



State Policy

Workforce Innovation and Opportunity Act (WIOA)

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Work-based Training

REFERENCE

Federal and state laws, regulations, rules, and other guidance and documentation relied upon for the development of this policy are cited in footnotes.

BACKGROUND

Work-based training can be an effective training strategy that provides additional opportunities for employers and adults and dislocated worker program participants.

ACTION

This policy supersedes and cancels the State's¹ Preliminary Policy on Work Experiences for Youth, Adults, and Dislocated Workers (Rev. 4/17/2015) and Interim Policy on Incumbent Worker Training Programs (Rev. 08/31/2015). Questions and comments on this policy may be submitted in writing to the WIOA policy mailbox at ndol.wioa_policy@nebraska.gov.

¹ The term "State" refers to the Nebraska Workforce Development Board and the Nebraska Department of Labor (acting on the Governor's behalf pursuant to the Governor's Executive Order No. 15-03).

Each local board must:

- if it uses transitional jobs as part of its service delivery strategy, implement a policy addressing the requirements stated in [Section I\(a\)\(1\)](#);
- if it uses customized training as a service strategy, implement a policy addressing the requirements stated in [Section II\(a\)](#);
- if it uses incumbent worker training as a service strategy, implement a policy addressing the requirements stated in [Section II\(b\)](#); and
- ensure that funds provided to employers for work-based training are not used to directly or indirectly engage in the prohibited activities described in [Section IV](#).

POLICY

This policy establishes requirements regarding work-based training opportunities, including:

- internships, work experiences, and transitional jobs for adults and dislocated workers;
- customized and incumbent worker training services for employers; and
- Registered Apprenticeship programs.

Requirements regarding on-the-job training (OJT) and work-based training for youth are addressed separately in the State’s OJT and youth program policies.

This policy is organized into four sections.

Section I. Work-based training services for adults and dislocated workers	2
Section II. Work-based training services for employers	4
Section III. Registered Apprenticeship programs.....	8
Section IV. Prohibited activities	9

Section I. Work-based training services for adults and dislocated workers

(a) Internships and work experiences

An internship or work experience:²

- is a planned, structured learning experience that takes place in a workplace for a limited period of time;

² 20 CFR § 680.180

- may be paid or unpaid, as appropriate and consistent with laws such as the Fair Labor Standards Act (FLSA);³ and
- may be arranged within the public, private, or non-profit sectors.

Labor standards apply in any work experience setting where an employee-employer relationship exists as defined by FLSA.

(1) Transitional jobs⁴

Transitional jobs:

- provide a participant with work experience that takes place within the context of an employee-employer relationship, with the local program provider generally acting as the employer;
- are time-limited work experiences that are wage-paid and subsidized up to 100 percent and in the public, private, or non-profit sectors;
- are only available for adults and dislocated workers with barriers to employment who are chronically unemployed or have inconsistent work history.

Transitional jobs must be combined with other career services⁵ and supportive services and must be designed to:

- establish a work history for the participant;
- demonstrate success in the workplace; and
- develop skills that lead to entry into and retention in unsubsidized employment.

There is no requirement that the employer retain the individual upon completion of the transitional job; however, retention is preferred for the benefit of the worker and employer when appropriate.

(A) Funding

A local board may use up to 10 percent of the combined total of its adult and dislocated worker allocations for a program year for transitional jobs.⁶

(B) Local policy⁷

If a local board uses transitional jobs as part of its service delivery strategy, it must identify appropriate employers and implement a local policy that:

- establishes the amount of reimbursements for the jobs (up to 100 percent of the wage);

³ Information on FLSA is accessible at <https://www.dol.gov/whd/flsa/>.

⁴ 20 CFR §§ 680.190 and 680.195; TEGL 19-16

⁵ Transitional jobs are a type of individualized career service.

⁶ 20 CFR § 680.195

⁷ 20 CFR § 680.195; TEGL 19-16

- defines what supportive services must be included;
- establishes limits on the duration of the transitional job; and
- defines and identifies individuals who are *chronically unemployed* or *have an inconsistent work history*, such as long-term unemployed individuals, ex-offenders, and individuals who are currently receiving or have exhausted Temporary Assistance for Needy Families (TANF) benefits.

Section II. Work-based training services for employers

(a) Customized training

Customized training is training:⁸

- designed to meet the special requirements of an employer or group of employers; and
- conducted with a commitment by the employer or employers to employ an individual or group of individuals upon successful completion of the training.

