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DEPARTMENT OF LABOR AND EMPLOYMENT

WORKFORCE DEVELOPMENT PROGRAMS

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Category:	State Initiatives
Subject:	"Earn to Learn" OJT NEG Supplemental Project
Source:	State
Revise/Replace:	PGL-10-16-WIA Earn to Learn On-the-Job Training
Contact:	Workforce Development Programs
Distribution:	Managers, Workforce Development Staff, Workforce Region Directors, Fiscal
Colorado One-Stop System Program Guidance Letter: 13-02-WIA	
Date: January 9, 2013	

I. REFERENCES:

- Workforce Investment Act (WIA) of 1998 (Public Law 105-220), August 7, 1998, Sections 173 and 189(i) (29 USC 2918)
- WIA regulations at 20 CFR Part 661 663, 671
- TEGL 16-03, National Emergency Grant (NEG) Policy Guidance, January 26, 2004
- TEGL 19-08, National Emergency Grants Funded with American Recovery and Reinvestment Act of 2009 Resources, April 30, 2009
- TEGL 01-09, Reporting Requirements under Section 1512 of the ARRA of 2009
  TEGL 01-09, Change 1
  TEGL 01-09, Change 2
- TEGL 4-10, On-the-Job Training National Emergency Grants (OJT NEGs) Funded with American Recovery and Reinvestment Act of 2009 Resources, August 6, 2010
- PGL 01-03-WIA, WIA Eligibility Determination and Documentation, November 21, 2008
- PGL 01-08-WIA1, On-the-Job Training and Customized Training, March 21, 2001
- PGL 08-06-WIA, WIA and WP Discretionary Grant Quarterly Reporting, June 3, 2008
- PGL 10-5-V, Implementing Priority of Service for Veterans and Eligible Spouses in All Qualified Job Training Programs Funded in Whole or in Part by the US Department of Labor (USDOL), March 22, 2010
- PGL 12-06-WIA Guidance on Data Integrity and the Customer Participation Cycle for WIA and TAA Programs

II. PURPOSE:

To provide guidance on the implementation and program requirements of the "Earn to

Learn" On-the-Job Training National Emergency Grant (OJT NEG) Supplemental Project.

BACKGROUND:

National Emergency Grants (NEGs) are discretionary grants awarded by the Secretary of Labor under section 173 of the WIA, as amended, to provide employment-related services for dislocated workers in response to significant dislocation events. Because of the widespread scope of recession-related layoffs across the country and their impact on the workforce system's ability to assist laid-off workers, The Secretary has recognized the impact of the recession on the national workforce as a significant dislocation event for purposes of supplemental funding NEG assistance to provide on-the-job training for dislocated workers who are long-term unemployed.

Colorado received, $1,444,101 to fund 120 OJT placements over a two-year period beginning June 30, 2012 and ending June 30, 2014. The program targets workforce regions in the state with high unemployment and poverty rates, and other factors such as the number of UI claimants who are receiving extended benefits, the percentage of mass layoffs, etc.

III. POLICY/ACTION:

A. Definitions

Per the WIA Section, 101, OJT is defined as training by an employer that is **provided** to a paid participant while engaged in productive work in a job that:

- Provides knowledge or skills essential to a full adequate performance of the job
- Provides reimbursement to the employer, based upon a percentage of the wage rate of the participant, for the extraordinary costs of providing the training and additional supervision related to the training
- Is limited in duration, as appropriate to the occupation for which the participant is being trained, and takes into account the content of the training, the prior work experience of the participant, and the service strategy of the participant, as appropriate.

B. General Requirements

1. **Eligibility for OJT NEG**: All participants must meet the following criteria:

    - Dislocated Worker, as defined in WIA Section 101(9)
    - Laid off on, or after, 1 January, 2008
    - Unemployed for at least 19 weeks, with preference given to those who are receiving extended benefits, or have exhausted their unemployment claims
    - Veterans' priority of service will be given to veterans and eligible spouses who meet all of the above criteria.

