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## STATE INSTRUCTION NUMBER 21-02

**To:** Local Workforce Area Signatory Officials  
Local Workforce Area Board Chairs  
Local Workforce Area Administrators

**Subject:** Training or Contract Exceptions to ITA-funded Training

**Issuance Date:** July 14, 2021

**Effective Date:** Immediately

**Purpose:** To provide guidance on when and how a Local Workforce Development Board (LWDB) may utilize a training contract to provide occupational training to Adult and Dislocated Worker (DW) program participants in lieu of an Individual Training Account (ITA).

**References:**

- Workforce Innovation and Opportunity Act, Public Law 113-128, § 134(c)(3)(G)(ii)
- 20 CFR Part 680, Subparts C and D; 20 CFR § 680.320, 680.340, 680.510, 680.530
- Training and Employment Guidance Letters (TEGLs) 19-16, 8-19
- State Instruction (SI) 20-03

**Background:** WIOA is designed to help job seekers access employment, education, training, and support services to succeed in the labor market and to match employers with the skilled workers they need to compete in the global economy. In order to achieve these goals, the workforce development system established under WIOA emphasizes informed consumer choice, job-driven training, provider performance, and continuous improvement. The quality and selection of providers and programs of training services are vital to achieving these core principles. The selection of training services should be conducted in a manner that maximizes consumer choice, is linked to in-demand occupations, is informed by the performance of relevant training providers, and coordinated to the extent possible with other sources of assistance.

The Eligible Training Provider List (ETPL) is compiled to provide participants a full array of training programs designed to meet their needs for job readiness or a career pathway, and to provide participants the information needed to make an informed customer choice concerning training providers and programs. WIOA requires states to develop procedures to determine eligibility for a variety of quality training providers and programs, and to establish, maintain,

and disseminate an ETPL, including accompanying performance and cost information to LWDBs, members of the public, the One-stop delivery system and its program partners, and the secondary and postsecondary education systems. Only approved eligible training providers (ETPs) and programs listed on South Carolina's ETPL will be utilized for WIOA Individual Training Accounts (ITAs). The South Carolina ETPL is housed on the Palmetto Academic and Training hub (PATH) website, [www.scpaath.org](http://www.scpaath.org).

**Policy:** WIOA authorizes various funding mechanisms for allowable participant training. These mechanisms include ITAs and training contracts. An ITA is the primary method to be used for procuring training services under WIOA. However, in certain circumstances, a training contract may be used to provide training services, instead of an ITA. These circumstances are referred to as "training exceptions" or "contract exceptions." Training contracts may only be used if at least one of five circumstances applies and the process for their use is described in the Local Workforce Development Area's (LWDA's) local plan.

**NOTE:** LWDA's must modify and resubmit their local plan prior to the use of a contract exception if the existing plan does not describe the use of the exception. Additionally, the LWDB must have fulfilled the consumer choice requirements that a LWDA has a full ITA system in place even if it decides to provide training through contracts.

The five "training exceptions" or "contract exceptions" are as follows:

1. On-the-job training (OJT), which may include paying for the OJT portion of a Registered Apprenticeship program (RAP), customized training, incumbent worker training (IWT), internships, paid or unpaid work experiences, and transitional employment
2. If the LWDB determines that there are an insufficient number of ETPs in the LWDA to accomplish the purpose of a system of ITAs

**NOTE:** This determination process must include a public comment period for interested providers of at least 30 days and must be described in the local plan.

**EXAMPLE:** One potential criteria for "insufficiency" is when no ETP program is available for an identified (either state or local) in-demand occupation or industry and the only way to procure the training would be through contracting directly with a provider.

3. To use a training services program of demonstrated effectiveness offered in a LWDA by a community-based organization or other private organization to serve individuals with barriers to employment

**NOTE:** The LWDB must develop criteria to be used in determining "demonstrated effectiveness," particularly as it applies to individuals with barriers to employment to be served. The criteria may include the following:

- Financial stability of the organization
  - Demonstrated performance in the delivery of services to individuals with barriers to employment 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
  - How the specific program relates to the workforce investment needs identified in the local plan
4. If the LWDB determines that the most appropriate training could be provided by an institution of higher education or other providers of training services in order to facilitate the training of a cohort of multiple individuals for jobs in-demand sectors or occupations, provided that the contract does not limit consumer choice
  5. If the LWDB determines that a pay-for-performance contract is suitable

**NOTE:** No more than 10 percent of the local funds may be spent on pay-for-performance contract strategies as they are defined in WIOA § 3(47). See 20 CFR §§ 683.500 – 683.510 for pay-for-performance contract requirements.

Additionally, a LWDB may determine that providing training through a combination of ITAs and contracts is the most effective approach. This approach could be used to support placing participants in RAPs and other similar types of training.

### **Consumer Choice Criteria**

Training services, whether funded by ITAs or under a training contract, must be provided in a manner that maximizes informed consumer choice in selecting an ETP in accordance with the goals and objectives outlined in the participant's individual employment plan (IEP). Each LWDA, through the One-stop center, must make SC's ETPL available to participants. The ETPL is a comprehensive list of approved ETPs and programs of training, including program descriptions, performance, and cost information. Priority consideration must be given to programs of training that lead to recognized postsecondary credentials that are aligned with in-demand industry sectors or occupations in the LWDA.

