WORKFORCE SYSTEM GUIDANCE No. 02-2015, July 22, 2015

TO: PENNSYLVANIA WORKFORCE DEVELOPMENT BOARD
BUREAU OF WORKFORCE DEVELOPMENT ADMINISTRATION
BUREAU OF WORKFORCE PARTNERSHIP AND OPERATIONS
CENTER FOR WORKFORCE INFORMATION AND ANALYSIS
BUREAU OF LABOR LAW COMPLIANCE
LOCAL ELECTED OFFICIALS
LOCAL WORKFORCE DEVELOPMENT BOARD CHAIRS AND EXECUTIVE DIRECTORS
REGISTERED APPRENTICESHIP PROGRAM SPONSORS

FROM: Diane Bosak
Deputy Secretary for Workforce Development

SUBJECT: Eligible Training Providers—Initial Implementation of the Workforce Innovation and Opportunity Act

I. Purpose. The purpose of this guidance is to provide technical assistance to Chief Elected Officials and other local workforce system stakeholders with ensuring participant access to a variety of quality training programs. A primary focus of the Workforce Innovation and Opportunity Act (WIOA or Opportunity Act) is the responsibility that local workforce development boards have to operate and publicly disseminate the statewide eligible training provider list (ETPL) and work directly with training providers to facilitate the timely submission of complete, acceptable applications. This guidance highlights and clarifies changes, as well as applicable benchmarks during this transition, to assist local boards and relevant partners in adjusting their processes to comply with WIOA requirements.

II. References.

- Workforce Innovation and Opportunity Act-Notice of Proposed Rulemaking, 80 FR 20689
- Training and Employment Guidance Letter (TEGL) No. 3-15, Guidance on Services Provided through the Adult and Dislocated Worker Program under the Workforce Innovation and Opportunity Act (WIOA or Opportunity Act) and Wagner Peyser, as Amended by WIOA, and Guidance for the Transition to WIOA Services, July 1, 2015
- Workforce Investment Information Notice No. 1-07, Change 1, WIA Certification Process for Eligible Training Programs/Providers (ETPP), June 24, 2011
III. Opportunity to Submit Comments. This guidance includes the criteria, information requirements, and procedures for providers of training services to become eligible to receive WIOA title I-B funds. Any interested party wishing to comment on this guidance must do so, in writing, by 4:00 PM on Friday, August 21, 2015. Comments may be emailed to the following resource account: RA-LI-BWDA-Policy@pa.gov

IV. Background. The Workforce Investment Act of 1998 (WIA) required the establishment of the eligible training provider list to ensure informed customer choice, performance accountability, and continuous improvement. WIOA builds upon and modifies the system in place under WIA title I by retaining much of the structure of WIA with critical changes to promote greater coordination and alignment. WIOA title I-B assigns responsibilities to the state and local levels to support participants in need of training services, for the purpose of enhancing their job readiness or career pathway, ensuring their access to career training through a list of approved training providers and their programs. This guidance provides information and direction to support and govern the operation and dissemination of the commonwealth’s statewide eligible training provider list.

V. Definitions.

- Commonwealth Workforce Development System (CWDS) is the management information system of record used for all data collection and reporting in Pennsylvania.
- Department is the Pennsylvania Department of Labor & Industry, which has been designated by the governor to serve as the state administrative entity/state workforce agency.
- Eligible Training Provider is a provider of training services who has met the eligibility requirements to receive WIOA title I Adult and Dislocated Worker funds to provide training services to eligible individuals.
- Eligible Training Provider List (ETPL) is the commonwealth’s statewide list of approved providers of training services who are eligible to receive WIOA title I-B funds. This list was previously known as Pennsylvania’s statewide eligible training program/providers (ETPP) list.
- PA CareerLink® is the registered trademark for Pennsylvania’s one-stop centers.

VI. Eligibility.

A. Eligible Providers of Training Services. To be an eligible provider of training services and receive WIOA title I-B funds, an entity must qualify as one of the following:

1. An institution of higher education that provides a program leading to a recognized post-secondary credential;
2. An entity that carries out programs registered under the Act of August 16, 1937 (commonly known as the “National Apprenticeship Act”; 60 Stat. 664, Chapter 663, 29 U.S.C. 50 et seq.); or
3. Another public or private provider of a program of training services, which may include joint labor-management organizations, and eligible providers of adult education and literacy activities under WIOA title II, if such activities are provided in combination with occupational skills training.

