

SOUTHWESTERN AREA WORKFORCE DEVELOPMENT BOARD

Customized Training Policy 19-01.3

Effective Date

March 26, 2026

Applicability

This applies to Southwestern Area Workforce Development Board (SAWDB), providers of Workforce Innovation and Opportunity Act (WIOA) Adult and Dislocated Workers.

Purpose

The purpose of this policy is to provide direction to Southwestern Area Workforce Development Board (SAWDB) Service Provider regarding the permissible use of adult and dislocated worker funds for customized training activities.

References

- A. Workforce Innovation and Opportunity Act (WIOA), July 22, 2014, §108, §122, §134, §181 and §194.
- B. WIOA Final Rules – U.S. Department of Labor (Title I): 20 CFR §680.760, §680.830, and §680.840.
- C. Office of Management and Budget (OMB), Uniform Guidance at 2 CFR §200, et al., Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- D. Training and Employment Guidance Letter WIOA No. 21-22
- E. Training and Employment Guidance Letter WIOA No. 19-16 Operating Guidance for the Workforce Innovation and Opportunity Act.
- F. Training and Employment Guidance Letter WIOA No. 10-16, Change 3
- G. Fair Labor Standards Act (FLSA) §203.
- H. DWS 22-001 State WIOA Self-Sufficiency Wage Policy
- I. DWS 25-001 State Customized Training Activities Policy

Background

The Workforce Innovation and Opportunity Act (WIOA) of 2014 explicitly allows for the use of customized training contracts as a workforce strategy. This training strategy is designed to meet the special requirements of an employer (or a group of employers), with the commitment that the employer(s) will hire an individual upon successful completion of the training.

Definitions

Appropriate Commitment to hire an individual means to maintain an employer-employee relationship meeting the requirements of the Fair Labor Standards Act for a minimum of one (1) year.

Customized Training is training by an employer or group of employers, generally for the hiring of new or recent employees and not for retraining existing employees.

High-Priority Occupation (HPO) is an in-demand occupation that has higher skill needs and is likely to provide a self-sufficient wage. Statistical data, regional expertise, and local workforce development area inputs are combined to determine whether an occupation meets the high-priority criteria.

Incumbent Worker is an individual who is employed, meets Fair Labor Standards Act requirements for an employer-employee relationship, and has an established employment history with the employer for six (6) months or more.

Incumbent Worker Training (IWT) is training provided to an incumbent worker that is designed to meet the needs of an employer(s) to retain a skilled workforce or avert the need to lay off employees; increase the competitiveness of the employer or employee; and be conducted with a commitment by the employer to retain or avert the layoffs of the incumbent worker trained. Such training may also include the upskilling of an employer's current workforce, which may lead to additional opportunities for potential job seekers.

In-Demand Industry Sector is an industry sector that has a substantial current or potential impact (including jobs that lead to economic self-sufficiency and opportunities for advancement) on the state, regional, or local economy, as appropriate, and that contributes to the growth or stability of other supporting businesses, or the growth of other industry sectors.

In-Demand Occupation is an occupation that currently has or is projected to have several positions (including positions that lead to economic self-sufficiency and opportunities for advancement) in an industry sector to have a significant impact on the state, regional, or local economy, as appropriate.

Note: The determination of whether an industry sector or occupation is in-demand in a local area is made by the local board, as appropriate, using business and labor market projections and statistics. Customized Training must lead to an in-demand occupation, but does not necessarily have to lead to an HPO. However, all HPOs are considered in-demand occupations and, therefore, eligible for customized training.

A recent employee is an individual who is employed, meets Fair Labor Standards Act requirements for an employer-employee relationship, and has an established employment history with the employer for six (6) months or less.

Self-Sufficiency Wage: the State Administrative Entity (SAE) annually calculates a self-sufficiency standard for each local area using a living-wage model or comparable data that draws on geographically specific expenditures and incorporates the income needs of individuals, families, and sub-state geographical considerations. The self-sufficiency wage is to be provided to the Local Workforce Development Boards (LWDB) annually.

