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OKLAHOMA EMPLOYMENT AND TRAINING ISSUANCE #20-2010

TO: WIA Board Staff
WIA Fiscal Agents
Local Office Managers
Area Managers
OJT Coordinators

FROM: Richard J. Gilbertson, Director
Workforce Integrated Programs Division

DATE: October 12, 2010

SUBJECT: On-the-Job Training Services funded with ARRA and OK Jobs Now Initiative Funds

PURPOSE: Through this guidance, the OESC is providing details on the one-time availability of On-the-Job Training National Emergency Grants (OJT NEGs) funded with ARRA resources and the OJT services conducted with OK Jobs Now Initiative Funds. The policies and procedures for both of these OJT projects will be the same for those Grantees that received ARRA funds and those Grantees receiving funds from the OK Jobs Now Initiative.

The intent of this message is to disseminate guidance for the National Emergency Grant On-the-Job Training (NEG/OJT) requirements under the Workforce Investment Act (WIA), Training and Employment Notice (TEN) #38-09, and Training and Employment Guidance Letter (TEGL) #4-10. Through this policy, The Department of Labor (DOL) and OESC is providing additional details on the one-time availability of National Emergency Grant On-the-Job Training (NEG/OJT) funded with ARRA resources announced in TEN #38-09 and OK Jobs Now Initiative Funds provided through the Oklahoma Department of Commerce.

BACKGROUND: National Emergency Grants (NEGs) are discretionary grants awarded by the Secretary of Labor (the Secretary), under §173 of the WIA, as amended, to provide employment-related services for dislocated workers. NEGs 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 as well as other events recognized by the Secretary under 20 CFR 671.110(f). Significant events are those that create a sudden need for assistance that cannot be accommodated within the ongoing operations of the WIA Dislocated Worker (DLW) formula program, including statewide activities and Rapid Response funds reserved at the state level.

Current economic conditions have intensified the country's need to employ practical and effective solutions to our most pressing socio-economic challenges. Job creation has been slow in many urban and rural communities which also has led to prolonged unemployment. For these communities, sustained unemployment rates have created an emergency on a scale with the emergencies typically identified with NEGs. Because of the widespread scope of recession-related layoffs across the country and their significant impact on the workforce system's ability to assist laid-off workers, US DOL has recognized the impact of the recession on the national workforce as a significant dislocation event for purposes of one-time ARRA-funded NEG assistance.

MESSAGE: A participant's potential for permanent employment with the OJT employer or in the occupation or industry in which the OJT experience is taking place is an essential component of a quality OJT placement. Grantees should consider OJT placements in the context of in-demand occupations or industries where career pathways exist with employer partners who have a documented plan to add jobs. Grantees should conduct proactive outreach to employers, particularly small businesses, where OJT opportunities can be utilized to maximum effectiveness for participants that meet the definition of prolonged unemployed.

Potential employers must be able to demonstrate their ability to train participants and document what skills will be acquired. For those employers who meet the grantee's approval and are selected as partners, OJT contracts of sufficient detail should be developed to ensure an optimal training experience, as well as one that maximizes the potential of participants to be permanently hired once the training period has ended. Contracts must also adhere to the *Special Policy Guidelines* around reimbursement, wage cap, and training duration as described in this guidance. Contracts must ensure the employer's responsibility for documenting skills gained by participants during the training period. When possible, industry recognized credentials should be the end product for applicable occupations.

APPROPRIATE EMPLOYERS: OJT positions cannot be developed with public sector employers or with employers:

- Which are gambling establishments, swimming pools, aquariums, zoos, and golf courses;
- That will or may result in displacement of current employees; and,
- 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.

OJT works best when the employment experience is closely tied to anticipated employment opportunities after an OJT placement is completed. As stated in the WIA Regulations governing OJT, there is an expectation that the OJT will lead to continued unsubsidized employment beyond the OJT period.

Grantees must also be aware of the WIA Regulations at §667.270 - What safeguards are there to ensure that participants in Workforce Investment Act employment and training activities **do not displace** other employees?