2. **Enrollment in OJT NEG**

- All participants must be enrolled in WIA Dislocated Worker program **(DW)** prior to entry in the OJT NEG discretionary grant, which uses the **DI** program code.
- Participants should not be co-enrolled in OJT NEG until they are considered ready to be placed with an employer.

3. **Participant recruitment strategies.** Participating regions are encouraged to consider the following recruitment strategies:

- Participants who are currently enrolled in VWIP or previously enrolled in HIRE Colorado work experience may be good candidates for an OJT following the completion of their training, and may be screened to determine whether they are eligible dislocated workers, and co-enrolled in WIA Dislocated Worker as appropriate.
- Regions are encouraged to leverage additional programs and other possible grants and programs for the recruitment and referral of successful candidates (e.g., green energy grant programs).
- Regions are encouraged to contact UI claimants who are currently receiving extended benefits regarding the OJT NEG program.
- CDLE will provide a handout for recruitment purposes that explains the basic features of the program.

4. **Participant Services**

<u>Assessments</u>

- Regions will use, at a minimum, WorkKeys, WorkKeys Fit, and/or ProveIt for pre-and post OJT assessments to assess and document participant skills levels on a pre- and post- training basis.
- Regions may use Key Train instead of WorkKeys for pre-OJT assessments, and are also encouraged to leverage the Career-Ready Colorado Certificate training as part of the post-OJT assessment process, as well as other available workforce center resources and services.
- Regions may use other assessment tools to help determine participant interests, soft skills, etc. to assist with the placement process.

<u>Classroom Training</u>

- Funds shall NOT be used for any classroom training.
- Classroom training may not be provided through the Earn to Learn OJT NEG program.
- Participants who require classroom training should be co-enrolled in WIA, Veterans Workforce Investment Program (VWIP), or referred to a partner program, (as appropriate) to cover the costs.

Supportive Services

- NEG OJT funds may be used to provide supportive services for participants.
- Participants who require either supportive services and/or classroom training may be co-enrolled in WIA, Veterans Workforce Investment Program (VWIP), or referred to a partner program, (as appropriate) to leverage additional funds for these services.
- NEG OJT funds shall not be used to provide services to an individual until the participant is enrolled in the NEG OJT program
- NEG OJT funds shall be used for staff costs related to outreach, recruitment, and/or general screening and intake activities or may be charged against other funding streams, as appropriate (e.g. Wagner-Peyser, Employment Support Fund, etc.).

C. On-the-Job Training Requirements

1. **Duration:** OJT's may not exceed six (6) months, and should be based upon the amount of time it will reasonably take to address the participant's skill gaps and train them for the position.
   - If the amount of time needed to train the participant for the position is less than 6 months, the OJT contract will be for less than 6 months.
   - If the amount of time needed to train the participant for the position is more than 6 months, the OJT-NEG contract will not exceed 6 months.
   - Participants may not be co-enrolled in another WIA program to extend the OJT contract beyond 6 months.

2. **Training Reimbursement Rate:** Employers will be reimbursed for the cost of training OJT participants (e.g. overhead, training, shadowing, mentoring, additional supervision, etc.) based upon a percentage of the participant's wages. The reimbursement rate is based upon employer size:
   - Up to 90%: Employers with 50 or fewer employees
   - Up to 75%: Employers with 51-250 employees
   - Up to 50%: Employers with more than 250 employees

3. **Wage Cap:** The hourly wage used to determine the training reimbursement rate may not exceed the state's average hourly wage (i.e. $22.11 per hour).
   - If the prevailing wage for the position is more than $22.11 per hour, the participant should still be paid the prevailing wage. The employer will pay the difference between the participant's wages and the average hourly wage (in addition to their share of the participant's wages), and the region will reimburse the employer between 50-90% of the average hourly wage.
   - If the prevailing wage for the position is less than the wage cap (i.e. $22.11 per hour), the OJT wages and training reimbursement should be based on this lesser level.

