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January 11, 2010

**Workforce Investment Act Policy Letter No. 09-07**

To: WIA Local Workforce Investment Boards (WIBs), WIA Fiscal Agents, WIA Administrative Entities, and One-Stop Operators

From: Lisa Patt-McDaniel, Director

Subject: Customized training and guidelines for the employer match requirement from 50% to a sliding scale with a minimum of 10% under waiver authority.

**I. Purpose**

This communication provides guidance on the waiver authority to vary the statutory employer match of 50% for customized training with the option of a sliding scale reimbursement method, to a minimum of 10%; as well as general requirements for customized training.

**II. Effective Date**

October 1, 2009, through June 30, 2010

**III. Background**

In July 2009, Ohio submitted a waiver request to allow the State to replace the statutory employer match requirement of 50% for customized training, to a minimum of 10% with the variance based upon State and local policy. On November 12, 2009, the United States Department of Labor (USDOL) approved this waiver request, retroactive to October 1, 2009.

WIA Section 101(8) and the accompanying regulations in 20 CFR Subpart G 663.715, 663.720, and 663.730 establish that local WIBs and the State may offer customized training through an agreement with either a vendor or employer with a mandatory employer match requirement of 50% of the cost of training.

**IV. Requirements**

Overall, customized training is training designed to meet the needs of a specific employer, or group of employers (employer consortiums). It can be provided for the introduction of new technologies, or to new production or service procedures, upgrading existing skills, workplace literacy, or other appropriate purposes identified by the local WIB. The employer must commit to employ, or continue to employ, the worker(s) upon successful completion of any form of customized training. Customized training agreements may be written for unemployed as well as

employed workers. Employed workers may include full-time, part-time, and/or workers placed through private placement agencies.

The private placement agency and the placement employer should be included in the contract when offering customized training to employers that want to include workers placed through private placement agencies. This is to ensure that all parties agree that successful completion of the customized training will include the placement of the trainees into permanent employment.

Unless the trainee is unemployed, in order to participate in customized training, an "employer-employee" relationship must exist between the trainee and the business that is seeking local WIB approval to perform customized training. Individual workers who are independent contractors are not eligible to participate in customized training. Independent contractors fall under the category of self-employment. Trainees must meet the definition of employment found in the Ohio Administrative Code (OAC) 4141-3-05.

Customized training is one of several types of allowable training identified in Section 34(d)(4) of WIA. This training may be offered to individuals under local area formula-funded programs or as a type of incumbent worker training, conducted at the local level under waiver authority. As a type of training offered in local formula-funded programs, participants must meet all eligibility requirements, and receive both a core and an intensive service prior to the start of customized training. Local WIBs/employers need not adhere to the regulatory eligibility requirements, when serving incumbent workers through programs operated under waiver authority, as they are considered statewide activities and not subject to the same eligibility and sequence of service rules as regular formula-funded program participant services.

Regardless of the target group for services (incumbent workers or formula-funded participants), all other requirements of customized training apply, as described in this issuance. This includes the sliding scale, which allows an employer to pay less than 50% of the cost of training, depending on the total number of employees.

Training providers for customized training either need to be included in the ETP Online System in SCOTI, or must be competitively procured. For training providers not in the ETP Online System, local WIBs will need to follow proper procurement procedures as identified in Fiscal Administrative Procedure Manual Transmittal Letter (FAPMTL) No. 14, Acquisition Standards Definitions and Procurement Requirements, or local procurement policies if they are more restrictive.

ODJFS reserves the right to review and approve proposed exceptions to the requirements identified in this issuance, on a case-by-case basis. Recommendations for exceptions may be submitted via e-mail to: [WIAQNA@JFS.OHIO.GOV](mailto:WIAQNA@JFS.OHIO.GOV).

## **A. Utilizing the Employer Match Waiver**

### **1. Sliding Scale**

This waiver is available immediately. Local WIBs may choose to implement this waiver of a reduction of the 50% match. If so, the employer match will be based upon the following sliding scale.

