

**Nevada Department of Employment, Training and Rehabilitation  
(DETR)  
Workforce Innovation and Opportunity Act  
State Compliance Policy (SCP)**

**Policy Number: 2.6**

**Originating Office:** DETR; Workforce Investment Support Services (WISS).

**Subject:** Youth- Work Experience (WEX)/ Internships, Pre-Apprenticeship, Registered Apprenticeship (RA) and On the Job Training.

**Issued:** NEW; Approved GWDB Executive Committee, 11-14-16; Ratified GWDB, 01-19-17

**Purpose:** To provide the Workforce Innovation and Opportunity Act (WIOA) requirements for Work Experience/ Internships, Pre-Apprenticeship and RA for the Youth programs.

**State Imposed Requirements:** This directive contains some state-imposed requirements. These requirements are printed in **bold, italic type**.

**Authorities/References:** Workforce Innovation and Opportunity Act P.L. 113-128; 20 CFR §681.480 & 590-600; 20 CFR §680.330 & 700-750; TEN 13-12; TEGL 02-07; TEN 44-11; TEGL 3-15.

**ACTION REQUIRED:**

Upon issuance bring this guidance to the attention of all WIOA service providers, local workforce development board (LWDB) members and any other concerned parties. Any LWDB's policies, procedures, and or contracts affected by this guidance are required to be updated accordingly.

**Background:**

Work-based training is employer-driven with the goal of unsubsidized employment after participation. Generally, work-based training involves a commitment by an employer or employers to fully employ successful participants after they have completed the program. Work-based training can be an effective training strategy that can provide additional opportunities for participants and employers in both finding high quality work and in developing a high quality workforce. Each of these work-based models can be effectively used to target different job seeker and employer needs. Providers of work-based training must be providing the highest quality training to participants and are subject to performance and dissemination requirements of WIOA sec. 134(a)(2)(B)(v) and 122(h), separate from that of the Eligible Training Provider List (ETPL).

### Work Experience (WEX)/Internship-

Are planned, structured, time-limited learning experiences that take place in a workplace. They may be paid or unpaid, as appropriate and be provided in the private for-profit, non-profit, or public sectors. Labor standards apply to any internship or work experience in which an employee/employer relationship exists under applicable law. An internship or work experience for a participant in WIOA is classified as an Individualized Career Service as described in 20 CFR § 678.430(b). Internships and work experiences provide a helpful means for an individual to gain experience that leads to unsubsidized employment.

Care must be taken when matching the participant to a job site taking into consideration the demonstrated aptitudes/interests and maturity of the participant, the location (transportation), availability of supervising staff and hazards of the work environment.

### Pre-Apprenticeship; Registered Apprenticeship (RA)-

Pre-apprenticeship is defined as a program or set of strategies designed to prepare individuals to enter and succeed in a Registered Apprenticeship program and has a documented partnership with at least one, if not more, Registered Apprenticeship program(s).

RA programs offer employment and a combination of on-the-job learning and related technical and theoretical instruction through a training provider. Apprentices are employed at the start of their apprenticeship and work through a series of defined curricula, usually in a classroom, until the completion of their apprenticeship programs. Components of RAs include structured On-the-Job training, related training and instruction, rewards in skill gains and national occupational credentials. RA programs automatically qualify to be placed on the State and LWDB list (ETPL). RA Programs must appear on the list to be utilized. ***Each program is reviewed by the LWDB on a quarterly basis to insure continued endorsement by the RA Council.***

On-the-Job Training (OJT)—OJT is available to youth, adults and dislocated workers. OJT is a type of training that is provided by a private, private-non-profit or public sector employer to a participant. During the training, the participant is engaged in productive work in a job for which he or she is paid, and the training provides the knowledge or skills essential to the full and adequate performance of the job.

## **Policy and Procedure:**

### **Youth Work Experience Priority (20 CFR§ 681.590)**

(a) Local youth programs must expend not less than 20 percent of the funds allocated to them to provide ISY [In school Youth] and OSY[Out of School Youth] with paid and unpaid work experiences that fall under the categories listed in [20 CFR] § 681.460(a)(3) and further defined in [20 CFR] § 681.600.