4. **OJT Placements**: OJT placements should focus on businesses and industries where (1) there is a reasonable expectation of continued, permanent employment following the end of the OJT contract and (2) the participant will earn a "family supporting" wage. Documentation is also required for the placement into demand occupations (e.g., LMI, employer needs, trends, local target industry, etc.).
   - OJT placements may not be developed with public sector employers or with any of the following:
     - Casinos or other gambling establishments
     - Amusement parks, swimming pools, aquariums, zoos, country clubs, golf courses or car washes
     - Seasonal employment
     - Hotel/hospitality/service employers if the positions are for bellmen, maids, janitors, food/banquet servers or other low wage positions
     - Staffing, recruiting or other intermediary agencies, where the worksite will be with another employer
     - Positions that will or may displace existing employees (20 CFR 667.270)
     - Employers that have relocated all or part of their business within the previous 120 days and the relocation resulted in the loss of employment of anyone at the original location.
     - Employers that have laid off workers in the same, or similar, positions as the OJT, and these workers could be called back or rehired.

5. **OJT Contracts:** OJT contracts must include and comply with the following requirements:
   - Basis for the employer reimbursement, including:
     - Occupation
     - Rate of pay
     - Rate of reimbursement
     - Participant's skill gaps
     - Employer's skill needs
     - Amount of time (weeks/months) needed to learn the job

   - Description of the participant, employer and workforce's roles and responsibilities
     - Training plan, including the skills and competencies to be learned, and how the employer will document the participant's progress and proficiency
     - Safeguards against displacement
     - Specify that the reimbursement is strictly for the hours worked, and does not include time spent in classroom training, paid time off (e.g. sick leave, vacation, holidays, jury duty, etc.) or benefits.

6. **Continued employment upon training completion**: There needs to be a reasonable expectation of continued employment after the participant completes their training. Regions should not enter into OJT contracts with employers who have a demonstrated "pattern of failure." This may include, but it is not limited to employers who do not retain their OJT employees citing fiscal issues but who continue to post job openings for similar positions, or who cite unsatisfactory job performance upon completion of the contract but did not indicate any problems or gave satisfactory reviews during the training.

D. Partnerships. Regions must have written MOUs or agreements that spell out the roles and responsibilities for each of the named partners involved in the OJT NEG program, including the nature and amount of leveraged resources that will be provided by each partner.

This does not apply to the OJT employers.

E. Allowable Costs

- OJT NEG may cover the WorkKeys, ProveIt and other assessments <u>after</u> enrollment into the program.
- Regions may spend up to 5.3% of their OJT NEG funds for administrative costs.
- OJT NEG funds shall be used to provide OJT reimbursements to employers as delineated above.
- OJT NEG funds shall be used to provide supportive services for participants <u>after</u> enrollment into the program.
- OJT NEG funds may be used for staff costs related to outreach, recruitment, and/or general screening and intake activities <u>or</u> may be charged against other funding streams, as appropriate (e.g. Wagner-Peyser, Employment Support Fund, etc.).
- OJT NEG funds shall be used for staff costs related to case management of OJT NEG participants and for the cost of the pre- and post- assessments.
- OJT NEG funds **shall not** be used to pay for a participant's non-work hours such as holiday, vacation or sick days, time spent in classroom training, jury duty, etc.; however, the employer may elect to cover these costs.
- OJT NEG funds **shall not** be used to pay over time. If any employer asks, or requires, a participant to work in excess of 40 hours, it is their responsibility to cover the full costs of the wages.
- OJT NEG funds **shall not** be used to provide services to an individual until the participant he/she is enrolled in the OJT NEG program

F. Workplace Laws and Guidelines

1. **Fair Labor Standards Act (FLSA).** The provisions of the FLSA apply to all participants engaged in OJT under Earn to Learn OJT NEG, including all Federal/State hourly minimum wage laws.