- (a) A participant in a program or activity authorized under title I of WIA must not displace (including a partial displacement, such as a reduction in the hours of non-overtime work, wages, or employment benefits) any currently employed employee (as of the date of the participation).
- (b) A program or activity authorized under title I of WIA must not impair existing contracts for services or collective bargaining agreements. When a program or activity authorized under title I of WIA would be inconsistent with a collective bargaining agreement, the appropriate labor

organization and employer must provide written concurrence before the program or activity begins.

- (c) A participant in a program or activity under title I of WIA may not be employed in or assigned to a job if:
- (1) Any other individual is on layoff from the same or any substantially equivalent job;
 - (2) The employer has terminated the employment of any regular, unsubsidized employee or otherwise caused an involuntary reduction in its workforce with the intention of filling the vacancy so created with the WIA Participant; or
 - (3) The job is created in a promotional line that infringes in any way on the promotional opportunities of currently employed workers.
- (d) Regular employees and program participants alleging displacement may file a complaint under the applicable grievance procedures found at § 667.600. WIA §181.

In addition, below is a question and answer posted on DOL's website for OJT on the subject of Employer Hiring Limitations:

“May an employer who has laid off workers be eligible to offer an OJT for a position in which there is no layoff? This is potentially allowable though proper adherence must be paid to the displacement regulations mentioned previously.”

PARTICIPANT ELIGIBILITY: The U.S. DOL issued a Memorandum clarifying the participant's eligibility for OJT NEGs which is also applicable to those participants under the OK Jobs Now Initiative as follows:

1. In order to qualify for program participation with OJT NEG and OK Jobs Now Initiative Funds, a person must first meet the definition of a dislocated worker as defined in WIA Section 101(9).
2. Secondly, the person must have been laid off since January 1, 2008 (the publicly recognized date of the onset of the current recession which is the layoff event justifying the use of these ARRA NEG and OK Jobs Now Initiative Funds.)
3. After meeting the first two criteria, the dislocated worker needs to be determined “prolonged unemployed”. For the purposes of this initiative “prolonged unemployed” refers to those dislocated workers who have been unemployed longer than the state's average Unemployment Insurance duration of 19 weeks. The number of weeks 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 exceeded the state's average UI duration.

TRAINING REIMBURSEMENT SLIDING SCALE: Grantees may use grant funds to reimburse employers for the extraordinary cost of training OJT participants, e.g. the costs of overhead associated with providing the training, shadowing, mentoring and additional supervision that are part of a quality OJT placement as described in OJT NEG TEGL #4-10 and Oklahoma's Final On-the-Job Training Policy, OETI #16-2010.

The reimbursement amount will be a negotiated percentage of the wage being paid to the participant. The wage level on which the reimbursement is based cannot exceed the State's average hourly wage or the “wage cap” as described below. The negotiated reimbursement percentage may be as high as 90 percent of the participant's hourly wage (subject to the wage cap) based on employer size as follows:

- Up to 90 percent for employers with 50 or fewer employees;

- Up to 75 percent for employers with 51-250 employees; and
- For employers with more than 250 employees, the current statutory requirements (50 percent reimbursement) will continue to apply.

WAGE CAP: For the purposes of these on-the-job training contracts, the training reimbursement is restricted by a wage cap. The Department of Labor's Employment and Training Administration (DOL ETA) has established a wage cap policy that the training reimbursement level is not to exceed a percentage (up to 50 percent through 90 percent as described above) of the state's average hourly wage rate. That is, the training reimbursement percentage is applied against the participant's wage rate unless the wage rate exceeds the state's average hourly rate. In that case, the training reimbursement percentage must be applied against the state's average hourly rate of \$17.22.

While grantees may enter into contracts with employers who elect to pay participants more than the state average wage – the employer cannot receive a training reimbursement beyond a percentage (determined by the sliding scale) of the capped level. While employers are required to compensate OJT participants at the same rates as trainees or employees who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills - if the job pays less than the capped level for similar work, the OJT wages and training reimbursement should be based on this lesser level. The OJT participant should not be paid more simply because the state's average wage makes available a higher reimbursement threshold.

