

DIRECTIVE

WORKFORCE SERVICES

Number: WSD10-12

Date: December 16, 2010
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TO: WORKFORCE DEVELOPMENT COMMUNITY

SUBJECT: ON-THE-JOB TRAINING NATIONAL EMERGENCY GRANT
REQUIREMENTS

EXECUTIVE SUMMARY:

Purpose:

This directive provides grant specific requirements to Local Workforce Investment Areas (local areas) implementing an On-the-Job Training (OJT) National Emergency Grant (NEG) project.

Scope:

This directive applies to the 20 local areas who were awarded an American Recovery and Reinvestment Act (ARRA) funded OJT NEG grant.

Effective Date:

This directive is effective on the date of issuance.

REFERENCES:

- Workforce Investment Act (WIA) Sections 101(9) and (31), 173, 181(a)(1)(A), and 189(i)
- ARRA of 2009 (Public Law 111-5)
- Title 20 Code of Federal Regulations Parts 661, 663, 667.270, and 671
- Department of Labor (DOL) Training and Guidance Letter (TEGL) 4-10, OJT NEGs Funded with ARRA Resources (August 6, 2010)
- TEGL 1-09, Reporting Requirements under Section 1512 of ARRA, Changes 1 and 2 (August 14, 2009)
- TEGL 24-08, WIA and Wagner-Peyser Act Performance Accountability Reporting for ARRA (May 21, 2009)

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- TEGL 19-08, NEGs Funded with ARRA Resources (April 30, 2009)
- Training and Employment Notice 38-09, ARRA OJT NEGs (April 12, 2010)
- Grant Officer's Participant Eligibility Clarification Memo (August 13, 2010)

STATE-IMPOSED REQUIREMENTS:

This document contains one State-imposed requirement. This requirement is indicated by ***bold italic*** type.

FILING INSTRUCTIONS:

This directive finalizes Workforce Services Draft Directive WSDD-50, issued for comment on October 27, 2010. The Workforce Services Division received three comments during the draft comment period. These comments resulted in substantive changes to the directive, which are viewed as highlighted text. The highlighted text will remain on the Internet for 30 days from the issuance date. A summary of the comments is provided as an Attachment. Retain this directive until further notice.

BACKGROUND:

National Emergency Grants are discretionary grants awarded by the Secretary of Labor under WIA Section 173 to provide employment-related services for dislocated workers. They are intended to temporarily expand service capacity at the state and local levels by providing time-limited funding assistance in response to significant dislocation events. Significant events include plant closures and mass layoffs which create a sudden need for assistance that cannot be accommodated within the ongoing operations of the dislocated worker program, including statewide activities and Rapid Response funds. The Secretary of Labor has recognized the impact of the current recession on the national workforce as a significant dislocation event for purposes of authorizing one-time ARRA-funded assistance.

On June 25, 2010, Secretary of Labor Hilda Solis announced \$75 million in ARRA funded OJT NEGs to 41 states to provide workers affected by layoffs with OJT opportunities. California received nearly \$10 million of the \$75 million. The funds were provided to those areas of the country most severely impacted by the recession, with a focus on creating OJT opportunities for dislocated workers. The following 20 local areas were awarded OJT NEG funds:

Merced County, North Central Counties Consortium, Tulare County, Stanislaus County, Richmond City, Kern/Inyo/Mono Counties, Oakland City, Madera County, Monterey County, NoRTEC Consortium, Santa Cruz County, San Bernardino County, Los Angeles County, Sacramento City/County, San Jose City, Solano County, Anaheim City, Golden Sierra Consortium, Los Angeles City, and Long Beach City.

POLICY AND PROCEDURES:

Participant Eligibility Criteria

In order to qualify for program participation with OJT NEG funds, a person must meet the following requirements:

1. Meet the definition of a dislocated worker as defined at WIA Section 101(9),
2. Must have been laid off after January 1, 2008, and
3. Must meet the definition of "prolonged unemployed." For the purposes of California's OJT NEG Project, "prolonged unemployed" refers to those dislocated workers who have been unemployed beyond California's average Unemployment Insurance (UI) duration of 21.5 weeks. (Note: The number of weeks unemployed is the important indicator, not the UI status. Therefore, an individual not covered by UI may still be considered prolonged unemployed if the period of unemployment exceeds the State's average UI duration.)