(b) Local WIOA youth programs must track program funds spent on paid and unpaid work experiences, including wages and staff costs for the development and management of work experiences, and report such expenditures as part of the local WIOA youth financial reporting. The percentage of funds spent on work experience is calculated based on the total local area youth funds expended for work experience rather than calculated separately for ISY and OSY. Local area administrative costs are not subject to the 20 percent minimum work experience expenditure requirement.

### **Youth WEX Components (20 CFR § 681.600)**

- (a) Work experiences are a planned, structured learning experience that takes place in a workplace for a limited period of time. Work experience may be paid or unpaid, as appropriate. A work experience may take place in the private for-profit sector, the non-profit sector, or the public sector. Labor standards apply in any work experience where an employee/employer relationship, as defined by the Fair Labor Standards Act or applicable State law, exists. Consistent with [20 CFR] § 680.840 of this chapter, funds provided for work experiences may not be used to directly or indirectly aid in the filling of a job opening that is vacant because the former occupant is on strike, or is being locked out in the course of a labor dispute, or the filling of which is otherwise an issue in a labor dispute involving a work stoppage. Work experiences provide the youth participant with opportunities for career exploration and skill development.
- (b) Work experiences must include academic and occupational education. The educational component may occur concurrently or sequentially with the work experience. Further academic and occupational education may occur inside or outside the work site.
- (c) The types of work experiences include the following categories:
- (1) Summer employment opportunities and other employment opportunities available throughout the school year;
  - (2) Pre-apprenticeship programs;
  - (3) Internships and job shadowing; and
  - (4) On-the-job training (OJT) opportunities as defined in WIOA sec. 3(44) and in [20 CFR] § 680.700 of this chapter.

### **Pre-Apprenticeships (20 CFR §681.480)**

A pre-apprenticeship is a program designed to prepare individuals to enter and succeed in an apprenticeship program registered under the Act of August 16, 1937 (commonly known as the “National Apprenticeship Act”; 50 Stat. 664, chapter 663; 29 U.S.C. 50 et. seq.) (referred to in this part as a “registered apprenticeship” or “registered apprenticeship program”) and includes the following elements:

- (a) Training and curriculum that aligns with the skill needs of employers in the economy of the State or region involved;
- (b) Access to educational and career counseling and other supportive services, directly or indirectly;
- (c) Hands-on, meaningful learning activities that are connected to education and training activities, such as exploring career options, and understanding how the skills acquired through coursework can be applied toward a future career;
- (d) Opportunities to attain at least one industry-recognized credential; and
- (e) A partnership with one or more registered apprenticeship programs that assists in placing individuals who complete the pre-apprenticeship program in a registered apprenticeship program.

### **Registered Apprenticeship (20 CFR §680.330)**

Registered apprenticeships automatically qualify to be on a State’s eligible training provider list (ETPL) as described in [20 CFR] § 680.470.

- (a) ITAs [Individual Training Account] can be used to support placing participants in registered apprenticeship through:

- (1) Pre-apprenticeship training, as defined in [20 CFR] § 681.480 of this chapter; and
  - (2) Training services provided under a registered apprenticeship program.
- (b) Supportive services may be provided as described in [20 CFR] § 680.900 and 680.910.
- (c) Needs-related payments may be provided as described in [20 CFR] § 680.930, 680.940, 680.950, 680.960, and 680.970.
- (d) Work-based training options also may be used to support participants in registered apprenticeship programs (see [20 CFR] § 680.740 and 680.750).