A training provider described in (1) or (3) above shall comply with the criteria, information requirements and procedures established within this guidance. A provider described in (2) above shall be included on the statewide eligible training provider list if the provider remains registered with the U.S. Department of Labor’s Office of Apprenticeship.
B. Eligible Programs of Training Services. A program of training services is defined as: one or more courses or classes, or a structured regimen that leads to a recognized post-secondary credential, secondary school diploma or its equivalent; employment; or measurable skill gains toward such a credential or employment. These training programs could be delivered in person, on-line, or in a blended approach.

VII. Eligible Training Providers - Statewide Eligible Training Provider List. The Department is responsible for the development, maintenance and dissemination of the ETPL. Only providers that the Department determines to be eligible, as required by WIOA Section 122 may receive title I-B funds and inclusion on the statewide eligible training provider list.

A. Eligibility Exemptions.

1. Providers of OJT, customized training, incumbent worker training, internships, paid or unpaid work experience opportunities, transitional employment activities, and youth workforce investment activities are not included on the commonwealth’s statewide eligible training provider list. However, such providers are considered eligible training providers if they meet the criteria established by the Department. Local boards may establish additional criteria for program eligibility within a local area.

2. Providers of registered apprenticeship programs are not subject to the requirements of the commonwealth’s statewide eligible training provider list. However, such programs will be added to this list if the program sponsors indicate their interest to be included on the list and provide the required information. Registered apprenticeship programs will remain eligible so long as the program is registered with the U.S. Department of Labor’s Office of Apprenticeship.

3. Instances where the local board determines there are insufficient numbers of eligible providers of training services in the local area.

4. Where the local board determines an exception is necessary to meet the needs of individuals with barriers to employment (including assisting individuals with disabilities or adults in need of adult education and literacy services).

5. Where the local board determines that it would be most appropriate to award a contract to an institution of higher education or other eligible provider to facilitate the training of multiple individuals in in-demand industry sectors or occupations (so long as the contract does not limit customer choice).

6. Eligible training providers of youth workforce investment activities.

7. Pay-for-performance contracts.

Note. In certain circumstances, a local workforce development board may determine that a contract for services can be used instead of individual training accounts (ITAs) to provide training services. If local boards elect to do so, the WIOA local plan must describe the process to be used in selecting providers under a contract for services. See Appendix B, Contracting for Training Services, for more information.
B. Criteria and Information. To be eligible for inclusion on the ETPL, all entities must comply with the following criteria and informational requirements in this section:

1. **Transitional eligibility.** To facilitate the transition of eligible training providers and program services from WIA to WIOA, providers and programs made eligible under WIA during Program Year (PY) 2014 may continue to be eligible to provide training services and for inclusion on the eligible training provider list through December 31, 2015.

   These training providers and programs are considered transitionally eligible, or “grandfathered” into WIOA, until the end of this transition period. Transitionally eligible providers and programs are subject to the criteria, information and procedures for continued eligibility after such time. On or before November 1, 2015, training providers must submit completed applications for continued eligibility as provided (VII.C.2. Continued eligibility). If a training provider is not approved for continued eligibility by December 31, 2015, such provider will be removed from the ETPL until such time as the provider is determined eligible.

2. **Initial eligibility.** Training providers and programs not currently on the commonwealth’s statewide eligible training provider list are ineligible for transitional or continued eligibility at this time. Such training providers and programs must submit an initial application for determination of eligibility. Initial eligibility is granted for one (1) year (July 1–June 30). Eligibility is determined on a program-by-program basis for each provider based on the established criteria provided.