2. **Non-Discrimination and Equal Opportunity.** Federal and state requirements prohibit discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief. An organization that accepts an Earn to Learn OJT NEG participant should be aware of this requirement, and must ensure that agency services are provided to all individuals that are eligible, and not discriminate based on circumstances that might limit the population served. For example, a faith-based organization that operates an emergency food distribution center must serve all individuals that are eligible to receive those services and not discriminate based on a religious preference.

3. **Workers' Compensation**. Local regions should consult with local/county Workers Compensation and Risk Management Departments to ensure that all OJT participants under Earn to Learn OJT NEG are covered by Workers' Compensation. In addition regions need to include language in the OJT contract that specifies how workers' compensation coverage will be provided.

4. **Displacement of Employees.** Program participants engaged in OJT should not unfavorably impact current employees in the workplace. In addition, regions should carefully consider the working environment and impacts of placing a participant in a position where a layoff or displacement may potentially occur (or has already occurred), particularly in seasonal positions. More specifically, regions are not allowed to place a participant in a subsidized employment position when:

   a. A regular employee is on layoff from the same or any substantially equivalent job; or 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 a program participant; or the job is created in a promotional line that infringes in any way on the promotional opportunities of currently employed workers

   b. The placement results in a partial displacement, such as a reduction in the hours of non-overtime work, wages, or employment benefits, of any currently employed employee (as of the date of the participation)

   c. The placement impairs existing contracts for services or collective bargaining agreements. When a program or activity authorized under *Hire Colorado* would be inconsistent with a collective bargaining agreement, the appropriate labor organization and employer must provide written concurrence before the program or activity begins.

5. **Sectarian Placements.** Participants in a paid work experience must not be employed to carry out the construction, operation, or maintenance of any part of a facility that is intended for sectarian instruction or as a place for religious worship. Work experience placements are allowable in faith-based community organizations, as long as the participant does not engage in inherently religious activities, such as religious worship, instruction, or proselytizing.

In addition, participants should only be placed in faith-based organizations that do not discriminate against a person seeking help who is eligible for services. For example, a religious organization that runs an emergency shelter must not serve only persons of that faith and turn away others.

IV. DATA COLLECTION AND DOCUMENTATION REQUIREMENTS:

A. Standard case file documentation requirements apply to the participants enrolled in the OJT NEG including eligibility, enrollment, activities, results of assessments, IEP, notes, OJT contract documents, training certificates, use of O*Net Codes to identify occupation of placement, etc.

B. Verification of Long-Term Unemployment Status requirements apply to the cross-check verification of CUB benefit records (i.e. number of weeks the individual has received benefits), self-attestation statement of the participant, and detailed notes added to the participant's electronic file to describe what steps were used to verify the long-term unemployment status.

C. Co-enrollment: Participants must be co-enrolled in the Dislocated Worker program to participate in the OJT NEG program using the following program code: **DW**

D. Program Enrollment. Participants enrolled into Earn to Learn OJT NEG should be entered into Connecting Colorado using the following program code: **DI**

E. Sub-program Code. Participating regions will use sub-program codes to identify new OJT NEG program activity. The following are recommended but may change pending availability:

Region	Sub-Program Code
Boulder	01
Denver	02
Eastern	03
El Paso	04
Jefferson	05
Larimer	06
Pueblo/UA	07

F. On the Job Training Activity: On the Job Training should be entered into Connecting Colorado using the following codes:

OJ: OJT

OJT completions need to be entered to close out the OJT activity.

G. Other Activities: All appropriate activity codes must be entered into Connecting Colorado on a timely basis.

H. Program Termination: Terminations must be entered into Connecting Colorado using the appropriate codes. If the participant exits the program because they obtained **unsubsidized** employment:

Manually enter all information regarding the unsubsidized employment on the Termination Screen (e.g. starting wage, employer information)

All participants must have a termination date of no later than June 30, 2014.