### **On the Job Training (OJT)**

#### **(WIOA sec. 3(44))**

ON-THE-JOB TRAINING.—The term “on-the-job training” means training by an employer that is provided to a paid participant while engaged in productive work in a job that—

- (A) provides knowledge or skills essential to the full and adequate performance of the job;
- (B) is made available through a program that provides reimbursement to the employer of up to 50 percent of the wage rate of the participant, except as provided in [WIOA] section 134(c)(3)(H), for the extraordinary costs of providing the training and additional supervision related to the training; and
- (C) is limited in duration as appropriate to the occupation for which the participant is being trained, taking into account the content of the training, the prior work experience of the participant, and the service strategy of the participant, as appropriate.

#### **OJT Requirements (20 CFR § 680.700)**

- (a) OJT is defined at WIOA sec. 3(44). OJT is provided under a contract with an employer or registered apprenticeship program sponsor in the public, private non-profit, or private sector. Through the OJT contract, occupational training is provided for the WIOA participant in exchange for the reimbursement, typically up to 50 percent of the wage rate of the participant, for the extraordinary costs of providing the training and supervision related to the training. In limited circumstances, as provided in WIOA sec. 134(c)(3)(h) and [20 CFR] § 680.730, the reimbursement may be up to 75 percent of the wage rate of the participant.
- (b) OJT contracts under WIOA title I, must not be entered into with an employer who has received payments under previous contracts under WIOA or WIA if the employer has exhibited a pattern of failing to provide OJT participants with continued long-term employment as regular employees with wages and employment benefits (including health benefits) and working conditions at the same level and to the same extent as other employees working a similar length of time and doing the same type of work.
- (c) An OJT contract must be limited to the period of time required for a participant to become proficient in the occupation for which the training is being provided. In determining the appropriate length of the contract, consideration should be given to the skill requirements of the occupation, the academic and occupational skill level of the participant, prior work experience, and the participant’s IEP [Individual Employment Plan or ISS, Individual Service Strategy].

### **OJT Payments to Employers (20 CFR § 680.720)**

(a) OJT payments to employers are deemed to be compensation for the extraordinary costs associated with training participants and potentially lower productivity of the participants while in the OJT.

(b) Employers may be reimbursed up to 50 percent of the wage rate of an OJT participant, and up to 75 percent using the criteria in [20 CFR] § 680.730, for the extraordinary costs of providing the training and additional supervision related to the OJT.

(c) Employers are not required to document such extraordinary costs.

### **OJT Reimbursement Rate Increase Requirements (20 CFR § 680.730)**

(a) The Governor may increase the reimbursement rate for OJT contracts funded through the statewide employment and training activities described in [20 CFR] § 682.210 of this chapter up to 75 percent, and the Local WDB also may increase the reimbursement rate for OJT contracts described in [20 CFR] § 680.320(a)(1) up to 75 percent, when taking into account the following factors:

(1) The characteristics of the participants taking into consideration whether they are “individuals with barriers to employment,” as defined in WIOA sec. 3(24);

(2) The size of the employer, with an emphasis on small businesses;

(3) The quality of employer-provided training and advancement opportunities, for example if the OJT contract is for an in-demand occupation and will lead to an industry-recognized credential; and

(4) Other factors the Governor or Local WDB may determine to be appropriate, which may include the number of employees participating, wage and benefit levels of the employees (both at present and after completion), and relation of the training to the competitiveness of the participant.

(b) Governors or Local WDBs must document the factors used when deciding to increase the wage reimbursement levels above 50 percent up to 75 percent.

### **OJT and RAs (20 CFR § 680.740)**

(a) OJT contracts may be entered into with registered apprenticeship program sponsors or participating employers in registered apprenticeship programs for the OJT portion of the registered apprenticeship program consistent with [20 CFR] § 680.700. Depending on the length of the registered apprenticeship and State and local OJT policies, these funds may cover some or all of the registered apprenticeship training.

(b) If the apprentice is unemployed at the time of participation, the OJT must be conducted as described in [20 CFR] § 680.700. If the apprentice is employed at the time of participation, the OJT must be conducted as described in [20 CFR] § 680.710.

### **Combining ITA and OJT Funds (20 CFR § 680.750)**

There is no Federal prohibition on using both ITA and OJT funds when placing participants into a registered apprenticeship program. See [20 CFR] § 680.330 on using ITAs to support participants in registered apprenticeship.