   To be considered for initial eligibility, training providers (and/or their respective program as applicable) must:

   - Have been in operation at least twelve (12) months;
   - Assure and/or demonstrate full compliance with nondiscrimination and equal opportunity laws;
   - Provide physical and programmatic accommodations as required by Section 504 of the Rehabilitation Act of 1973, as amended; the Americans with Disabilities Act of 1990, as amended; Section 188 of WIOA; and the regulations implementing these statutory provisions;
   - Assure and/or demonstrate financial capacity — the ability to administer funds, following accepted accounting practices: registered and in good standing with the state Unemployment Insurance (UI) agency; no outstanding citations from the Office of the Attorney General, Fair Labor Practice or Consumer Protection Division within the prior five (5) years; no willful or repeat violations issued by the US DOL Occupational Safety and Health Administration (OSHA); an active workers’ compensation insurance policy; and provide a financial statement (or similar vetting source).
   - Attest to the accessibility of training services throughout the commonwealth, including rural areas and use of technology;
   - Demonstrate effectiveness in serving individuals with barriers to employment;
   - Agree to permit on-site visits by any federal, state or local agency as legally authorized to monitor activities for which funds have been provided;
   - Provide performance data as required;
   - Submit student data as required;
Accept Individual Training Accounts (ITA) or contracts for services so long as admission and program performance requirements have been met;

Assure the timely and accurate reporting of required information; and

Include the following information to facilitate informed consumer choice and ensure program quality, accessibility and accountability:

- Description of the training program, including all costs associated (tuition, books, fees, etc.);
- Evidence of state licensure requirements of training providers, and licensing status of providers of training services, as applicable;
- Program completion rate for all individuals participating in the applicable program;
- Evidence supporting the provider and/or program business and industry partnerships;
- Description of credential earned to include (at minimum):
  - Information supporting applicable training program leads to a post-secondary credential, an industry-recognized credential; and a detailed description of the credential;
  - Ability to provide services to incumbent workers and individuals with barriers to employment; and
  - Data regarding program alignment with in-demand sectors and occupations.

Complete additional information as included in the initial eligibility application.

3. **Continued eligibility.** Under the requirements of WIOA sec. 122, the procedures for determining eligibility of providers are established at the state level and include application and continued (renewal) procedures, eligibility criteria, and information requirements for training providers and training programs to receive funds under WIOA title I–B. The Department will review training provider eligibility information and assess the renewal of training provider eligibility biennially. The Department may utilize such procedures to establish minimum levels of training provider performance as criteria for continued eligibility.

Pennsylvania’s phased approach to implementing eligible training provider list reporting and performance appraisal began on July 1, 2015, and will continue through 2018.

Continued eligibility is granted for a period of two (2) years. Eligibility is determined on a program-by-program basis for each provider based on the established criteria provided. Two groups of providers are subject to the requirements for continued eligibility — transitional (new) training providers that were previously eligible under WIA (following the Department’s transition period, which ends December 31, 2015); and new training providers whose initial eligibility expires after one (1) year (July 1 - June 30).

In addition to the aforementioned criteria to be considered for initial eligibility, training providers applying for continued eligibility must:

- Meet the minimum performance criteria as established by the Department (available in greater detail at a future date), which includes eligible training provider submission of the following elements for the most recent year, and three (3) preceding years (if applicable) of performance information:
Employment and earnings outcomes for all individuals in a program of study;
Post-secondary credentials offered;
Program costs per student by type of training;
Program completion rate for all individuals participating in the applicable program;
Total number of individuals exiting the program by type of training entity;
Total number of individuals exiting the program by title I-B funding stream;
Number of participants who received training under title I-B programs (demographics):
  - Number of participants with barriers to employment;
  - Number of participants by race, ethnicity, gender and age;
  - Number of participants by type of training entity.

- Provide information that is reported to state agencies on federal and state training programs other than WIOA title I-B programs, including PA CareerLink® partner programs;
- Provide information on the levels of performance for the commonwealth’s six (6) primary common measure indicators (with respect to all individuals engaging in the program of study):
  - Entry into unsubsidized employment at second quarter after exit;
  - Entry into unsubsidized employment at fourth quarter after exit;
  - Median earnings;
  - Attainment of post-secondary credentials;
  - Measurable skill gains; and
  - Effectiveness in serving employers.

The Department will take into account alternate factors for any performance information that is not yet available until such time as performance data is available (verifiable data to be made available by program year (PY) 2018).

4. Undue burden or extraordinary costs in providing information. A training provider may petition the Department if the provision of information required under this section would be unduly burdensome or costly.

