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**NEW YORK STATE
WORKFORCE DEVELOPMENT SYSTEM
TECHNICAL ADVISORY #10-15.2**

MARCH 31, 2014

To: Workforce Development Community

Subject: Updated Local Workforce Investment Area On-the-Job-Training Policy

PURPOSE

The purpose of this Workforce Development System Technical Advisory (WDS-TA) is to advise Local Workforce Investment Areas (LWIAs) that:

- Every LWIA must develop written On-the-Job Training (OJT) policy and procedures;
- All businesses under consideration for a publicly-funded OJT contract must complete a standardized pre-award review;
- A minimum list of business assurances must be included in every OJT contract; and
- Rescind and replace WDS-TA 10-15.1 "Updated Local Workforce Investment Area (LWIA) On-the-Job-Training Policy," dated November 24, 2010.

ACTION

LWIBs must ensure OJT policies and procedures comply with the requirements outlined in this WDS TA

POLICY

A. LWIAs must have written OJT policies and procedures that address specific elements.

The elements were derived from information contained in the United States Department of Labor (USDOL) – Employment and Training Administration’s (ETA) new web-based OJT toolkit to help workforce professionals expand and strengthen their OJT strategies. ETA’s OJT Toolkit can be accessed at: <http://ojttoolkit.workforce3one.org>. The OJT Toolkit provides a variety of examples of OJT Policy Handbooks and forms that can serve as resources for developing or refining local policies and procedures.

LWIA OJT Policy and Procedural Elements must include the following:

- Identification of OJT Opportunities with Qualified Businesses
 - Recruitment and marketing strategies.
 - Outreach to identify OJT opportunities for jobseekers that would benefit from hands-on training.
 - Process that businesses will use to apply for OJT.

- Criteria that will be applied prior to moving forward with the OJT contract – see section on required “Pre-Award Review” process.
- Guidelines on what constitutes a “pattern of failing to provide OJT participants with continued long-term employment with wages, benefits, and working conditions that are equal to those provided to regular employees who have worked a similar length of time and are doing the same type of work.” [WIA Final Rules § 663.700(b)].
- Criteria that will be used to determine suitability of employment opportunity for OJT.
- Development of job description and training outline.
- How jobseekers will be referred to the business.
- Identification and Assessment of Training Candidates
 - Recruitment and marketing strategies.
 - Search strategies to identify candidates for known OJT opportunities.
 - How need for OJT training will be determined.
 - How skill gaps will be determined.
 - Criteria for handling candidates who were previously employed by the business.
 - Criteria for handling currently employed workers.
 - How training plan will be developed.
- Reimbursement Policies (options vary with funding source)
 - Dollar amount limits available per individual and/or per business.
 - Duration limits on OJT.
 - Reimbursement rates that will be used.
 - Whether the LWIA will cover the participant for the cost of items such as uniforms, work-related tools, equipment, licensing fees, training-related books or additional coursework related to the training occupation.
- Composition of Local OJT Contract Package

The minimum elements for an OJT contract are as follows:

 - Applicant Name, Address, Telephone number and FEIN.
 - Trainee name.
 - Trainee job title and wage.
 - Supervisor name and title.
 - Job description.
 - Training plan that specifies:
 - Skills and competencies to be learned;
 - Successful completion of training, such as minimum number of hours to be completed, business evaluation, and/or minimum mastery of skill; and

- Start and end dates, and hours of training to be provided.
 - Agreement on maximum allowable costs of training, reimbursement percentage and reimbursement schedule.
 - Collective bargaining unit compliance, if appropriate.
 - Assurances – see section C on required business assurances.
- Contract Administration
 - Vouchering process.
 - Contract modifications, extensions, and terminations.
- OJT Monitoring
 - LWIBs must ensure all OJT contracts are monitored **on-site** at least once to ensure compliance with contract terms and to help resolve any issues, ideally around the mid-point of the training period. LWIBs may designate program staff responsible for the OJT contract to conduct this monitoring. Monitoring should verify that the participant is receiving the agreed upon training, and is not required to engage in prohibited activities. The participant’s attendance record should be reviewed to ensure they are fully engaged in the training. Business records should be reviewed to assure that the participant is receiving proper wages, tax withholdings and workers’ compensation. Any compliance issues requiring corrective action must comply with local monitoring policies and procedures. The participant’s progress should be noted in the comments section of OSOS. Businesses should also be monitored to determine whether there is a pattern of failure to retain OJT trainees.

B. LWIBs must implement and use the following Pre-Award Review process and procedures.

Pre-Award Review

Business Information That Must Be Collected

- Pre-award review forms must capture the information contained in the attached sample application (**Attachment A –Pre-Award Review Business Application**). The Pre-Award Review document may be incorporated into the final OJT contract by reference. Note that job opportunities considered for OJT reimbursement must be located in New York State.
- Businesses must complete the Responsibility Questionnaire presented in **Attachment B**. Please note that it has been determined by the New York State Department of Labor (NYSDOL) that the Responsibility Questionnaire must now be used for all OJT contracts under WIA. If an organization has submitted a Responsibility Questionnaire within the last 12 calendar months, all that is needed is an attestation that the information presented in the form remains true, accurate and complete. An attestation form for this purpose is presented in **Attachment C**.

LWIBs must confirm that the applicant business is a responsible training provider (bidder) for an OJT candidate by checking:

- *Responses to Responsibility Questionnaire*. LWIBs should determine the process that will be used to deal with any “yes” responses to the questionnaire.

