

TITLE 11 LABOR AND WORKERS' COMPENSATION
CHAPTER 2 JOB TRAINING
PART 20 WORKFORCE INVESTMENT ACT (WIA) CUSTOMIZED TRAINING

11.2.20.1 ISSUING AGENCY: New Mexico Office of Workforce Training and Development (OWTD).
[11.2.20.1 NMAC - N, 12/31/2005]

11.2.20.2 SCOPE: The Workforce Investment Act (WIA) state administrative entity (SAE), state workforce development board (SWDB), local workforce development boards (LWDBs) and all SAE WIA subrecipients.
[11.2.20.2 NMAC - N, 12/31/2005]

11.2.20.3 STATUTORY AUTHORITY: Workforce Development Act Chapter 50, Article 14, NMSA 1978.
[11.2.20.3 NMAC - N, 12/31/2005]

11.2.20.4 DURATION: Permanent.
[11.2.20.4 NMAC - N, 12/31/2005]

11.2.20.5 EFFECTIVE DATE: December 31, 2005 unless a later date is cited at the end of a section.
[11.2.20.5 NMAC - N, 12/31/2005]

11.2.20.6 OBJECTIVE: To establish requirements for local workforce investment boards (LWDBs) in the delivery of customized training services under the Workforce Investment Act (WIA)
[11.2.20.6 NMAC - N, 12/31/2005]

11.2.20.7 DEFINITIONS: [RESERVED]

11.2.20.8 BACKGROUND: Customized training is occupational training designed to meet the specific training needs of an employer or group of employers through a training curriculum that is "customized" to a WIA participant's skill needs. Under the terms of the customized training contract, the employer agrees to employ a participant upon completion of training and agrees to pay a minimum of 50% of the cost of the participant's training.
[11.2.20.8 NMAC - N, 12/31/2005]

11.2.20.9 ACTION: References include the following: Public Law 105-220, Workforce Investment Act (WIA), Section 101(8)(A)(B)(C), Section 122 (h)(1)(2), 20 CFR Part 652*et al.*, Section 663.430 (a)(i), Section 663.595, Section 663.715 (a)(b)(c), Section 663.720 (a)(b)(c), Section 663.730, Section 665.200 (b)(2), Section 667.268 (a)(2), Section 667.270, Section 667.272, Section 667.640 (b)(iii), Section 667.274 and Section 667.275.

A. LWDBs shall establish customized training programs that must comply with the following requirements:

(1) the employer makes a written commitment to employ the WIA participant upon successful completion of training; and
(2) the employer pays a *minimum* of 50% of the cost of the participant's training.

B. Customized training for **incumbent workers** must comply with the following requirements:

(1) the above requirements in Subsection A are met;
(2) the incumbent worker is not earning a self-sufficient wage as determined by the local workforce development board (LWDB); and
(3) the customized training relates to introduction of new technology, introduction of new production or service procedures, or upgrading to new jobs that require additional skills, workplace literacy or other appropriate purposes identified by the LWDB.

C. Customized training contracts are designed for a particular participant, employer or group of employers, and a training provider. Procurement of customized training contracts is conducted through noncompetitive negotiations. Documentation detailing how the price was derived must be developed and maintained.

(1) The assessment of the participant needs of the employer and skills to be learned shall be considered in developing the contract. The goal is to prepare the participant for long-term, unsubsidized employment based on the new or upgraded skills acquired through training.

(2) Customized training contracts shall not be written to provide skills for seasonal, temporary or intermittent employment.

(3) The LWDB shall make an effort to ensure that occupations obtained through customized training afford the participant the opportunity to become self-sufficient as defined in the local five-year plan.

D. LWDBs shall ensure that their written customized training include, at a minimum, the following:

- (1) agreement on the maximum allowable costs of training;
- (2) employer commitment to fund a *minimum* of 50% of training costs (not to include employee wages);
- (3) the length of training required;
- (4) description of occupations involved, skill(s) and competencies to be provided and learned;
- (5) performance measures outcome requirements, including for incumbent workers;
- (6) define what constitutes successful completion of training;
- (7) a provision for recoupment of overpayments;
- (8) a provision for termination for lack of funds, lack of participant attendance or failure of employer to comply with initial or upgraded employment requirements;
- (9) a provision for LWDB, state and federal monitoring and review of training records;
- (10) state taxpayer identification numbers for payment of state gross receipts tax and state unemployment compensation tax;
- (11) other provisions required by LWDB policy.

E. In determining an employer's viability for customized training contracts, the LWDB may consider the employer's past history with OJT contracts, finances, layoffs, relocation, and labor disputes, as well as the occupational and industry outlook. Contracts shall not be written with employers who failed to provide agreed upon employment to participants who completed training. LWDBs shall ensure compliance with the requirements in 20 CFR 663.730, 20 CFR 667.270 and 20 CFR 667.268.

F. LWDBs shall monitor each customized training contract through attendance and completion records to determine amounts claimed are substantiated and that training is being provided in accordance with the contract. Monitoring shall also include reviewing participant progress and a determination if supportive services are needed. LWDBs shall also monitor the work site upon placement of the participant after completion of training to document whether the participant is working in the agreed position, at the agreed salary, and utilizing the skills obtained through the customized training.

G. LWDBs shall make provisions for the maintenance and retention of all customized training records, including systems of issuance, funding obligations/expenditures, oversight and completion in accordance with WIA record retention requirements. Such records shall be retained for a period of three (3) program years from the date the individual participant exits unless an unresolved audit is pending. In that case, records must be retained until final resolution of the audit.

[11.2.20.9 NMAC - N, 12/31/2005]

11.2.20.10 RESCISSIONS: None. However, this rule supersedes State Information Notice (SIN) No. 44-00, "SAE guidance regarding OJT and customized training activities," dated September 8, 2000.

[11.2.20.10 NMAC - N, 12/31/2005]

11.2.20.11 CONTACT ENTITY: Inquiries regarding this rule should be directed to the state administrative entity (SAE) in Santa Fe at (505) 827-6827.

[11.2.20.11 NMAC - N, 12/31/2005]

11.2.20.12 DISTRIBUTION: SWDB and LWDB chairpersons, LWDB administrative entities, SAE WIA subrecipients, SAE legal counsel, SAE EEO officer, USDOL federal representative and New Mexico commission on public records.

[11.2.20.12 NMAC - N, 12/31/2005]

HISTORY OF 11.2.20 NMAC: [RESERVED]