Customized training of eligible employed individuals may be provided for an employer or group of employers when the:⁹

- employee or group of employees are not earning a self-sufficient wage or wages comparable to or higher than wages from previous employment;
- training relates to:¹⁰
 - introduction of new technologies, introduction to new production or service procedures, upgrading to new jobs that require additional skills, or workplace literacy; or
 - other appropriate purposes identified by the local board.

(1) Funding¹¹

The employer or group of employers receiving work-based training services must pay for a significant portion of the cost of customized training, taking into account:

- the size of the employer or group of employers; and
- other factors, including the:
 - number of employees participating in training;

⁸ WIOA Sec. 3(14); 20 CFR § 680.760

⁹ 20 CFR § 680.770

¹⁰ 20 CFR § 680.710(c)

¹¹ TEGL 19-16

- wage and benefit levels of participating employees, at present and anticipated upon completion of the training;
- relation of the training to the competitiveness of the participating employees; and
- other employer-provided training and advancement opportunities.

In the case of an employer or group of employers located in multiple local areas in the state, the employer or group of employers receiving work-based training services must pay a significant portion of the cost of the training as determined by NDOL, taking into account the size of the employer or group of employers and other factors NDOL determines appropriate.

(2) Local policy¹²

If a local board uses customized training as part of its service delivery strategy, it must implement a policy for determining what constitutes the employer's payment of a *significant portion of the cost of training*, taking into account the:

- size of the employer; and
- other factors the local board determines are appropriate, which may include the:
 - number of employees participating in training;
 - wage and benefit levels of participating employees, at present and anticipated upon completion of the training;
 - relation of the training to the competitiveness of the participating employees; and
 - other employer-provided training and advancement opportunities.

(b) Incumbent worker training¹³

Incumbent worker training (IWT) is training designed to meet the special requirements of an employer or group of employers. IWT must not be used to provide occupational training for new hires. IWT services may be provide to either:

- help avert potential layoffs of employees; or
- assist employees in obtaining the skills necessary to retain employment, such as increasing skill levels so they can be promoted within the company and create backfill opportunities for less-skilled employees.

IWT services must be conducted with a commitment by the employer to retain or avert the layoffs of the workers trained.

¹² TEGL 19-16

¹³ 20 CFR § 680.790; TEGL 19-16

(1) Employer eligibility¹⁴

The local board must determine an employer's eligibility for IWT services based on the following factors to evaluate whether IWT services would increase the competitiveness of the workers only or the workers and employer:

- characteristics of the workers to be trained;
- whether IWT improves the labor market competitiveness of the workers only or the workers and employer; and
- other factors, including:
 - employer size;
 - number of workers to be trained;
 - wages and benefits, both pre- and post-training increases;
 - existence of other training and advancement opportunities provided by the employer;
 - credentials and skills to be gained as a result of IWT;
 - layoffs averted as a result of IWT; or
 - utilization of IWT services as part of a larger sector and/or career pathway strategy.

(2) Worker eligibility¹⁵

For an employer to receive IWT services, the workers to be trained must:

- be employed by the employer;
- meet FLSA requirements for an employer-employee relationship; and
- have an established employment history with the employer of six months or more, with the following exception.

EXCEPTION. In the event that IWT is being provided to a cohort of workers, not every worker in the cohort must have an established employment history with the employer of six months or more, as long as a majority of workers being trained meet the employment history requirement.

A worker does not have to meet eligibility requirements for career and training services unless the worker is enrolled as a participant in the local adult or dislocated worker program.

¹⁴ WIOA Sec. 134(d)(4)(A)(ii); 20 CFR § 680.810; TEGL 19-16

¹⁵ 20 CFR § 680.780; TEGL 19-16. Refer to the State's adult and dislocated worker program policy for information on eligibility requirements for career and training services.

(3) Funding¹⁶

The local board may reserve up to 20 percent of its combined total of adult and dislocated worker allocations for a program year for IWT services. This 20 percent may be used for IWT activities that are programmatic in nature. Administrative IWT activities must be paid out of the local board's administrative funds.

(A) Cost-sharing requirements¹⁷

Employers participating in IWT must pay the non-Federal share of the cost of providing training to their incumbent workers. The minimum amount of the employer's non-Federal share depends on the size of the employer and must not be less than:

- 10 percent of the costs, for employers with 50 or fewer workers;
- 25 percent of the costs, for employers with between 51 and 100 workers; and
- 50 percent of the costs, for employers with more than 100 workers.