Participant Priority of Service

Local areas must grant priority of service to OJT NEG eligible participants as follows:

- ***First priority: Individuals not covered by UI and unemployed for 99 weeks or longer after January 1, 2008. Participants with the greatest barriers to employment receive priority of service.***
- ***Second priority: Individuals who have been unemployed and/or receiving UI benefits and meet the definition of prolonged unemployed (i.e., have been unemployed for 21.5 weeks or longer).***

(Note: Veterans are to receive the highest priority of service among all OJT NEG eligible participants.)

Employer Eligibility Criteria

OJT positions cannot be developed with employers in the following circumstances:

- Casinos or other gambling establishments, swimming pools, aquariums, zoos, or golf courses (ARRA requirement),
- Public sector employers,
- Employers that have relocated all or part of their business within the previous 120 days where the relocation action has resulted in the loss of employment of any employee at the original location

Additionally, a participant may not be placed in an OJT slot if: (1) any other individual is on layoff from the same or any substantially equivalent job; (2) the employer has

terminated the employment of a regular employee with the intention of filling the vacancy with an OJT participant; or (3) the OJT position infringes on the promotional opportunities of currently employed workers. (Note: The prohibition on displacement may also include a partial displacement, such as a reduction in the hours of non-overtime work, wages, or employment benefits of any current employee.)

Safeguards to prevent the displacement of incumbent workers must also be in place ensuring the appropriate ratio of current employees to trainees, and ensuring that employers have not reduced their workforce via lay-offs during the six months prior to program participation.

Employers selected to provide OJT's must:

- Have an identifiable job with necessary equipment, materials, and supervision to perform the training
- Be an official business with appropriate licenses
- Have insurance coverage
- Have federal and state tax identification numbers
- Sign a contract with the respective local area which commits them to remain in compliance with training plans and monitoring guidelines
- Have an accounting system that allows for the tracking of OJT employee salaries and invoicing procedures
- Be looking to expand and hire the employee full-time after the training term is completed
- Provide training at prevailing wages

Reverse referrals (when an employer with a hiring need sends an individual to the One-Stop Career Center for an eligibility determination and then hires the individual on an OJT contract) are allowable. However, all of the conditions of this OJT NEG directive must be met.

OJT Contract Requirements

At a minimum, OJT contracts must include the following information:

- A description of the occupations for which training is to be provided
- The length of time the training will be provided (limited to six months)
- The wage rate to be paid to the trainee
- The rate of reimbursement to the employer and the maximum amount of reimbursement to be paid
- A training outline that includes the work skills and competencies to be learned and describes any separate classroom training that may be provided

- Employer's agreement to maintain and make available accurate and complete time and attendance, payroll and other records to support amounts claimed by the employer for reimbursement under the contract
- Employers agreement to document skills gained during the training period

OJT Duration Limit

Employers participating in the OJT NEG project may be reimbursed a percentage of an individual's wage rate for no longer than six months. Additionally, individuals may not be co-enrolled in other DOL Employment and Training Administration programs (such as WIA formula funds, WIA 15 Percent and 25 Percent funds) for the purpose of extending their OJT beyond six months. Employers who require less time to train OJT participants should be encouraged to transition participants to permanent employment as soon as possible.

Training Reimbursement

Local areas may use the OJT NEG grant funds to reimburse employers for the extraordinary cost of training OJT participants. The negotiated reimbursement percentage may be as high as 90 percent of the participant's hourly wage (subject to the wage cap) based on the following employer size:

1. Up to 90 percent of the participant's wage rate for employers with 50 or fewer employees;
2. Up to 75 percent of the participant's wage rate for employers with 51-250 employees; and
3. Up to 50 percent of the participant's wage rate for employers with more than 250 employees. [Note: This flexibility is independent of California's waiver of WIA Section 101(31)(B) approved for PY 2010-11.] See WIA [WSD10-10](#), WIA Statewide Waivers and Extension of State Plan for PY 2010-11, for more information.

(Note: Employer size is based on the employment at the company's local operation where the OJT placements will be made. For instance, a hotel chain that employs thousands nationwide, but only 40 at its company in the targeted region, may be eligible for reimbursement up to 90 percent. In addition, the percentage of reimbursement for OJT participants is based on the employer size prior to the hiring of any OJT NEG participants.)

If the results of the skills gap analysis indicate a large gap between the skills needed by the employer and the skills of the individual which would require extraordinary training, local areas may use the skills gap reimbursement method. A sliding scale up to 90 percent may be used to reflect the degree of the individual participant's skills gap. Local areas will need to ensure proper documentation of the exceptional need for this type of reimbursement rather than the employer size.