Such a request must be submitted in writing to the address listed below and include the following:

- Include the nature of the request;
- Provide a detailed explanation that outlines why the provision of such information creates an undue burden or substantial hardship for the training provider.

PA Department of Labor & Industry
Bureau of Workforce Partnership and Operations
ATTN: Director
651 Boas Street, 12th Floor
Harrisburg, PA 17121

The Department will evaluate the request, determine if the provider has demonstrated that extraordinary costs or a substantial hardship exists, and offer applicable assistance.
5. **Advertising Restriction.** Eligible training providers are strictly prohibited from advertising their respective entity as an approved statewide workforce development training provider.

C. **Procedures.**

1. **Initial eligibility.** Initial eligibility procedures apply only to providers that were not previously eligible under WIA or WIOA. Training providers who are not currently included on the statewide eligible training provider list and choose to apply as an eligible provider of training services must complete an application in the Commonwealth Workforce Development System (CWDS).

   a. Local workforce development boards solicit training providers in their local area to become an eligible training provider; training providers may independently apply to be an eligible training provider of WIOA title I-B services.

   b. Providers seeking eligibility must complete an application in CWDS.

   c. Upon receipt of completed application and required information, the Department and the appropriate local workforce development board review the application and each proposed program.

   d. The local workforce development board will make its recommendation to the Department through CWDS; the Department will make the final eligibility determination and add the program(s) to the ETPL if the determination is favorable.

   e. Once the Department has approved eligibility, the local board must ensure the provider completes a Memorandum of Understanding covering use of Personally Identifiable Information (PII) in Student Data, PA wage records, PA employment records, WRIS2, and FEDES, as applicable.

   f. The Department will make a final determination with regard to eligibility.

   g. New providers will be added to the eligible training provider list as they become eligible. Initial eligibility remains in effect at least one (1) year.

2. **Continued eligibility.** Training providers who currently have programs listed on the eligible training provider list and seek to have their programs remain on the list after December 31, 2015, may begin to apply for continued eligibility beginning October 1, 2015. The renewal process is as follows:

   a. The process for requesting continued eligibility will be the same as parts b through f under the procedures for initial eligibility.

   b. The period of eligibility will last from January 1, 2016 through December 31, 2018, unless an entity is removed for cause.

3. **Registered Apprenticeships.** Providers of National Apprenticeship Act programs (registered apprenticeships) are exempted from meeting any additional criteria; submitting performance data; or undergoing a state review during the initial or continuing eligibility determination process. Although registered apprenticeship programs are not subject to the same review procedures as other providers, the Department must verify the status of the registered apprenticeship programs in order to remove from the list any apprenticeship programs that are no longer registered.
Initially, all registered apprenticeships in Pennsylvania will receive a letter from the Department with regard to the procedures required for inclusion on the ETPL (opt-in) and subsequent removal (opt-out).

All registered apprenticeship programs are required to provide the following information to the Department as part of their procedures for inclusion on the statewide eligible training provider list:

- Occupations included within the registered apprenticeship program;
- The name and address of the registered apprenticeship program sponsor;
- The name and address of the related technical instruction provider, and the location of instruction if different from the program sponsor’s address;
- The method and length of instruction; and
- The number of active apprentices.

Registered apprenticeship program sponsors that do not provide the related technical instruction portion of the apprenticeship program (as outlined above) may be required to provide additional information about their education provider, including the cost of the instruction.

In addition to the information required for inclusion on the ETPL, registered apprenticeship programs may provide performance data and/or other information as a strategy to publicize success and remain competitive in diverse consumer choice-driven market.

The Department will verify the registration status of apprenticeship programs. Once the registration status has been confirmed, the entity will be added to the ETPL.

Registered apprenticeship programs will be added to the ETPL on an on-going basis. As apprenticeship programs are constantly added to the federal and SAA databases; it is likely such programs may seek to be included on the ETPL. Therefore, data collection on new registered apprenticeship programs will be conducted on at least a bi-annual basis.

D. Denials or Removals.

1. Denials for initial or continued eligibility may be based on:
   - Incomplete or untimely application submission;
   - Failure to meet established criteria;
   - Intentionally supplying inaccurate information; and
   - Substantial violations of any provisions of federal, state, or local statutes, regulations, policies or procedures.

