
Policy Number: WIOA I-B – 3.7 Updated

Effective Date: August 27, 2018

Customized Training

PURPOSE: The purpose of this policy is to describe and to detail the regulations concerning customized training, in accordance with the rules and regulations of Workforce Innovation and Opportunity Act of 2014 (WIOA), the WIOA Final Rule, Training and Employment Guidance Letters (TEGLs) published by the Employment and Training Administration of the U.S. Department of Labor (ETA), and policies of the Arkansas Workforce Development Board (AWDB).

REFERENCE:

WIOA §§ 3(14), 188(a)(3), & 134(c)(3)(G)(ii)(II)
20 CFR 680 & 683
Comments in WIOA Final Rule concerning §680.320
29 CFR part 2, subpart D
TEGLs 10-16 & 19-16
ADWS Certification of Local Workforce Development Boards
ADWS Policy No. WIOA I-B – 1.2 (Definitions)
ADWS Policy No. WIOA I-B – 3.3 (Occupational Skills Training)

POLICY:

Customized training is training that meets all of the following requirements [WIOA § 3(14); TEGL 10-16; TEGL 19-16]:

1. Training is designed to meet the specific requirements of an employer or group of employers.
2. Training is conducted with a commitment by the employer to employ an individual upon successful completion of the training.
3. The employer or employers pay(s) a significant portion of the cost of the training.
 - a. If the training is to be conducted by an employer or employers in one local area, the LWDB determines the portion of the cost of training to be paid by the employer or employers, taking into account the size of the employer and other appropriate information, such as:
 - i. The number of employees participating in the training
 - ii. The wage and benefit levels of those employees (present and anticipated upon completion of the training)
 - iii. The relation of the training to the competitiveness of a participant

- iv. Other employer-provided training
 - v. Advancement opportunities
- b. If the training is to be conducted by an employer or employers in multiple local areas of the state, the Governor of the state will determine the amount to be paid by the employer, using the criteria mentioned in (a) above.

Customized training, as described above, may be provided for an employed individual when all of the following conditions apply [20 CFR 680.770]:

1. The employee is not earning a self-sufficient wage, as defined by the LWDB, or wages comparable to or higher than wages from previous employment
2. Other requirements for training are met, including the requirements that (a) the individual is unable or unlikely to obtain or retain employment leading to self-sufficiency or wages comparable to or higher than wages from previous employment without the training, and (b) the training leads to a job that provides economic self-sufficiency or pays wages comparable to or higher than wages from previous employment.
3. The customized training relates to the introduction of new technologies, introduction to new production or service procedures, upgrading to new jobs that require additional skills, instruction in workplace literacy, or other appropriate purposes identified by the LWDB

Customized training is provided through contracts instead of through ITAs [WIOA 134(c)(3)(G)(ii)(II)]. Providers of customized training are not subject to the requirements applicable to entities listed on the eligible training provider list, and they are not included on the state list of eligible training providers and programs. If the State, however, decides to impose performance regulations, local areas must collect required performance data and identify providers that meet required performance levels [20 CFR 680.530]. There is no prohibition on the combination of ITAs with customized training [Comments in WIOA Final Rule concerning §680.320]. See ADWS Policy No. WIOA I-B – 3.3 (*Occupational Skills Training*) for information concerning ITAs.

No funds may be provided to employers for work-based training and other work experiences to be used directly or indirectly to assist, promote, or deter union organizing [20 CFR 680.830]. No funds may be provided to employers for work-based training and other work experiences to be used directly or indirectly to aid in the filling of a job opening which is vacant because the former employee is on strike, the former employee is being locked out in the course of a labor dispute, or the job is vacant because of an issue in a labor dispute involving a work stoppage [20 CFR 680.840].

A participant in any workforce training activity must not displace any currently employed employee (as of the date of the participation). This includes a partial displacement, such as a reduction in the hours of non-overtime work, wages, or employment benefits. The workforce training activity must not impair existing contracts for services or collective bargaining agreements unless the appropriate labor organization and the employer provide written concurrence before the activity begins. The participant may not replace an unsubsidized employee who was laid off from the same or any substantially equivalent job or who was terminated with the intention of hiring the participant. The participant may not be placed in a promotional line that infringes in any way on the promotional opportunities of currently employed workers as of the date of the participation [20 CFR 683.270]

WIOA funds may not be used for the encouragement or inducement of a business or part of a business to relocate from any location in the United States if the relocation results in any employee losing his or her job at the original location. No individual may be placed in work experience in any business or part

of a business that has relocated from any location in the United States until the company has operated at that location for 120 days if the relocation has resulted in any employee losing his or her job at the original location. To verify that a business that is new or expanding and is not relocating, in fact, relocating employment from another area, a standardized Arkansas pre-award review criteria must be completed and documented jointly by the local area and the business (FORM WIOA I-B – 4.1 *Standardized Pre-Award Review Criteria*) [20 CFR 683.260].

No funds may be used to pay a participant to construct, operate, or maintain any part of a facility used for sectarian instruction or as a place for religious worship, with the exception of maintenance of facilities that are not used primarily for sectarian instruction or worship and are operated by organizations providing services to WIOA participants [WIOA § 188(a)(3); 20 CFR 683.255(a)]. Special rules concerning training administered by religious organizations can be found in 29 CFR part 2, subpart D (*Equal Treatment in Department of Labor Programs for Religious Organizations, Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries*) [20 CFR 683.255(b); 20 CFR 683.285(b)].

No individual may be placed in a WIOA employment activity if a member of that person's immediate family is directly supervised by or directly supervises that individual [20 CFR 683.200(g)]. The Arkansas State definition of "immediate family" is (1) a spouse and (2) any other person residing in the same household as the participant, who is a dependent of the participant or of whom the participant is a dependent. Dependent means any person, whether or not related by blood or marriage, which receives from the participant, or provides to the participant, more than one-half of his/her financial support [ADWS *Certification of Local Workforce Development Boards*]. (This definition is different from the definition of "family" used for eligibility purposes.)

Participants must be paid at the same rates, including periodic increases, as trainees or employees who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills. Rates of pay must not be less than the higher of the applicable Federal, State or local minimum wage. Participants must receive benefits and working conditions at the same level and to the same extent as other trainees or employees working a similar length of time and doing the same type of work [20 CFR 683.275].

Health and safety standards established under Federal and State law otherwise applicable to working conditions of employees are equally applicable to working conditions of participants. To the extent that a State workers' compensation law applies, workers' compensation must be provided to participants on the same basis as the compensation is provided to other individuals in the State in similar employment [20 CFR 683.280].

Customized training is excluded from the credential attainment performance indicator because the training usually does not result in a credential, although participants are being trained in valuable skills. ETA, however, encourages LWDBs to consider customized training that does result in an industry-recognized credential [TEGL 19-16].