



**COUNTY OF SAN LUIS OBISPO**  
**DEPARTMENT OF SOCIAL SERVICES**  
**WORKFORCE DEVELOPMENT BOARD**

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**POLICY NO:** 05-19  
**TO:** Service Providers  
**FROM:** Department of Social Services  
**EFFECTIVE:** January 01, 2020  
**SUBJECT:** On-The-Job Training (OJT) Policy

**REFERENCES:**

- Workforce Innovation and Opportunity Act (WIOA) of 2014, Section 134
- Title 20 Code of Federal Regulations (CFR) Sections 680.700-680.730
- Workforce Services Directive 15-09

**PURPOSE:**

This policy provides guidance regarding the use of On-the-Job Training (OJT) contracts as an allowable local training activity to enrolled WIOA Title I participants.

This policy is based on SLOWDB's interpretation of WIOA law, regulations and policies and federal, state and local laws, regulations and policies. This policy will be reviewed and updated based on any additional federal or state guidance.

**BACKGROUND:**

WIOA Section 134(c)(3)(D)(ii) lists on-the-job training as an allowable local employment and training activity. Section 3(44) of the WIOA defines OJT as "training by an employer that is provided to a paid participant while engaged in productive work." Additionally, any OJT should provide knowledge or skills essential to the full and adequate performance of the job. The WIOA allows reimbursement to the employer to offset the extraordinary costs of the provision of the training and additional supervision required during the course of the training. Employer reimbursement rates are typically negotiated at a limit of 50%. However, WIOA permits Local Workforce Development Boards (WDB) to increase the reimbursement rate for OJT up to 75% under certain circumstances. (WIOA 134[c][3][H])

Through the effective use of OJT contracts, eligible WIOA participants are afforded employment opportunities that provide occupational skills training while earning a sustainable income.

**POLICY:**

WIOA Service Providers in San Luis Obispo County will utilize OJT contracts, as an appropriate and allowable training activity, consistent with the definitions and requirements of WIOA. OJT may be provided under a contract with an employer in the public, private non-profit, or private sector. OJT will only be provided for positions paying no less than \$0.50 above the current minimum hourly wage, and for employment providing no less than 32 hours of work per week. OJT participants should not comprise the majority of employees in an organization.

WIOA Section 134(c)(3)(H)(ii) permits Local Workforce Development Boards (WDB) to increase the reimbursement rate for OJT **up to 75%** when taking into account:

- the characteristics of the participant and whether they are an individual with barriers to employment;
- the size of the employer, with an emphasis on small business;
- the quality of the employer-provided training and advancement opportunities, including whether the OJT contract is for an in-demand occupation and will lead to an industry recognized credential; and
- other factors that the Board may determine to be appropriate, which may include the number of individuals participating, the wage and benefit levels of the participants both during and following the completion of the OJT, and the relation of the training to the competitiveness of the participant.

The San Luis Obispo County WDB approves the use of higher reimbursement rates for certain sizes of small businesses in San Luis Obispo County as outlined below based on contract negotiation:

- 1-20 employees reimbursed at a maximum of 75%
- 21-35 employees reimbursed at a maximum of 70%
- 36 employees and above, reimbursed at a maximum of 50%

**PROCEDURES:**

Employer Eligibility

Careful consideration should be given when selecting a suitable employer. General business practice in terms of working conditions (safety, health), presence of health benefits, wage structure, turnover rates, adequate staff and equipment to carry out the training, and whether the employer is in compliance with federal, state and local laws, etc. are potential indicators to research.

OJT is a “*hire first*” program; the trainee becomes an employee of the company at the start of the training program, however it may not be someone already on the employer’s payroll, nor be hired prior to the effective date of the OJT contract (with the exception of up-skill OJT contracts for Employed Workers as outlined below in this policy). Training may begin after the OJT contract has been signed by all parties.

The employer is required to certify his/her intention to retain the trainee after the subsidized training period if the trainee accomplished the stated training goals outlined in the OJT contract.

The OJT must be conducted at the employer's place of business or another site, and may not be subcontracted.

### Participant/Trainee Eligibility

To be eligible for OJT services, the trainee must:

#### A. Unemployed Workers

1. Be enrolled in the WIOA program; and
2. Have participated in assessment activities; and
3. Have completed an Individual Service Strategy (ISS)/Individual Employment Plan (IEP)

#### B. Employed Workers

1. Conditions 1-3 under item A above must be met; and
2. An employee who is not earning a self-sufficient wage (determined by local policy) or wages comparable to, or higher than, wages from previous employer; and
3. The OJT relates to the introduction of new technologies, introduction to new production or service procedures, upgrading to new jobs that require additional skills, or workplace literacy.

### Service Provider Responsibilities

Service Providers shall accept unconditional fiduciary responsibility for issuing federal funds on behalf of the WDB as specified in this policy. Service providers shall establish and utilize appropriate checks and balances necessary to guarantee the integrity of the OJT funding. Service Providers shall ensure systems are in place for the review, approval and payment/reimbursement of OJT contracts pursuant to current WIOA, State regulations, and local WDB directives, policies and procedures. Reimbursement amounts to employers utilizing OJT will be based on straight time hours worked in training and will not exceed the maximum allowed under WIOA and/or local policy.