2. Removals from the list may be based on:
   - Failure to provide required data;
   - Failure to notify of program changes including, but not limited to, costs, location of training, or a change in the program any time after its original approval;
   - Failure to meet established criteria;
- Failure to meet minimum levels of performance
- Intentionally supplying inaccurate information;
- Substantial violations of any provisions of federal, state, or local statutes, regulations, policies or procedures; and
- Conduct that is either unreasonable or unprofessional.

VII. **Eligible Training Providers - Local Workforce Development Area List.** Providers of OJT, customized training, incumbent worker training, internships, paid or unpaid work experience, or transitional employment are required to provide performance information established by the Department. Although these providers are not included on the statewide eligible training provider list, these entities are considered to be eligible providers of training services and as such must meet the Department’s criteria for eligible work-based training providers.

Only a provider that a local board determines to be eligible in a local workforce development area will be approved for inclusion on a local eligible training provider list and may receive WIOA title I-B funds for the provision of approved work-based training program. Working collaboratively with the local board, PA CareerLink® operators must collect information (including but not limited to performance information) as required and determine whether the provider met the established criteria. Operators are required to disseminate a list of providers that have met the eligibility criteria, along with the relevant performance information, through the local area's workforce delivery system.

PA CareerLink® operators must ensure that work-based training programs are employer-driven with the goal of unsubsidized employment after participation. Additionally, operators must be mindful of the explicit prohibition on the use of work-based training funds which includes OJT, customized training, incumbent worker training, transitional jobs or registered apprenticeship for assisting, promoting, or deterring union organizing activities.

Work-based training can be an effective strategy for engaging employers across the workforce system to align training with needed skills and matching employers with qualified workers; as well providing additional opportunities for training participants build their skills, find high-quality work and advance in their careers over time. Each of these work-based models can be utilized to target different job seeker and employer needs, and enhance the overall workforce system throughout the commonwealth.

A. **Criteria and information.** Work-based training providers must provide the local one-stop operators with performance information (to be) established by the Department as well as other information required by a local workforce development board as outlined in its WIOA local plan.

B. **Procedures.** Local workforce development boards must establish procedures for training providers that the local board may approve to be included on the local area’s list of eligible training providers as described in this section. Such procedures will be outlined in the WIOA local plan.

C. **Denials or removals.** Local workforce development boards must take into consideration each of the factors shown in Section X.A.4. *Denials or Removals*, when evaluating whether to approve eligibility or remove a provider from the local list. A local board shall deny eligibility or remove a training provider from a local list if the provider intentionally supplied inaccurate information or substantially violated any provisions of federal, state, or local statutes, regulations, policies or procedures.
VIII. **Requirements for all Eligible Training Providers:**

A. **Compliance.** Eligible training providers must comply with all federal, state, or local statutes, regulations, policies and procedures.

B. **Repayment.** A provider of training services whose eligibility is terminated under (A) or (B) above shall be liable for the repayment of funds received under Title I-B of WIOA (or Title I of WIA, as was in effect on the day before the enactment of WIOA) during the period of noncompliance.

C. **Reapplication.** A training provider or program that has been denied for continued eligibility or terminated, may apply for eligibility as follows:

1. **Performance.** Providers may apply to have their training courses or programs of study certified one (1) year from the date of the final denial or removal action taken either at the state or local level.

2. **Violations of WIOA.** Providers that were removed from an eligible training provider list may reapply two (2) years from the date of the final termination action taken either at the state or local level.

3. Unreasonable or unprofessional conduct. Providers that were removed from the eligible training provider list may reapply one (1) year from the date of the final removal action.

D. **Construction.** The contents of this section shall be construed to provide remedies and penalties that supplement, but do not supplant, applicable civil and criminal remedies and penalties specified in other provisions of law.

E. **Requests for Appeal.** Training providers may file complaints with regard to the denial of a provider’s application for initial or continued eligibility listing on the ETPL or the removal of a program(s) already listed on the ETPL.

Such requests must include the following:

- A statement of the desire to appeal;
- Specification of the program in question; and
- Detailed explanation of the reasons claimed that the denial or removal was erroneous.