- a) 1-50 employees                      Employer match of no less than 10%
- b) 51-100 employees                  Employer match of no less than 25%
- c) 100+ employees                    Employer match of 50% - as per current statutory requirements continue to apply

**2. Employee Count**

The employee count is to include full-time and part-time workers, and workers placed through a private placement agency. This count is based upon the employer's total number of employees, not the number of employees to be trained. The count is to be on a company-wide-basis for all locations within the State of Ohio; and the involved adjoining state when customized training is being offered to Ohio residents who work for employers in an adjoining state.

**3. Selection Criteria and Local Policy**

Local WIBs must establish policies if they choose to implement this waiver. Local policies should include any selection criteria for awarding customized training Contracts, such as industry type, cost, demand occupation, increase in earnings, career advancement, portable skills, retention, etc. WIBs without a policy that includes the criteria above will be assumed to require a 50% employer match for all customized training activities.

**IN NO INSTANCE MAY THE EMPLOYER PROVIDE A MATCH OF LESS THAN 10% OF THE COST OF TRAINING**

**B. Customized Training**

**1. Customized training means training:**

- a) That is designed to meet the special requirements of an employer (including a group of employers);
- b) That is a participant/trainee service and a business service;
- c) That is conducted with a commitment by the employer to employ or continue to employ an individual upon successful completion of the training;
- d) That enable trainees to obtain industry or employer-recognized skills identified by the employer (or group of employers);
- e) For which the employer pays for not less than 50% of the cost of the training, except as set forth in Section IV. B. 1. (f) below;
- f) That requires a 50% employer match, unless a lesser percent match is warranted and approved by the local WIB. (Please refer to Section IV. A, above); and
- g) For which an agreement has been negotiated and signed. The agreement must identify the occupation(s) of trainees, the skills and competencies to be learned, and the length of time the training will be

provided. The agreement must specify what the employer will pay for the employer match portion for the cost of the training and according to what payment percent and method.

## **2. The Local WIBs Must:**

- a)** Develop a local policy if they choose to implement the sliding scale and include any additional selection criteria;
- b)** Obtain commitments from participating employers to include, at a minimum:
  - i.** That successful completion of the customized training will result in portable skills, and retention and placement of the trainee into permanent employment that offers good pay and benefits, with opportunities for career advancement;
  - ii.** That continued training will be provided for trainees who need help with remedial skills or other skills in order to retain their jobs; after completion of customized training; and
  - iii.** That training will be aligned with industry or employer recognized skill standards, as defined by the WIB and/or the employer.

## **3. Agreement Provisions for Customized Training**

- a)** Good and effective agreements should include:
  - i.** The occupation for which training will be provided; the skills and competencies to be achieved and the length of time for the training;
  - ii.** The number of employees to be trained;
  - iii.** The employer's assurance that customized training is needed, based upon the individual skill sets of trainees;
  - iv.** The method and maximum amount of reimbursement (employer match);
  - v.** Job description(s) of the trainees and a training outline;
  - vi.** The cost and documented description of any ancillary items or supportive services that may be needed; and
  - vii.** Other appropriate training outcomes related to the training (i.e. increases in earnings).
- b)** Customized training agreements are to contain appropriate assurances and certifications as specified in this issuance.

- c) Written endorsement from a union official is required when the workplace is covered by a collective bargaining agreement.
- d) When working with a group of employers (employer consortiums), the local WIB may decide with whom to contract and the details set forth therein. If the consortium is a legal entity and the participating employers are in agreement on their match requirements, the local WIB may contract with the consortium directly and accordingly, the match requirement would be paid by the consortium. It is also allowable to enter into individual contracts with each participating employer. Regardless of what entity the contract is with, all requirements, expected outcomes, and assurances described in this issuance must be met.

#### **4. Business Considerations for Customized Training**

- a) A WIB must not enter into a customized training agreement with an employer who has exhibited a pattern of failing to retain individuals after successful completion of the customized training.
- b) Businesses should be current on their local, state and federal tax obligations and compliant with all environmental requirements. Only businesses that are not presently debarred, suspended, or proposed for disbarment by any State or federal department or agency should be considered for training. Several websites that may be helpful in checking tax, environmental compliance, and debarment status are located at the end of this issuance, in Section VI.
- c) A customized training contract that would prevent a layoff or avert a business closure should be given priority consideration. Businesses that provide additional sources of funding to support the training make strong candidates.
- d) Businesses that have employees in a lay-off status should not be considered for customized training unless the training would avert additional layoffs.
- e) Businesses that have relocated to Ohio and laid-off workers at their original location in the United States may not be considered for customized training, until they have been in operation at the new location for 120 days.