### OJT Contract

The San Luis Obispo County WDB requires a written, signed agreement between the Service Provider and the authorized employer prior to the start of an OJT. At minimum, an OJT contract between the Service Provider and an employer must comply with the requirements of Sections 194(1) and (4) and 101(44) of the WIOA and include:

1. The occupation(s) for which training is to be provided
2. The duration of the training.
3. The wage rate to be paid to the trainee/participant.
4. The rate of reimbursement
5. The maximum amount of the reimbursement

6. A training outline that reflects the work skills required for the position.
7. An outline of any other separate classroom training that may be provided by the employer.
8. The employer's agreement to maintain and make available time and attendance, payroll, and other records to support amounts claimed by the employer for reimbursement under the OJT contract.
9. A written assurance by the employer that said employer complies with the following wage and labor standards:
  - a. Participants/trainees shall be compensated at the same rates, including periodic increases, as trainees of employees who are situated in similar occupations by the same employer and who have similar training, experience and skills. Such rates must be in accordance with applicable minimum wage laws. If the employer operates under a collective bargaining agreement, the wage and benefits must be those specified in that union agreement and the job opening must be cleared with the appropriate union.
  - b. Participants/trainees shall be provided benefits and working conditions at the same level as similarly situated trainees or employees.
10. A written assurance by the employer that said employer complies with health and safety standards established under Federal and State law.
11. Verification that the employer has adequate and current workers' compensation insurance which must be provided to participant/trainees engaged in the OJT.
12. Documentation the employer is in compliance with requirements of the Civil Rights Act with respect to equal opportunity in employment, as well as comply with all Federal, State and local laws including those laws pertaining to nondiscrimination.
13. A written assurance that the employer is not experiencing abnormal labor conditions such as strikes, lockouts, or layoffs and the OJT participant/trainee will not dislocate or affect employment or promotional opportunities for employer's current or laid-off employees.

OJT contracts used in the County will be used for positions that are directly linked to employment opportunities in the local area as determined by labor market information. OJT contracts will be limited in duration as appropriate to the occupation for which the participant is being trained and based on Specific Vocational Preparation (SVP) times and the previous experience of an individual. SVP is the amount of training time required by a typical worker to learn the techniques, acquire the information, and develop the competencies needed for the average performance in a specific job-worker situation. An SVP level is based on the job seeker's applicable transferable skills and therefore the actual training period may be less than the SVP training period. The duration of an OJT contract must also take into account the content of the training and the prior work experience of the participant. This shall be documented in the participant file via the assessment process and subsequent ISS/IEP development and included in the case notes. An OJT contract should not exceed 6 months or 1,040 hours.

Service Providers must develop and implement policies and procedures that describe the process to be used to determine appropriate OJT participants and employers; and the basis for determining the duration and reimbursement level of the OJT. Service Provider's policies and procedures must clearly identify the parameters to be used when increasing the reimbursement levels above 50%.

### PROHIBITIONS

1. Consistent with the WIOA Section 194(4) and 20 CFR 680.700(b), OJT contracts using funds under the Act shall not be provided to employers who have exhibited a pattern of failing to provide participants with continued long-term employment, including the provision of wages, working conditions and employment benefits consistent with other employees with similar tenure and duties.
2. OJT contracts shall not be entered into with employers of a business or part of a business that has relocated from any location in the United States, until such company has operated at the new location for 120 days, if the relocation resulted in any employee losing her/his job at the original location
3. No funds provided to employers for OJT may be used to directly or indirectly assist, promote or deter union organizing.
4. No funds provided to employers for OJT may be used to employ the participant/trainee in a position involving political activities.
5. No funds provided to employers for OJT may be used in the employment or training of participants/trainees involved in the construction, operation, or maintenance of that part of a facility which is used for religious instruction or worship (sectarian activities).
6. The employer or immediate supervisor shall not provide OJT training to a member of his/her immediate family (defined as: wife, husband, son, daughter, mother, father, brother, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, grandparent or grandchild)
7. The employer is an Employment Agency that provides only temporary or intermittent employment.
8. The employer has laid off a WIOA participant and subsequently recalled or rehired the individual for the same position.
9. OJT contracts cannot provide for commissions, sales, piece-work, occupations requiring licensing as a prerequisite for hiring, or occupations that would include tips.

**MONITORING**

Service Providers issuing the OJT contract shall monitor the OJT employer and/or the entity performing the training, at the worksite, at least one time during the term of the agreement. All monitoring results must be documented and retained by the Service Provider.

The purpose of monitoring an OJT agreement is to:

- Ensure participant employment is substantiated by payroll and time attendance records;
- Ensure that the training is being provided as specified in the agreement;
- Ensure that all parties are adhering to the contract provisions; and,
- Ensure performance reviews are conducted in compliance with the OJT contract conditions.

The Department of Social Services, as the Administrative entity for the WDB will monitor Service Providers for compliance with this OJT policy as part of the regularly scheduled program and fiscal monitoring, as appropriate.

**EXCEPTION TO POLICY:**

There may be extenuating circumstances that would warrant an exception to this policy. Any authorizations exceeding the OJT parameters as listed in this policy must be approved by the WIOA Program Manager or WDB Director.

**AVAILABILITY OF FUNDING:**

Service providers will take necessary steps to disburse WIOA participant training funds in a manner to provide services throughout the program year to customers who are in need and to meet State-mandated Participant Training Expenditure requirements as outlined in the Service Providers' contract with DSS.

**ACTION:**

WIOA Title I Service Providers shall follow this policy. This policy will remain in effect from the date of issue until such time that a revision is required.

**INQUIRIES:**

Any questions regarding this policy may be directed to the DSS WIOA Program Manager at 805-781-1838.

Workforce Development Board (WDB) Approval Required? Yes  No

Initial approval date: 10/09/2019

WDB revision approval date: \_\_\_\_\_