All appeals must be submitted in writing within 30 calendar days from the date of the rejection notice or notice of suspension of eligibility. Such appeals may be addressed to the Secretary of the Pennsylvania Department of Labor & Industry via the following:

PA Department of Labor & Industry  
Bureau of Workforce Partnership and Operations  
651 Boas Street, 12th Floor  
Harrisburg, PA 17121
IX. **Roles of Local Workforce Development Boards.** In accordance with WIOA Section 122, and in collaboration with the Department, the local board satisfies the consumer choice requirement for training services by:

- Determining the initial verification of eligibility of entities providing a program of training services, vetting the renewal of eligible providers, and considering the possible termination of an eligible provider due to the submission of inaccurate eligibility and performance information or the provider’s substantial violation of any provisions of federal, state, or local statutes, regulations, policies or procedures;

- Working with the Department to ensure there are sufficient numbers and types of providers of training services, including eligible providers with expertise in assisting individuals with disabilities and adults in need of adult education and literacy activities described under WIOA sec. 107(d)(10)(E);

- Ensuring the dissemination and appropriate use of the ETPL through the local one-stop system;

- Soliciting training providers within and outside of their respective local areas as deemed appropriate to ensure a competitive market designed to promote consumer choice and achieve successful implementation of data-driven career pathways and sector strategies;

- Receiving performance and cost information from the Department and disseminating this information throughout the one-stop delivery systems; and

- Providing adequate access to services for individuals with disabilities.

Beyond the local board’s statutory responsibilities, local workforce development boards may:

- Establish additional eligibility criteria, information requirements, and minimum performance levels for local providers beyond what is required by the Department. Note: Any additional requirements imposed by a local board will only affect a program’s eligibility and performance requirements within the local area.

- Request that the provider of training services explain how the training program specifically links to occupations that are in demand within the local area;

- Request specific program performance and cost information particular to a local area where programs are offered at multiple sites;

- Request information from training providers that indicates how programs are responsive to these local requirements.

X. **Training Providers Located outside of Pennsylvania.** WIOA section 122(g) allows for individual participants to choose training providers located outside the local area, as well as in other states, in order to expand the array of training options available for individuals seeking training.

During the WIOA initial transition period, if a participant who resides in Pennsylvania requests to be served by a training provider that has been approved as an eligible training provider in a bordering state, the local workforce development board must ensure that the criteria and information for such eligibility align with those of the commonwealth.

Additionally, any out-of-state provider that does not currently have a physical presence in Pennsylvania, but seeks to be included on Pennsylvania’s ETPL, must follow the procedures outlined above in Section VII. C.1. **Initial Eligibility.**
XII. **Contact Entity.** Technical assistance and/or inquiries regarding this guidance should be directed to the Pennsylvania Department of Labor & Industry, Director of the Bureau of Workforce Development Administration, 651 Boas Street, 12th Floor, Harrisburg, PA 17121.

XI. **Rescissions.** None

XII. **Appendices.**

  - **Appendix A:** Work-based Training
  - **Appendix B:** Contracting for Training Services
Appendix A: Work-based Training

The following outlines pertinent information for implementing work-based training into the Department’s vision for an improved eligible training provider system:

**On-the-job training (OJT).** On-the-job training is a type of training that is provided by an 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.

On-the-job training is primarily designed to provide a participant with the knowledge and skills necessary for the full performance of the job. OJT is a critical tool that can help jobseekers enter into successful employment and should have positive employment and earnings outcomes.

This type of training may be provided under contract with an employer in the public, private non-profit, or private sectors. Contracts must not be entered into with an employer that 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, employment benefits, or working conditions at the same level as other employees performing the same type of work for the same length of time. These contracts must be limited in duration to the time necessary for a participant to become proficient in the occupation for which they are receiving the OJT training. When determining the length of the contract, the Department or local boards must take into account the skill requirements of the occupation, the academic and occupational skill level of the participant, prior work experience, and the participant’s individual employment plan.

On-the-job training contracts may be made with a registered apprenticeship program for training participants. These contracts made with the employer, and registered apprenticeships generally involve both classroom and on-the-job instruction. The OJT contract may be made to support the OJT portion of the registered apprenticeship program.