Employer Payment of Significant Cost of Training

Employers receiving funds for customized training are required to pay a substantial portion of the training costs. This can be done through both cash and fairly valued in-kind contributions. Rules for matching funds can be found in the Uniform Guidance at 2CFR 200.306 and 2 CFR 2900.8. Customized training is business-driven, with the employer deciding who will provide the training and which curriculum to use.

The share of the cost of training can include elements such as the expenses related to:

- A. Instruction or the instructor
 - B. Curriculum development
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C. Course materials or books

Expenses that are **not** permissible under the match and are not reimbursable through a customized training contract include:

- A. Equipment purchases
- B. Administration
- C. Facility upgrades/ renovations
- D. Travel and incidentals

The employer share is based on the size of the workforce as follows:

- A. At least 10 percent of the cost for employers with 50 or fewer employees;
- B. At least 25 percent of the cost for employers with 51 to 100 employees; and
- C. At least 50 percent of the cost for employers with more than 100 employees.

SAWDB Service Providers will track and document employer cost-share contributions.

Employer size means the number of employees currently employed at the local operation where customized training placement will be made. The number of employees determines the employer's size at the time the customized training contract is executed. This applies to all employers, including those with seasonal or intermittent fluctuations in employee size.

Restrictions

SAWDB will comply with the limitations and prohibitions on the use of funds allocated to the local area under WIOA Title I-B §181 and Part 680 of federal regulations, as follows:

- A. WIOA funds cannot be used to pay the wages of employees during their participation in an economic development activity provided through a statewide workforce development system.
- B. When a relocation of a business results in the loss of employment of any employee of such business, no funds provided for employment training can be used for customized training until after 120 days have passed since the relocation that caused the loss of employment at an original business location in the United States.
- C. WIOA work-based training funds must not be used to directly or indirectly assist, promote, or deter union organizing.
- D. WIOA work-based training funds 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.
- E. WIOA work-based training funds must not be used to directly or indirectly provide supportive services described in §680.900 or §681.570.
- F. WIOA work-based training funds shall not be used to train or fill seasonal employment.
- G. WIOA work-based training funds shall not be used with employers who previously failed to provide full-time employment for participants successfully completing training.

Eligibility Criteria

A. Customized Training Agreement

SAWDB will address the following factors and document them when developing a customized training agreement:

- a. Special training requirements of the employer (or group of employers); and
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- b. Agreement that the employer will pay for the significant cost of the training; and
 - c. Agreement that the employer makes an appropriate commitment to employ the individual upon successful completion of the training; and
 - d. Curriculum; and
 - e. Performance; and
 - f. A clearly stated goal.
- B. Employer Eligibility
- SAWDB will consider the following factors when determining the eligibility of employers to receive the WIOA customized training funds:
- a. The strategy of the LWDB in fulfilling the vision and goals established for the local area (i.e., the local plan)
 - b. The characteristics of the workers to be trained (i.e., the extent to which these individuals historically represent individuals with barriers to employment as defined in WIOA Section 3(24), and how such individuals would benefit from a skill gain that results in retention or advancement).
 - c. The quality of the training (e.g., industry-recognized credentials, advancement opportunities, etc.).
 - d. The number of participants the employer plans to train.
 - e. The wage and benefit levels of participants (before and after training).
 - f. The position(s) are for full-time employment (a minimum of 32 hours per week).
 - g. The occupation(s) for which customized training is being provided must be in-demand as defined by WIOA Section 3(23) and as determined by workforce development area-specific labor market information, which leads to employment opportunities that can aid the participant to become economically self-sufficient
 - h. Employer's industry status. Is the employer in:
 - i. An in-demand industry as defined by WIOA Section 3(23) and determined by labor market information; or
 - ii. A stable industry as determined by labor market information; or
 - iii. A declining industry, but there are compelling reasons (e.g., evidence of long-term viability of the employer) justifying investment in customized training?
 - i. Recent lay-offs and relocations. The employer must not have laid off workers within 120 days to relocate from another state.
 - j. Employer's unemployment insurance and workers' compensation status. The employer must be current on unemployment insurance and workers' compensation taxes, penalties, and/or interest, or have a related payment plan in place (including timely Quarterly Reports).
 - k. Is located in and has operations in the Southwestern Area.
 - l. Employ at least one full-time employee.
 - m. Keep accurate records of the project's implementation process for audit purposes for a minimum of five years.
 - n. The employer shall make a commitment to retain the participant(s) for a minimum period of (12) months following the successful completion of the customized training.
 - o. Business must not be presently disbarred, suspended, declared ineligible or voluntarily excluded from participation by USDOL.
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- p. SAWDB shall require employers to disclose any known outstanding tax liabilities, including those with other states, prior to entering into the IWT agreement.
- q. Business must have current approvals and licenses required to conduct business in the state of New Mexico.
- r. Businesses must not have any outstanding civil, criminal or penalties owed to or pending in the state of New Mexico.