V. OUTCOMES AND PERFORMANCE MEASURES:

A. Performance Goals. Earn to Learn OJT NEG will use the same performance measures as the **PY12** WIA Dislocated Worker Program, as follows:

- Entered Employment – 80.0% (**Note**: Entered employment applies to a participant being hired in unsubsidized employment by an employer after an OJT activity.)
- Employment Retention – 87.0%
- Average Wage - $21,500.00

Regions not meeting at least 80% of their performance goals will be considered out of compliance with the requirements of the grant.

B. OJT Placement Goal. Regions not meeting at least 80% of their OJT placement goal will be considered out of compliance with the requirements of the grant.

C. Expenditure Goal. Regions not expending 100% of their OJT NEG allocation will be considered out of compliance with the requirements of the grant.

VI. REPORTING REQUIREMENTS:

A. Monthly Reporting. Standard monthly fiscal reporting applies to the regions serving as the local fiscal agents for the OJT NEG supplemental grant. Regions will report fiscal activity for program staff time, OJT reimbursement, supportive services, assessments, and admin charges through the state workforce accounting system (often referred to as the VAX).

B. Quarterly Reporting. Quarterly and supplemental reports are to be submitted to the NEG grant manager and the monitor for the region pursuant to PGL 08-06-WIA, WIA and WP Discretionary Grant Quarterly Reporting, June 3, 2008. The regions subcontracting with other regions must collect report data from the sub-contractor and include it in their quarterly reports. The activities, expenditures, and outcomes for the region and the subcontractor should be separately identified.

C. **Best Practices and Success Stories.** Regions should be gathering information on best practices and participant success stories throughout the period of performance for the OJT NEG supplemental grant and be prepared to provide such information at any time during the grant. This is in anticipation of requests from the US Department of Labor and other Federal agencies that may conduct studies and evaluations of the OJT NEG projects in participating states receiving OJT NEG grants.

VII. MONITORING AND EVALUATION:

A. **Worksite monitoring.** Regions should actively monitor the worksite and activities described in the OJT agreement to ensure that the deliverables, performance, cost, and scheduled goals are being met by all parties. Monitoring must be done onsite.

Local regions may choose work sites in the private for profit and non-profit sectors.

Local monitoring policies and procedures should be updated to include information on how the regions will monitor to the provisions of the OJT agreements with the employer, participant, and the workforce center representative. In addition, local regions should ensure that the work place has policies on workplace safety and follows those guidelines. Procedures should also be in place to validate skill and competency attainments.

B. **Non-Performance of a Worksite.** Local regions should ensure that a process has been established to remove a work site that has exhibited a pattern of failure or has regularly not met their agreed upon requirements for the work experience participant. These procedures should include the local process to determine the following:

a) Deficiencies or situations that occur within the OJT process
b) What constitutes an employer "exhibiting a pattern of failure"
c) Corrective action interventions to be used
d) Circumstances under which immediate termination of an agreement will occur

An OJT agreement may not be written with an employer who has previously demonstrated a previous "pattern of failure", as defined by the local workforce board. Such failure may include failing to provide participants with continued employment and wages, benefits, and working conditions that are equal to those provided to regular employees who have worked a similar length of time and are doing the same type of work.

C. **Monitoring of Local Regions.** CDLE will monitor the Earn to Learn OJT NEG project operated by the participating regions. Regions shall allow the State to have access to program files, data, documentation, materials, invoices, and any other programmatic and/or administrative policies and procedural documents produced for use in operating Earn to Learn OJT NEG as part of on-going grant oversight and compliance with the provisions of this Program Guidance Letter.

VIII. IMPLEMENTATION DATE:

October 1, 2012

IX. INQUIRIES:

If you have any questions regarding these procedures, please contact Angel Moreno at (303) 318-8960 or angel.moreno@state.co.us.

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Elise Lowe-Vaughn, Acting Director
Workforce Development Programs

Attachments:

1 – OJT NEG Supplemental File Review Checklist
2 – OJT NEG Supplemental Local Monitoring Questionnaire