### **(Performance-WIOA sec. 122(h))**

(h) ON-THE-JOB TRAINING, CUSTOMIZED TRAINING, INCUMBENT WORKER TRAINING, AND OTHER TRAINING EXCEPTIONS.—

(1) IN GENERAL.—Providers of on-the-job training, customized training, incumbent worker training, internships, and paid or unpaid work experience

opportunities, or transitional employment shall not be subject to the requirements of subsections (a) through (f) [of WIOA sec 122].

(2) COLLECTION AND DISSEMINATION OF INFORMATION.—A one-stop operator in a local area shall collect such performance information from providers of on-the-job training, customized training, incumbent worker training, internships, paid or unpaid work experience opportunities, and transitional employment as the Governor may require, and use the information to determine whether the providers meet such performance criteria as the Governor may require. The one-stop operator shall disseminate information identifying such providers that meet the criteria as eligible providers, and the performance information, through the one-stop delivery system. Providers determined to meet the criteria shall be considered to be identified as eligible providers of training services.

**(General WIOA sec.181)**

**(a) BENEFITS.—**

**(1) WAGES.—**

(A) IN GENERAL.—Individuals in on-the-job training or individuals employed in activities under this title shall be compensated 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, and such rates shall be in accordance with applicable law, but in no event less than the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) or the applicable State or local minimum wage law.

(B) RULE OF CONSTRUCTION.—The reference in subparagraph (A) to section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) shall not be applicable for individuals in territorial jurisdictions in which section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) does not apply.

**(2) TREATMENT OF ALLOWANCES, EARNINGS, AND PAYMENTS.—**

Allowances, earnings, and payments to individuals participating in programs under this title shall not be considered as income for the purposes of determining eligibility for and the amount of income transfer and in-kind aid furnished under any Federal or federally assisted program based on need, other than as provided under the Social Security Act (42 U.S.C. 301 et seq.).

**(b) LABOR STANDARDS.—**

(1) LIMITATIONS ON ACTIVITIES THAT IMPACT WAGES OF EMPLOYEES.—No funds provided under this title shall be used to pay the wages of incumbent employees during their participation in economic development activities provided through a statewide workforce development system.

**(2) DISPLACEMENT.—**

(A) PROHIBITION.—A participant in a program or activity authorized under this title (referred to in this section as a “specified activity”) shall 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) PROHIBITION ON IMPAIRMENT OF CONTRACTS.—A specified activity shall not impair an existing contract for services or collective bargaining agreement, and no such activity that would be inconsistent with the terms of a collective bargaining agreement shall be undertaken without the written concurrence of the labor organization and employer concerned.

(3) OTHER PROHIBITIONS.—A participant in a specified activity shall not be employed in a job if—

(A) any other individual is on layoff from the same or any substantially equivalent job;

(B) the employer has terminated the employment of any regular employee or otherwise reduced the workforce of the employer with the intention of filling the vacancy so created with the participant; or

(C) the job is created in a promotional line that will infringe in any way upon the promotional opportunities of currently employed individuals (as of the date of the participation).

(4) HEALTH AND SAFETY.—Health and safety standards established under Federal and State law otherwise applicable to working conditions of employees shall be equally applicable to working conditions of participants engaged in specified activities. To the extent that a State workers' compensation law applies, workers' compensation shall be provided to participants on the same basis as the compensation is provided to other individuals in the State in similar employment.

(5) EMPLOYMENT CONDITIONS.—Individuals in on-the-job training or individuals employed in programs and activities under this title shall be provided 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.

(6) OPPORTUNITY TO SUBMIT COMMENTS.—Interested members of the public, including representatives of businesses and of labor organizations, shall be provided an opportunity to submit comments to the Secretary with respect to programs and activities proposed to be funded under subtitle B.

(7) NO IMPACT ON UNION ORGANIZING.—Each recipient of funds under this title shall provide to the Secretary assurances that none of such funds will be used to assist, promote, or deter union organizing.