SAWDB shall document the factors considered in approving a customized training contract with an employer (or a group of employers).

Employed Worker Eligibility

Customized Training funds may be used to provide training to eligible employed workers for an employer (or group of employers) when the following conditions are met:

- A. Employee is not earning a self-sufficient wage; and
- B. All other provisions of Customized Training are met; and
- C. Customized Training relates to the introduction of new technologies, introduction to new production or service procedures, upgrading to new jobs that require additional skills, or workplace literacy.

Exception: Customized training is generally reserved for hiring new or recent employees (less than six months) and not for retraining existing employees, which is typically used for incumbent worker training. However, there may be instances where customized training is appropriate in this circumstance. In such instances, customized training may be utilized for individuals earning more than self-sufficient wages if all applicable criteria are met, resulting in comparable or higher wages than those in their previous employment

Performance Accountability

Section 134(c)(3)(D) of WIOA defines 11 types of training services available to adults and dislocated workers, including customized training. Customized training may be offered to qualifying individuals through formula-funded programs or as incumbent-worker training. In cases where customized training formula-funded participants must meet adult or dislocated worker eligibility requirements prior to starting the training. Participants are to be included in WIOA performance accountability measures but excluded from Credential Attainment and/or Measurable Skills Gains (TEGL10-16, Change 3). For all other indicators, the period of participation is reported from the time an individual becomes a participant until their program exit date. Conflict of Interest

State and local board members and members of standing committees may not vote or participate in any decisions regarding the provision of services by such members or any organization they directly represent, nor on any matter that would provide any direct financial benefit to that member or the member's immediate family. For example, a SAWDB member who is also an employer who wants to use services on a fee-for-service basis would be prohibited from voting to approve the use of local area services, facilities, or equipment for employment and training activities for such board member's workers. Neither membership on the state board, local board, or standing committee, nor receipt of WIOA funds to provide training and related services, by itself, constitutes a violation of these conflict-of-interest provisions. In accordance with §200.112 of the Uniform Guidance,

recipients of federal awards must disclose in writing any potential conflicts of interest. Sub-recipients must disclose in writing any potential conflict of interest to the recipient of grant funds.

Process for Contracting

Customized training is a service that focuses on the needs of a business. All required customized training documentation shall be kept on file with the service provider, business, and America's Job Center (NMJobs). Service providers should make all files and documentation available for monitoring, audits, and data validation as required.

Customized training processes can include the following:

- A. Service providers may work with an employer to obtain the eligibility documentation for potential trainees. Special attention shall be paid to eligibility documentation requirements to ensure all data validation requirements are met.
- B. Service providers do not have to maintain individual file folders for each participant as long as all required information and documentation are kept on file collectively for each customized training contract by the service provider and business.