The employer share must be reported by the local board as program income in its quarterly financial reports.¹⁸

(4) Local policy¹⁹

If a local board uses IWT as part of its service delivery strategy, it must implement a policy, which must comply with the requirements established under 20 CFR §§ 680.780 through 680.820 and TEGL 19-16 and must:

- establish methods for determining which employers and workers are eligible for incumbent worker services;
- establish methods for determining the non-Federal share of the cost of IWT services, which must include consideration of:
 - wage and benefit levels of the employees, pre- and post-training;
 - relationship of IWT to the competitiveness of the workers and employer; and
 - availability of other employer-provided training and advancement opportunities;
- establish methods for payment of the non-Federal share of the cost of IWT, which may be done through both cash payments and fairly evaluated in-kind contributions and may include the wages the employer pays to the worker trainee while the worker is attending training;
- define processes for documenting the six-month work-history requirement; and

¹⁶ WIOA Sec. 134(a)(3)(A)(i); 20 CFR §§ 680.790, 680.800, 682.210(b), and 682.320(b)(4); TEGL 19-16

¹⁷ WIOA Secs. 134(d)(4)(C) and 134(d)(4)(D)(i)-(iii); 20 CFR § 680.820; TEGL 19-16

¹⁸ Refer to the State's policy on quarterly reporting.

¹⁹ 20 CFR § 680.780; TEGL 19-16

- require a contract between the local board and the employer that:
 - defines the scope of IWT services;
 - identifies the non-Federal share of the cost of IWT to be paid by the employer; and
 - describes the process for documenting the six-month work-history requirement with the employer.

Local IWT policies must be consistent with local plans and career pathways and sector strategy approaches for in-demand occupations.

Section III. Registered Apprenticeship programs²⁰

As an earn-and-learn strategy, Registered Apprenticeship (RA) offers job seekers immediate employment opportunities that pay sustainable wages and offer advancement along a career pathway. Graduates of RA programs receive nationally-recognized, portable credentials, and their training may be applied toward further postsecondary education. WIOA funds may be used to support RA programs through the services listed in Table 1.

Table 1. WIOA services supporting RA

Service	Method of support
Youth occupational skills training (OST)	Youth program funds may be used for RA as an OST option for youth ages 16 – 24.
Individual training accounts (ITAs)	ITAs can be used to support: <ul style="list-style-type: none"> ▪ the educational portion (i.e., related instruction component) of the RA for eligible apprentices, provided the RA program is included on the ETPL; and ▪ pre-apprenticeship training in preparation for formal RA, provided the pre-apprenticeship program is on the ETPL.
On-the-job training (OJT)	OJT contracts may be entered into with RA program sponsors, or employers participating in RA programs, for the OJT portion of the program. Depending on the length of the program and the requirements of State and local OJT policies, WIOA funds may cover some or all of the OJT. If WIOA-funded, the OJT portion of an RA program <u>must</u> be conducted according to the requirements of 20 CFR §§ 680.700 and 680.710 and State and local policies on OJT.
Supportive services	WIOA funds may support a variety of supportive services for apprentices, including books, supplies, child care, transportation, tools, and uniforms, subject to the requirements and limitations of 20 CFR § 680.900 through 680.970 and state and local policies on supportive services.
Contracted classes for training cohorts for related instruction	In certain cases, a local board may, instead of using ITAs, contract with an ETP to train a cohort of potential apprentices in in-demand industry sectors or occupations, provided the apprentices (or potential apprentices) meet the youth, adult, or dislocated worker eligibility requirements for training services. Such a contract <u>must</u> adhere to the procurement standards found in the Uniform Guidance and the requirements of the State's adult and dislocated worker program policy. A local board may also use incumbent worker training funds to provide training to a cohort of apprentices.

²⁰ 20 CFR § 680.740; TEGL 13-16

Service	Method of support
Customized training	A local board can support RA program sponsors and apprentices through customized training agreements.
Incumbent worker training	A local board may use up to 20 percentage of the local allocations for adult and dislocated worker programs to pay the Federal share of the cost of incumbent worker training, enabling current workers to remain on the job while in training provided through an RA program.

Section IV. Prohibited activities

Funds provided to employers for work-based training must not be used to directly or indirectly:

- assist, promote, or deter union organizing;²¹ or
- aid in the filling of a job opening which 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.²²

DISCLAIMER

This policy is based on NDOL's reading of the applicable statutes, regulations, rules, and guidance released by the US Government and the State of Nebraska. This policy is subject to change as revised or additional statutes, regulations, rules and guidance are issued.

²¹ 20 CFR § 680.830

²² 20 CFR § 680.840