A WIOA participant in South Carolina may choose a training provider located outside of the LWDA and/or outside of the state, including an online training program, in accordance with local policies and procedures. An out-of-state training provider must be included on that state's ETPL and South Carolina's ETPL in order to receive funding through an ITA. LWDA's are responsible for ensuring out-of-state providers offer quality training programs that meet local demand occupation requirements. In an effort to maximize consumer choice, LWDA's should consider out-of-area training providers in local policies and procedures, as appropriate.

## Training Provider Criteria

All training providers must meet the following requirements:

- Qualify as one of the following:
  - Institution of higher education that provides a program of training that leads to a recognized postsecondary credential
  - Entity that carries out apprenticeship programs, including Industry Recognized Apprenticeship Programs (IRAPs) and RAPs
  - Public or private training provider, including community-based organizations, joint labor-management organizations, pre-apprenticeship programs, and joint labor-management organizations
  - Provider of adult education and literacy activities, if such activities are provided concurrently or in combination with other training services
  - LWDB if it meets the conditions of WIOA § 107(g)(1)
- Be a legal entity
- Be registered or licensed by the appropriate governing board or agency prior to applying for placement on the ETPL
- Provide an appropriate program of training services (see below for program requirements)
- Have the ability to do all of the following:
  - Offer programs that lead to recognized postsecondary credentials or certifications
  - Meet the needs of local employers and participants
  - Serve individuals with barriers to employment
- Have refund policies specifying when refunds for tuition and other costs associated with the training program will be allowed that are in writing and are published to ensure students are aware of how to request a refund
- Have a written grievance policy for students to file complaints within an organization against faculty, staff, or other employees that is published to ensure that students are aware of how to file a complaint
- Comply with all applicable non-discrimination and equal opportunity provisions as potential recipients of WIOA funds, in accordance with WIOA § 188

**NOTE:** No individual in the United States may be excluded from participating in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any program or activity funded under WIOA Title I for any of the following characteristics:

- Race,
- Color,
- Religion,

- Sex (including pregnancy, childbirth and related medical conditions, transgender status, and gender identity),
- National origin (including limited English proficiency),
- Age (individuals aged 40 years and older),
- Disability, or
- Political affiliation or belief.

Additionally, no beneficiary of, applicant to, or participant in any WIOA Title I program may be discriminated against based on citizenship or participation in any program or activity funded under WIOA Title I.

### **Program of Training Criteria**

A training provider must provide a program of training services (one or more courses or classes, or structured regiment) that leads to one of the following:

- An industry-recognized certificate or certification, a certificate of completion of a registered apprenticeship, a license recognized by the State or the Federal government, or a postsecondary credential
- A secondary school diploma or its equivalent if such activities are provided in combination with other training services
- Employment
- Measurable skill gains toward a recognized credential or employment

Training programs may be delivered as stackable services and can be provided in-person, online, or in a blended approach. Certificates must recognize technical or industry/occupational skills for the specific industry/occupation rather than general skills. Programs of training must correspond to an occupation that is recognized by the LWDB as an in-demand occupation and demonstrate its program quality with at least one year of student performance data.

### **Performance Criteria**

When establishing training contracts, LWDA's must collect aggregate performance data from the training provider and determine that a provider's program of training meets the established LWDA's negotiated credential attainment performance goal for the applicable WIOA Title I program before entering into a training contract with the training provider. The LWDA's process of collecting and determining whether or not a provider's program meets the aforementioned criteria must be described in the LWDA's ITA policy and within their local plan if training contracts are being utilized.

For non-ITA training contract exceptions two through five, listed above, the LWDA must collect the following performance data from the previous program year (July 1 – June 30) prior to entering into a non-ITA training contract:

- The number of students who exited the program of training

**NOTE:** students who exited the program of training includes students who completed the program, either successfully or unsuccessfully, and students who dropped out of the program.

- The number of students that obtained a credential

### **SCWOS Training Contract Service Codes**

Non-ITA-funded training contract services must be recorded using the appropriate service codes in SC Works Online Services (SCWOS). Staff must further document the service by entering a corresponding case note, indicating the specific service and justification for entering the service code. The timely and accurate entry of the following service codes, with corresponding case notes, is critical for performance reporting and analysis of non-ITA training contracts.

- Service Code 364, Contract for Occupational Skills Training Non-ITA Insufficient Number of Eligible Training Providers
- Service Code 365, Contract for Occupational Skills Training Non-ITA Individuals with Barriers to Employment
- Service Code 366, Contract for Occupational Skills Training Non-ITA Pay-for-Performance
- Service Code 367, Contract for Occupational Skills Training Non-ITA Group Training

**NOTE:** For the most up-to-date Adult and DW service codes, see the “Adult/DW Service Code Definitions” document under Staff Online Resources in SCWOS.

**Action:** Please ensure that all appropriate staff receives and understand this policy.

**Inquiries:** Questions should be directed to [PolnPro@dew.sc.gov](mailto:PolnPro@dew.sc.gov).



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Technical Services, Policies, and Reporting