The training reimbursement percentage is applied against the participant's wage rate, unless the wage rate exceeds California's average hourly rate of \$23.82. In that case,

the training reimbursement cannot exceed California's average hourly rate of \$23.82 per hour. In establishing the hourly rate, employers are required to compensate OJT participants at the same rate as trainees or employees who are in similar occupations with the same employer and who have similar training, experience and skills [WIA 181(a)(1)(A)].

Skills Gap Analysis

Local areas are responsible for developing their own policies to assess individual participants' skill gaps as well as determining the appropriate tools used to measure them. (Refer to TEG 4-10, page 5, Section 5.A. for examples of tools that are useful in determining the skills necessary for specific occupations and industries.)

A copy of the local skills gap analysis policy and a description of the tools that will be used to measure skills gap will be required as a subgrant exhibit in the local area OJT NEG plan.

Skills Attainment

Local areas should track the progress of the OJT participants through scheduled performance reviews. The reviews, scheduled monthly, should be conducted to ensure that the participant is making progress during the training phase of the OJT. A variety of tools to monitor the progress should be used including, but not limited to, onsite visits, employer evaluation, and employee self evaluation. Employers should complete a survey upon completion of the OJT for the client which will further measure if the client has attained the necessary skill and experience as stated in their training plans to be successful in the workplace and potentially be hired in unsubsidized positions with the employer.

Certificates of attainment should be issued to OJT participants who successfully complete the curriculum established for their position. The curriculum should be negotiated between the OJT agent/contractor, employer, and at times the employee. Additionally, it should align with the skills, abilities, and knowledge identified in the Occupational Information Network (O*NET) Classification Directory. Each curriculum should be incorporated into and made a part of the OJT agreement with the employer. The employer should certify that the OJT participant has achieved the elements of the curriculum. Employer certification may be either a signed standardized form listing the elements of the curriculum, a letter, or a written statement indicating that the elements of the curriculum have been achieved. Most of the OJT certificates of attainment are recognized by the local areas as credentials for purposes of the WIA.

Performance Goals

Local areas participating in this OJT NEG are expected to meet or exceed the State's targeted performance goals. The Program Year (PY) 2009 target performance goals agreed upon for California's WIA dislocated worker (DW) program and for this OJT NEG project are as follows:

<u>Performance Goal</u>	<u>WIA DW PY 2009</u>	<u>ARRA OJT NEG</u>
Entered Employment Rate	67.3%	75%
Employment Retention Rate	83%	90%
Average Earnings	\$15,900	\$15,900

ACTION:

Please bring this directive to the attention of all relevant parties.

INQUIRIES:

If you have any questions, please contact your [Regional Advisor](#) at (916) 654-7799.

/S/ MICHAEL EVASHENK, Chief
Workforce Services Division

Attachment

Summary of Comments
Draft Directive “On-the-Job-Training National Emergency Grant Requirements”

There were 2 commenters to the draft version of this directive.

Commenter #1 requested that the section of the directive entitled “Participant Priority of Service” clarify that veterans are to be given the “highest” priority of service among all OJT NEG eligible participants, thereby superseding the first and second priorities as written in the section.

Resolution: The EDD recognizes that the language contained in the directive did not make it clear that veterans receive the highest priority of service. As a result, the EDD inserted the following sentence on page 3: Note: Veterans are to receive the highest priority of service among all OJT NEG eligible participants.

Commenter #1 also asked that the EDD provide clarification regarding the last bullet, written assurances, in the section entitled “OJT Contract Requirements.” The commenter noted this bullet did not specify what written assurances should be included in OJT contracts. The commenter recommended that the EDD elaborate on what written assurances should be included in the OJT contract, or remove the bullet from the directive.

Resolution: The EDD agrees that the preceding bullets suffice as OJT contract requirements. To help alleviate any confusion, the EDD deleted the last bullet, written assurances, under the section “OJT Contract Requirements.”

Commenter #2 expressed an issue with the section of the directive “Employer Eligibility Criteria” that reads: “Safeguards to prevent the displacement of incumbent workers must also be in place ensuring the appropriate ratio of current employees to trainees (typically no less than 7:1), and ensuring that employers have not reduced their workforce via lay-offs during the six months prior to program participation.”

Specifically, the commenter’s concern was that the ratio “typically no less than 7:1” could be interpreted to be a mandatory requirement, and therefore stop some local areas from writing any OJTs under this grant with the small business community.

Resolution: The EDD intended the ratio just to be an example. However the EDD acknowledges that the ratio could be interpreted as a mandatory requirement, and therefore, removed the reference in order to eliminate any confusion.