

# Oklahoma Employment Security Commission



Richard McPherson, Executive Director

Mary Fallin, Governor

## Representing Employers

Douglas R. Major, Ed. D., Commissioner  
Gayle Harris, Commissioner

Representing the Public  
Rev. W. B. Parker, Chairman

## Representing Employees

Rev. Mike Wester, Commissioner  
Susan Stoll, Commissioner

## Oklahoma Employment and Training Issuance #10-2011 Final State Policy

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

**FROM:** Lisa Graven, Director  
Workforce Services Division

**DATE:** July 20, 2011

**SUBJECT:** Revisions to State policy on National Emergency Grant On-the-Job Training (NEG/OJT) Services funded with ARRA.

**PURPOSE:** The purpose of the OETI is to disseminate changes and provide clarification to State policy for NEG/OJT requirements as previously provided in Oklahoma Employment Training Issuance (OETI) 6-2011. These changes include the removal of references to “OK Jobs Now”, due to grant expiration on June 30, 2011; modify OSL entry requirements, and provide clarification/guidelines on “Prolonged Unemployed” as it relates to individuals who have had jobs while receiving unemployment benefits. Additional changes are as follows:

1. The 19 weeks of “prolonged unemployment” do not need to be consecutive. (Page 4)
2. Orientation which is provided to all new employees is not reimbursable; only orientation specific to the training plan may be reimbursed. (Page 5)
3. “Oklahoma Service Link Entry Requirements and Performance Reporting”, **second paragraph** has been modified. (Page 5)

The intent of this message is to provide 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.

**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 **instructions on reimbursement, wage cap, and training duration as described in this OETI**. 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 contracts must comply with **OETI #10-2011, OETI #11-2011**, and the following requirements in TEGl #4-10:

Grantees are prohibited from developing OJT contracts with a public sector employer or with a private for-profit or non-profit sector employer which:

- **is a casino or other gambling establishment, swimming pool, aquarium, zoo, or golf course;**
- **will or may displace workers (See 20 CFR § 667.270); or**

- **has relocated all or part of its 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 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).
- 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.
- A participant in a program or activity under title I of WIA may not be employed in or assigned to a job if:
  - Any other individual is on layoff from the same or any substantially equivalent job;
  - 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
  - The job is created in a promotional line that infringes in any way on the promotional opportunities of currently employed workers.
- 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:** Individuals eligible for services under the NEG/OJT Grants must follow all of the stipulations listed below:

1. In order to qualify for program participation with NEG/OJT funds, a person must first meet the definition of a dislocated worker as defined in WIA Section 101(9).
  - Workers whose layoffs occurred since the onset of the recent recession (January 1, 2008) may be considered to be unlikely to return to their previous industry or occupation for purposes of determining eligibility for part A (iii) of the Dislocated Worker definition in

Section 101(9). (TEGL No. 04-10 issued August 7, 2010.)

2. Secondly, the person must have been laid off **on or after** 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 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 19 weeks of “prolonged unemployment” do not need to be consecutive.** 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. **If an individual is working, any week they are eligible to receive unemployment benefits can be counted toward the 19 weeks prolonged unemployment.**

**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 NEG/OJT TEGL #4-10 and Oklahoma’s Final On-the-Job Training Policy, **OETI #11-2011**.

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 NEG/OJTs 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 from these funds. However, formula funds may be used for this purpose.

## **ORIENTATION**

Orientation which is provided to all new employees is not reimbursable; only orientation specific to the training plan may be reimbursed.

**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 US DOL.

Due to the high profile nature of these grants it is imperative that local staff take extra precautions and enter current and accurate information into **all OSL demographic screens to ensure eligibility is properly documented**. Prior to enrollment into OK14 NEG-OJT, staff must be diligent and update the program eligibility date, enter the number of weeks unemployed at the time of enrollment and update the Dislocated Worker screens to reflect the participant's information. Participants that have a Dislocated Worker enrollment that was done prior to determination of eligibility for OK14 NEG-OJT must show current eligibility for the Dislocated Worker program prior to enrollment into OK14 NEG-OJT. Staff must enter accurate information pertaining to the participant's employment status, number of week's unemployed and the participant's lay-off details including the most current date of separation from employment prior to enrollment in 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.

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 3<sup>rd</sup> 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 #11-2011** 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:** NEG/OJT funds must be expended by June 30, 2012.

**RESCSSIONS:** This issuance rescinds OETI #06-2011.

**ACTION REQUIRED:** Local Board policy must be revised to be in compliance with this policy.

**CONTACT INFORMATION:** If you have any questions pertaining to this issuance, please contact Jackie Younge at (405) 557-5314, [jackie.younge@oesc.state.ok.us](mailto:jackie.younge@oesc.state.ok.us), or Tami Decker at (405) 962-7595, [tdecker@oesc.state.ok.us](mailto:tdecker@oesc.state.ok.us).

“Auxiliary aids and services are available upon request to individuals with disabilities.”  
“Equal Opportunity Employer (EOE)/Program.”