(c) GRIEVANCE PROCEDURE.—

(1) IN GENERAL.—Each State and local area receiving an allotment or allocation under this title shall establish and maintain a procedure for grievances or complaints alleging violations of the requirements of this title from participants and other interested or affected parties. Such procedure shall include an opportunity for a hearing and be completed within 60 days after the filing of the grievance or complaint. [Reference State Compliance Policy 4.3]

(2) INVESTIGATION.—

(A) IN GENERAL.—The Secretary shall investigate an allegation of a violation described in paragraph (1) if—

(i) a decision relating to such violation has not been reached within 60 days after the date of the filing of the grievance or complaint and either party appeals to the Secretary; or

(ii) a decision relating to such violation has been reached within such 60 days and the party to which such decision is adverse appeals such decision to the Secretary.

(B) **ADDITIONAL REQUIREMENT.**—The Secretary shall make a final determination relating to an appeal made under subparagraph (A) no later than 120 days after receiving such appeal.

(3) **REMEDIES.**—Remedies that may be imposed under this section for a violation of any requirement of this title shall be limited—

(A) to suspension or termination of payments under this title;

(B) to prohibition of placement of a participant with an employer that has violated any requirement under this title;

(C) where applicable, to reinstatement of an employee, payment of lost wages and benefits, and reestablishment of other relevant terms, conditions, and privileges of employment; and

(D) where appropriate, to other equitable relief.

(4) **RULE OF CONSTRUCTION.**—Nothing in paragraph (3) shall be construed to prohibit a grievant or complainant from pursuing a remedy authorized under another Federal, State, or local law for a violation of this title.

(d) **RELOCATION.**—

(1) **PROHIBITION ON USE OF FUNDS TO ENCOURAGE OR INDUCE RELOCATION.**—No funds provided under this title shall be used, or proposed for use, to encourage or induce the relocation of a business or part of a business if such relocation would result in a loss of employment for any employee of such business at the original location and such original location is within the United States.

(2) **PROHIBITION ON USE OF FUNDS AFTER RELOCATION.**—

No funds provided under this title for an employment or training activity shall be used for customized or skill training, on-the-job training, incumbent worker training, transitional employment, or company-specific assessments of job applicants or employees, for any business or part of a business that has relocated, until the date that is 120 days after the date on which such business commences operations at the new location, if the relocation of such business or part of a business results in a loss of employment for any employee of such business at the original location and such original location is within the United States.

(3) **REPAYMENT.**—If the Secretary determines that a violation of paragraph (1) or (2) has occurred, the Secretary shall require the State *[or local area]* that has violated such paragraph (or that has provided funding to an entity that has violated such paragraph) to repay to the United States an amount equal to the amount expended in violation of such paragraph.

(e) **LIMITATION ON USE OF FUNDS.**—No funds available to carry out an activity under this title shall be used for employment generating activities, investment in revolving loan funds, capitalization of businesses, investment in contract bidding resource centers, economic development activities, or similar activities, that are not

directly related to training for eligible individuals under this title. No funds received to carry out an activity under subtitle B shall be used for foreign travel.

(f) TESTING AND SANCTIONING FOR USE OF CONTROLLED SUBSTANCES.—

(1) IN GENERAL.—Notwithstanding any other provision of law, a State *[or local area]* shall not be prohibited by the Federal Government from—

(A) testing participants in programs under subtitle B for the use of controlled substances; and

(B) sanctioning such participants who test positive for the use of such controlled substances.

(2) ADDITIONAL REQUIREMENTS.—

(A) PERIOD OF SANCTION.—In sanctioning participants in a program under subtitle B who test positive for the use of controlled substances—

(i) with respect to the first occurrence for which a participant tests positive, a State may exclude the participant from the program for a period not to exceed 6 months; and

(ii) with respect to the second occurrence and each subsequent occurrence for which a participant tests positive, a State may exclude the participant from the program for a period not to exceed 2 years.