Customized Training Agreement Provisions

Customized training agreements shall, at a minimum, include the following elements:

- A. The occupation for which training will be provided; the skills and competencies to be acquired, and the length of time for the training.
 - B. The name of each employee to be trained, social security number, date of birth, gender, selective service registration, I-9 on file with employer, hourly pay, hours per week, and employee start date.
 - C. The employer's assurance that customized training is needed based upon the individual skill sets of trainees.
 - D. Training outline.
 - E. Method and maximum amount of reimbursement.
 - F. The cost and documented description of any ancillary items or supportive services that may be needed.
 - G. Other appropriate training outcomes related to the training (includes obtaining veteran status, highest grade completed, household/family size, and increases in earnings after training if applicable).
 - H. Appropriate assurances and certifications as defined in the agreement:
 - a. Employers shall provide workers' compensation coverage for the participants on the same basis as the compensation is provided to other individuals in the same employment. 20 CFR 680.700 (b).
 - b. Employer shall verify that the training will relate to the introduction of new technologies, introduction to new production or service procedures, or is an upgrade to a new job that requires additional skills, workplace literacy, or other appropriate skills identified by the local WDB. 20 CFR 680.710 (C).
 - c. Employer certifies that the company is financially solvent on the date of the contract, and the employer's best projection is that they will remain financially able to meet contract obligations at the end of the training period, including training participant retention.
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- d. Employers agree that wage and labor standards will be adhered to and to pay the participants at the same rates, including increases, and benefits as trainees or employees who are situated in similar jobs. Such rates shall be in accordance with applicable law, but in no event less than the higher rate specified in section 6(a) (1) of the Fair Labor Standards Act of 1938 (and as amended in 1996) or the applicable state or local minimum wage law and WIOA 20 CFR Part 683.275.
- e. Conditions of employment and training will be in full accordance with all applicable federal, state, and local laws and ordinances (including but not limited to anti-discrimination, labor and employment laws, environmental laws, or health and safety laws), 29 CFR part 38.
- f. Employer certifies that the training will not impair existing agreements for services or collective bargaining agreements and that either it has the concurrence of the appropriate labor organization as to the design and conduct of training, or it has no collective bargaining agreement with a labor organization that covers the participants' position.
- g. Employer assures that they are not debarred or suspended regarding federal funding 29CFR 180 Sub Part H, (Verifiable at <https://www.sam.gov>).
- h. Employer further assures that federal funds will not be used to assist, promote, or deter union organizing, 20 CFR 663.730.
- i. Employer certifies that no member of the training participant's immediate family will directly supervise the participant. For this contract, immediate family is defined as the spouse, children, parents, grandparents, grandchildren, brothers, sisters, or any person bearing the same relationship to the participant's spouse, as specified in 20 CFR 683.200(a).
- j. Employer assures that the participants will not be employed to carry out the construction, operation, or maintenance of any part of a facility that is used or to be used for sectarian instruction or as a place for religious worship, 29 CFR part 2, Subpart D.
- k. Employer assures that the participant(s) has not been hired into or will remain working in any position when any other person is on layoff from the same or a substantially equivalent job within the same organizational unit or has been bumped and has recall rights to that position, nor if the training is created in a promotional line that infringes on opportunities of current employees, 20 CFR 680.710.
- l. Employer is committed to employ and/or retain the individual upon successful completion of the training for a minimum of twelve months as specified in section 680.760 (b), WIOA July 22, 2014.

Customized Training Documentation

The Customized Training Agreement, along with its related information and documentation, may be retained by the service provider and the business. The local board and service provider are responsible for ensuring the information and documentation are available for monitoring and review as required:

- A. Customized Training Agreement and supporting documentation.
 - B. Customized Training Plan.
 - C. Customized Training Modification(s), if applicable.
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D. Customized Training Progress Report and Invoice.

Inquiries

Questions related to this policy should be directed to the Administrative Entity at (575) 744-4857.

Attested

This policy was reviewed and approved by the SAWDB on March 26, 2026.

Jacqueline Fryar

SAWDB Chair