**Customized training.** Customized training is designed to provide local areas with flexibility to ensure that training meets the unique needs of the job seekers and employers or groups of employers.

Customized training is to be used to meet the special requirements of an employer or group of employers, conducted with a commitment by the employer to employ all individuals upon successful completion of training. The employer must pay for a significant share of the cost of the training. Proposed WIOA § 680.770 identifies the eligibility requirements for employed workers to receive customized training. There may be instances where a worker is employed but then receives customized training under a contract between the local area and the employer. In order for the employed worker to qualify, the employee must not be earning a self-sufficient wage as determined by local board policy, the requirements of customized training in proposed § 680.760 must be met, and the training must incorporate new technologies, processes, or procedures; skills upgrades; workplace literacy; or other appropriate purposes, as identified by the local board.
**Incumbent worker training.** WIOA explicitly allows for provision of incumbent worker training at the local level. This type of training is designed to either assist workers in obtaining the skills necessary to retain employment or to avert layoffs and must increase both a participant’s and a company’s competitiveness. This training should, wherever possible, allow the participant to gain industry-recognized training experience, and ultimately should lead to an increase in wages. An ideal incumbent worker training would be one where a participant acquires new skills allowing him or her to move into a higher skilled and higher paid job within the company, thus allowing the company to hire a job seeker to backfill the incumbent worker’s position.

To receive incumbent worker funding under WIOA, an incumbent worker must have an employer-employee relationship and an established employment history with the employer.

The employer or group of employers must pay for a portion of the cost of providing the training to incumbent workers. Proposed WIOA § 680.810 provides the criteria a local board must use when deciding on using funds for incumbent worker training with an employer. These factors may include the number of employees in training, wages and benefits (including post-training increases), and the existence of other training opportunities provided by the employer. Cost-sharing requirements for employers participating in incumbent worker training to pay for the non-Federal share of the cost of providing training to incumbent workers of the employers must be taken into consideration.

**Transitional jobs.** Transitional jobs are time-limited work experiences that are subsidized in the private, non-profit, or public sectors for individuals with barriers to employment who are chronically unemployed or have an inconsistent work history.

Transitional jobs can be effective solutions for individuals to gain necessary work experience that they would otherwise not be able to get through training or an OJT contract. The goal is to establish a work history for the individual, demonstrate work success, and develop skills that lead to entry into unsubsidized employment.

The difference between a transitional job and an OJT contract is that in a transitional job there is no expectation that the individual will continue his or her hire with the employer after the work experience is complete.

Both training providers and OJT providers must be providing the highest quality training to participants. OJT contracts must be continually monitored so that WIOA funds provided through OJT contracts are providing participants with successful employment. It is important that OJTs have a strong ability to provide participants with in-demand skills with opportunities for career advancement and employers with a skilled workforce.
Appendix B: Contracting for Training Services

Contracting for training services. In certain circumstances, a local workforce development board may determine that a contract for services can be used instead of individual training accounts (ITAs) to provide training services. If local boards elect to do so, the WIOA local plan must describe the process to be used in selecting providers under a contract for services. The process must include a public comment period for interested providers of at least thirty (30) days. The following are guidelines for local boards in regard to contract for training services:

1. Local boards may determine that there is a training services program of demonstrated effectiveness offered in the area by a community-based organization (CBO) or another private organization to serve individuals with barriers to employment, and utilize a contract for services instead of an ITA. In doing so, the local board must develop criteria to be used in determining demonstrated effectiveness, particularly as it applies to the individuals with barriers to employment to be served. The criteria may include, but is not limited to:
   - Financial stability of the organization;
   - Demonstrated performance in the delivery of services to hard to serve participant populations through such means as program completion rate; attainment of the skills, certificates or degrees the program is designed to provide; placement after training in unsubsidized employment; and retention in employment; and
   - How the specific program relates to the workforce investment needs identified in the WIOA local plan.

2. Local boards may determine that it would be most appropriate to contract with an institution of higher education or other eligible provider of training services to facilitate the training of multiple individuals in in-demand industry sectors or occupations, provided that the contract does not limit consumer choice.

3. Local Board may consider entering into a pay-for-performance contract with eligible training providers. In doing so, the local board must ensure that the contract is consistent with federal and state statute and regulation.