To verify that a business is not relocating employment from another area, a Pre-award review must be undertaken and documented by the local WIB. The Review must include the names under which the establishment conducts business, including predecessors and successors in interest; the name, title, and address of the company official certifying the information, and whether WIA assistance is being sought in connection with past or impending job losses at other facilities of their company. The pre-award review should also include a review of whether appropriate notices have been filed, as required by

the Worker Adjustment Retraining Notification (WARN) Act. The review may also include consultations with labor organizations and others in the affected local area(s).

## **5. Training Considerations for Customized Training:**

- a)** Training for customized training will address:
  - i.** Occupations in industries that have documented skill shortages. High wages, high costs for recruitment, and/or positions that remain unfilled for long periods of time may indicate a shortage of skills within the workforce; and
  - ii.** Developing the skills of the workforce and lead to enhanced career pathways for individual employees.
- b)** Training providers should have satisfactory past performance, accreditation, curricula that lead to credentials, relevant training experience and programs, accredited instructors, high job placement rates, and/or high training completion rates.
- c)** The training facility should provide an environment that supports learning and be within reasonable proximity to the participant. The training may take place in the business owned facility, a training provider's facility, or combination of sites.

## **6. Employer Match Requirements**

Should a local WIB choose to lower the 50% match requirement, the local WIB must utilize the sliding scale described in Section IV. A., to determine the appropriate match. Local WIBs may add additional selection criteria to the sliding scale if they so choose.

The match is to be based upon the total cost of the training, which can include items in Section IV. 7. The employer match may not be satisfied with federal, state, or other grant funds. The employer match, however, may be in cash or in-kind.

In-kind employer match alternatives to cash must be relevant to the specific project and documented. The use of cash or in-kind is a local WIB decision.

## **7. Allowable Costs for Customized Training**

Allowable costs may include only costs directly related to training. Examples of allowable costs include, but are not limited to, the following:

- a)** Instructor's / trainer's salaries;
- b)** Wages of trainees while attending customized training;

- c) Curriculum development; and
- d) Textbooks, instructional equipment, manuals, materials and supplies.

## 8. Unallowable Costs for Customized Training

Unallowable costs include but are not limited to:

- a) Trainees' benefits/fringes;
- b) Costs that are not directly related to customized training for eligible individuals under Title I;
- c) Foreign travel; and/or
- d) Purchase of capital equipment.

## V. Technical Assistance

For additional information, you may send your questions to the Office of Workforce Development: [WIAQNA@JFS.OHIO.GOV](mailto:WIAQNA@JFS.OHIO.GOV).

## VI. References

DOL waiver approval letter, November 12, 2009

Workforce Investment Act (WIA) of 1998, Public Law 105-220, August 7, 1998, Section 202 (8)

20 Code of Federal Regulations (CFR) Part 652 et al. Workforce Investment Act; Final Rules, August 11, 2000, Sections: 20 CFR Subpart G 663.715, 663.720, and 663.730

WIATL 22-C Waiver Authority to Use 20% of the Adult and Dislocated Worker Formula Allocation for Incumbent Worker Training

U.S. Department of Labor, Waiver Approval Letter, November 5, 2007

Federal Debarment Site: <http://www.epls.gov>

State Tax Status Site:

[http://www2.sos.state.oh.us/pls/portal/PORTAL\\_BS.BS\\_QRY\\_BUS\\_INFORMATION\\_1.SHOW\\_PARAMS](http://www2.sos.state.oh.us/pls/portal/PORTAL_BS.BS_QRY_BUS_INFORMATION_1.SHOW_PARAMS)

Federal Environmental Compliance Site: <http://www.epa-echo.gov/echo/index.html>

Independent Contractor - Definition of Employment in OAC CH. 4141-3-05

**Rescission:** WIATL No. 40 The waiver of the employer match requirement from 50% to a sliding scale with a minimum of 10% and the general requirements for Customized Training