) flames or higher. Local areas should target priority industries identified in their local plan. Occupations targeted for OJT should be defined in the local OJT policy and targeted employer outreach should occur within those industries.

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 \$28,080 annually for Adult or Dislocated Worker programs.<sup>25</sup> To meet the needs of all potential OJT participants and employers, exceptions may be made the minimum starting wage requirement.<sup>26</sup>

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.

<sup>22</sup> Providers should consult 29 CFR 29 for more information on apprenticeship standards, program performance standards, and apprenticeship agreement requirements.

<sup>23</sup> Please see Attachment A for additional guidance.

<sup>24</sup> <https://www.indianacareerready.com/indemandjobs?nav=jobseeker>.

<sup>25</sup> DWD strives to ensure all Hoosiers are earning sustainable living wages. To achieve this, DWD strongly recommends that OJT participants are compensated at wages of \$15.00 per hour or greater. At minimum, an OJT participant must be compensated at \$13.50 per hour, consistent with the terms of this policy.

<sup>26</sup> Submit the exception request along with a brief explanation to [WIOATitle1@dwd.IN.gov](mailto:WIOATitle1@dwd.IN.gov).

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.

Local WDBs must document the factors used when deciding to increase the wage reimbursement levels above 50% and up to 75%.<sup>27</sup>

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.<sup>28</sup>

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)<sup>29</sup> 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. SPV 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<sup>30</sup>***

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. For registered apprenticeships, it is recommended that training plans follow guidance in Appendix A to USDOL ETA Bulletin 2011-16.<sup>31</sup>

### ***OJT Process***

To encourage the use of OJT by employers and job seekers, it is critical to develop paperwork and processes that are not overly burdensome yet align with all program requirements. The process developed by DWD provides a minimum outline that local areas must follow when developing OJTs.

<sup>27</sup> Please see the *Definitions* section above for additional information.

<sup>28</sup> Submit the exception request along with a brief explanation to [WIOATitle1@dwd.IN.gov](mailto:WIOATitle1@dwd.IN.gov).

<sup>29</sup> SVP codes can be obtained via the O\*Net web site at <http://online.onetcenter.org/>. SVPs are provided in the “Job Zone” section of each occupation.

<sup>30</sup> Please see Attachment B for additional guidance.

<sup>31</sup> [https://www.doleta.gov/oa/bul11/Bulletin\\_2011\\_16\\_HB1\\_Appendeix\\_A.pdf](https://www.doleta.gov/oa/bul11/Bulletin_2011_16_HB1_Appendeix_A.pdf)

Local staff must follow the process below when developing OJTs:

1. Work with new or expanding employers to conduct the pre-award review. The local area is responsible for validating information provided in the pre-award review during the mandatory on-site monitoring visit.<sup>32</sup>
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.<sup>33</sup>
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 the 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 contract(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 the 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<sup>34</sup>***

WDBs have proactive responsibilities to monitor the successful operation of OJT contracts. WDBs or their designees are to conduct check-ins with OJT companies and conduct at least one fully documented monitoring visit during the OJT contract.<sup>35</sup> 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.

Additionally, WDBs or their designees are to provide follow-up services to OJT participants. WorkOne staff persons are to conduct check-ins with OJT participants throughout the duration of their training and for six months following successful completion of the OJT. These check-ins will help to determine if the participant needs additional WorkOne services to successfully retain employment. All check-ins must be documented in DWD's electronic case management system as a follow-up service.

For registered apprenticeships, local areas must verify that wages being paid match the rate outlined in Appendix B to ETA Form 671.<sup>36</sup>

<sup>32</sup> This visit may be conducted in an in-person or a virtual setting as circumstances require.

<sup>33</sup> See the *Determining the Appropriate Duration of an OJT* section for additional guidance.

<sup>34</sup> See DWD Technical Assistance *Example OJT Program Templates* for an example monitoring form.

<sup>35</sup> The check-ins and monitoring visits may be conducted in an in-person or virtual setting as circumstances require.

<sup>36</sup> [https://www.dol.gov/sites/dolgov/files/ETA/apprenticeship/pdfs/Bulletin\\_2010-09\\_Appendix\\_B.pdf](https://www.dol.gov/sites/dolgov/files/ETA/apprenticeship/pdfs/Bulletin_2010-09_Appendix_B.pdf)



WDBs must develop policies and procedures for monitoring OJT employers and participants as part of their OJT program.

## Action

Local areas must ensure the guidance contained within this policy is followed when developing local OJT policies and implementing and operating WIOA Adult and Dislocated Worker funded OJT training programs. Local areas must establish limits and criteria for establishing the percentage of reimbursement and OJT duration.

The local area must have a policy in place outlining the process for determining the rate of training wage reimbursement. For any amount approved beyond 50% and up to 75%, local areas must have documentation of the factors used in making the decision.

The content of this policy will be part of routine DWD monitoring.

## Attachments

**Attachment A** - Recommended OJT Contract Provisions

**Attachment B** - OJT Training Plan Guidance

## Effective Date

Immediately.

## Ending Date

Upon rescission.

## Additional Information

Questions regarding the content of this publication should be directed to [policy@dwd.in.gov](mailto:policy@dwd.in.gov).

## Attachment A

### Recommended OJT Contract Provisions

The purpose of the OJT contract is to outline the duties of an OJT employer and the local area as they relate to the provision of an OJT program.

**NOTE:** The below items 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 local 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;<sup>37</sup>
- The total reimbursement for the entire OJT program;
- The wage rate for the WIOA participant;
- Types of the 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 the WDB 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 local WDB and DWD upon request.

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<sup>37</sup> Please see the *Definitions* section above for additional information.

## Attachment B OJT Training Plan Guidance<sup>38</sup>

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.

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<sup>38</sup> See DWD Technical Assistance *Example OJT Program Templates* for an example training plan.