- *Registration with the New York Department of State's Division of Corporations.* This search can be conducted on-line at: http://www.dos.state.ny.us/corps/bus_entity_search.html.
- Federal OSHA records. These records are found on-line at: <http://www.osha.gov/pls/imis/establishment.html>. Search under New York State only.
- NYSDOL records. Requests for evaluation of this information should be made to: OJTDueDiligence@labor.ny.gov using the OJT Due Diligence Request form presented in **Attachment D**. The subject line should read "Local Area OJT Due Diligence Request – [Business Name]. The appropriate Regional Business Services Representative (BSR) should be listed in the cc line of the requesting email. Upon receipt of the request, NYSDOL will send a confirmation email to the requesting local area.

It is strongly recommended that the request be made as early in the process as possible in order to allow for a timely response. NYSDOL will provide a response to due diligence requests via email within three business days from the time confirmation of receipt is provided.

Due to the confidential nature of the information in question, NYSDOL will not provide any specifics for the categories of information. Instead, NYSDOL will provide a response of "Found to be Responsible," "Issues Pending," or "Not Found to be Responsible" via email for each entity. The records to be checked will include:

- Unemployment Insurance records;
- WARN notices and/or participation in the Shared Work program;
- Open investigations with NYSDOL's Public Works, Labor Standards and/or Safety and Health Divisions;
- Workers' Compensation Insurance and Disability Insurance coverage; and
- Active Trade Adjustment Assistance (TAA) petitions.

This review provides a snapshot of the organization at the point in time the review takes place. The information reviewed is updated on quarterly basis. For this reason, the review is considered valid for a three month period beginning on the date the review is completed. After this three month period, the organization must undergo a new due diligence review if it wishes to enter into a new contract.

- In addition, an on-site review must be conducted with the business. This review will allow staff to see where the OJT participant will be working, meet the trainee's supervisor, and gain a better understanding of the business' facility and operations. The purpose of the site visit is to determine whether the business will afford a viable on-the-job training opportunity.

C. At minimum, LWIAs must include the following business assurances in every OJT contract.

- The business' intention is for the newly hired employee to remain employed with the business upon completion of the OJT.
- OJT will take place during the employee's work hours (i.e., during the shift/hours for which the employee was hired) and the employee will be compensated at the same rates, including periodic increases, as trainees or employees who are similarly situated in similar occupations by the same business and who have similar training, experience and skills.

- No currently employed workers will be displaced by any OJT trainee(s), including a partial displacement such as a reduction in the hours, wages, or employment benefits.
- The OJT contract does not infringe in any way upon the promotional opportunities of current employees not involved in OJT.
- Funds provided to the business to reimburse the costs associated with OJT may not be used to assist, promote or deter union organizing.
- The business will comply with all applicable employment-related federal, state and local laws and regulations.
- The training activity will not impair an existing contract for services or collective bargaining agreement, and/or no activity that would be inconsistent with the terms of a collective bargaining agreement shall be undertaken without the written concurrence of the labor organization and the business.
- No member of the OJT employee's immediate family will directly supervise the OJT employee, nor will the trainee supervise an immediate family member. For the purpose of this contract, immediate family is defined as spouse, children, parents, grandparents, grandchildren, brothers, sisters or persons bearing the same relationship to the OJT employee's spouse.
- OJT trainee(s) will not 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 for religious worship, or
 - required to participate in political activities.
- The business agrees to adhere to the LWIB's grievance process if a complaint arises in connection with the OJT employee and the training.
- The LWIB, NYSDOL, or United States Department of Labor may inspect and monitor any records or activities pertaining to the OJT contract at any time during normal business hours, and as often as deemed necessary. Such inspection shall be made to determine whether the business is in compliance with the terms and provisions of this contract and the OJT participant is making sufficient progress.

In addition, the OJT contract should incorporate the traditional federal certifications required for WIA funding (debarment, anti-lobbying, drug-free workplace and nondiscrimination) by reference. Federal certifications are presented in **Attachment E**.

BACKGROUND

Current economic conditions make OJT a desirable solution for both businesses and jobseekers. For businesses, OJT helps accelerate hiring by offsetting the costs of training a new employee. For jobseekers, OJT provides an opportunity to earn income while learning skills desired in the current labor market.

A written LWIA OJT policy is critical for maintaining consistency; for institutionalizing practices the local area wants to deliver; and for managing and leveraging OJT funds. Local OJT policy also provides guidance on how to comply with federal and state OJT requirements, and leverage other hiring incentives such as WOTC or HIRE.

A summary of the OJT requirements for public funding relevant to the provision of OJT through the Career Center system is presented in **Attachment F**. A chart highlighting program-specific parameters for the different funding initiatives is presented in **Attachment G**. Public funding under this technical advisory encompasses the following programs:

1. Workforce Investment Act (WIA), including OJT National Emergency Grant (NEG).
2. Trade Adjustment Assistance (TAA).

REFERENCES

WIA §§101(31), 134(4)(D)(ii), 181(d) and 195(4); WIA Final Rule §§ 663.700 – 720; 664.460(d), 667.200(g); 667.266; 667.268, 667.270, 667.272, 667.274 - 275; 29 CFR Part 37.20; Trade Act §236 [19 USC §2296];

INQUIRIES

Questions regarding this TA may be directed to: WDTD.Onestop@labor.ny.gov

ATTACHMENTS

- A. [OJT Pre-Award Review Business Application](#)
- B. [Responsibility Questionnaire](#)
- C. [Responsibility Questionnaire Attestation Form](#)
- D. [OJT Due Diligence Request Form](#)
- E. [Federal Certifications](#)
- F. [OJT Requirements for Compliance with WIA and/or TAA eligibility](#)
- G. [Overview of OJT Across Public Funding Streams](#)