OJT DURATION LIMIT: Since OJT NEG's are a special initiative under ARRA - the DOL ETA has determined that the period of reimbursement will be limited to six months to maximize opportunity. Individuals may not be co-enrolled in other DOL ETA programs for the purpose of extending OJT beyond six months. While six months exceeds the average length of time for current WIA OJT activities in the country, local workforce investment areas (LWIAs) should refer to OESC Memorandum #M-15-2010, Building an Appropriate Training Plan, for further guidance on duration limits.

NEEDS-RELATED PAYMENTS: Participants enrolled in On-the-Job Training are not eligible to receive needs-related payments.

OKLAHOMA SERVICE LINK ENTRY REQUIREMENTS AND PERFORMANCE REPORTING: Data pertaining to participant characteristics and program outcomes will be generated from information entered at the local level into the Oklahoma Service Link (OSL) system. This data will be pulled by the State Office for each LWIA and Statewide on a monthly, quarterly and as needed basis for State review and for reporting to.

Due to the high profile nature of these grants it is imperative that local staff take extra precautions when entering information into OSL. Local staff must pay particular attention to the participant's demographic information including employment status, number of week's unemployed and all of the Dislocated Worker screens prior to enrollment into Dislocated Worker or OK14 NEG-OJT. This information will be used to verify to US DOL that we are serving the targeted population specifically identified in the grant application.

Participants served with the OK14 NEG-OJT grant must be co-enrolled into the Adult, Dislocated Worker and LE programs to allow the provision of services not directly funded by this particular grant. In keeping with Oklahoma's service integration initiative the first staff assisted service, after the

determination of eligibility/data validation, will be the service that initiates the dual enrollment. The OJT itself is the only direct expenditure service that is allowed under this grant. The entry of the OJT service must include the occupational skills training code that pertains to the training, the name of employer providing the training, wage participant is earning and the percentage of reimbursement. The name and address of the employer providing the training must be entered into the Provider field, in addition to the employer's address and phone number. The total wage the client is earning shall be entered in the total cost field and the percentage of reimbursement alone entered into the Note field of the Service and Training Plan. Staff must keep in mind that a core service and an intensive service must be provided prior to the start of the OJT.

Dislocated Workers not served with OK14 NEG-OJT that receive an allowable job creation service funded by the OK Jobs Now Initiative through the Oklahoma Department of Commerce must enter the allowable service that is flagged with the term "*OK Jobs Now*" in the service and training plan. An example is, "*On-the-Job Training, OK Jobs Now.*" This will allow the State to review the number of job creation services funded by the OK Jobs Now Initiative.

Outcomes for the OK14 NEG-OJT grant will be tracked through the WIA Quarterly Report, the Quarterly WIASRD record, the monthly Recovery Act Report and an additional NEG-specific report generated at the State level. Staff must take care to enter attainment of any recognized certificate, credential, or degree in the "Outcomes" link on the "Program Details" screen. Outcomes may be entered at any time during participation or up to the end of the 3rd quarter after program exit. The exit warning report must also be watched so staff can completely answer the "Exit Questions" and provide information concerning the participant's employment status at exit. Participants that have obtained employment during the course of participation must have that employment reported immediately upon exit by completion of the "Exit Questions." Those participants that have not obtained employment by the time they exit must have employment reported by answering the "Exit Questions" anytime they do obtain it through the end of the grant period.

OJT CONTRACTS: Please refer to OETI #16-2010 issued August 26, 2010 for:

- Contracting Minimum Requirements, Terms, and Clauses
- Pre-Award Review Requirements
- Recordkeeping Systems, On-Site Monitoring Reviews, Progress Reviews, Documentation, etc.
- Local Policy Template, Training Plan/Evaluation Forms, etc.

PERIOD OF AVAILABILITY: OJT NEG funds must be expended by June 30, 2012. For the OK Jobs Now Initiative - all funds must be expended by June 30, 2011.

ACTION REQUIRED: This issuance is to be used as guidance when implementing or reviewing OJT as a training option. Local Workforce Investment Boards must assure that policies and procedures are in place to ensure compliance with these requirements.

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