(B) APPEAL.—The testing of participants and the imposition of sanctions under this subsection shall be subject to expeditious appeal in accordance with due process procedures established by the State.

(C) PRIVACY.—A State shall establish procedures for testing participants for the use of controlled substances that ensure a maximum degree of privacy for the participants.

(3) FUNDING REQUIREMENT.—In testing and sanctioning of participants for the use of controlled substances in accordance with this subsection, the only Federal funds that a State may use are the amounts made available for the administration of statewide workforce investment activities under section 134(a)(3)(B).

(g) SUBGRANT AUTHORITY.—A recipient of grant funds under this title shall have the authority to enter into sub-grants in order to carry out the grant, subject to such conditions as the Secretary may establish.

## **Summary of OJT Eligibility Requirements**

### **Participant Eligibility:**

- The participant has received at least one of the fourteen youth program elements and has been unable to gain or retain employment and has been determined to need training ; and
- Has an Individual Employment Plan (IEP/ISS), wherein the participant’s interests, abilities and needs are identified and related to the OJT employment; **OR**
- If employed, earn less than the self-sufficiency hourly wage and includes a skills gap assessment; and
- Has an Individual Employment Plan (IEP/ISS), wherein the participant’s interests, abilities and needs are identified and related to the OJT employment; and
- Training relates to the introduction of new technologies; or

- Training relates to the introduction of new production or service procedures; or
- Training relates to an employment promotion requiring additional skills or workplace literacy

**NOTE:** Reference SCP 1.14 for the following OJT requirements.

Written Assurances (WIOA Sec. 134, 181, 194, 20 CFR 680.700-750, WIOA Contract Assurances Attachment C):

Employer Eligibility (WIOA 194 & 181, 20 CFR 680.700-730, 683.200)

OJT Contract Requirements (WIOA sec 134, 181, 194, 20 CFR 680.700-750)

Occupation Eligibility (WIOA sec. 134)

Monitoring and Oversight (2 CFR 200, WIOA sec. 183 & 184)

### **LWDB Policy Requirements Summary**

#### **Boards Must Have Written Policy Defining the Following**

- Eligibility of participant, where applicable, and training provider in each Work-based Training service.
- Documentation and reporting of Performance and methods of Dissemination of Work-based Training activities to the public.
- Definition of Self Sufficient Wage in the local area.
- Contract requirements for OJT providers and participants, including file, MIS, financial activities/records, job descriptions specific to employment, progress reports.
- WEX/Internship policy/procedures including requirements in documentation, contract requirements, payment to participant, duration timelines, job site safety precautions, participant progress reports, selection of employers taking into account necessary state and federal requirements. (WEX and Intern participants must be provided all state and federal requirements for workers compensation coverage by WIOA service providers, WIOA sec. 181(b)(4)).
- Pre-Apprenticeship/RA procedures policy/procedures in coordination of activities, documentation of wage/increases, skills gain, and appropriate participant exit timeframes.

#### **Required Participant File Content (WIOA sec. 134, 181, 194, 20 CFR§ 680.700-750, Data Element Validation)**

*The participant case file must contain at a minimum and per Local Board requirements;*

- *Administered assessments and the ISS wherein the participant's interests, abilities and needs are identified and related to the WEX/Internship, Pre-Apprenticeship, RA, activity/employment or OJT*
- *The WEX/Internship, OJT Contract; contract modification if any*
- *The WEX/Internship, OJT Job Description*
- *Pre-Apprenticeship/RA Contract or documentation identifying all components, time frames, salary etc.*
- *Progress Reports (content and interim per Local Board policy)*
- *Financial documentation(including time sheets, invoices and payroll records) as to costs associated with WEX/Internship*

**Required Case Note/Comment**

- *The need for the training service has been properly documented*
- *Co-enrollment details as to shared costs and services if any*
- *Contact with participant and Employer/Training Provider*
- *Start and end dates, invoice details in time frames and costs*
- *Receipt of progress reports, performance and necessary steps taken to improve below standard performance*