

Frequently asked questions regarding non-ETP contract training

The Department fielded several questions in the past year from states and local areas that are working to diversify their training portfolios. This attachment seeks to answer some of the more common questions regarding training performance requirements and procedures.

- **Are all training providers subject to the ETP eligibility and data reporting requirements at WIOA Section 122(a)-(f)?**

Training providers are typically subject to the ETP eligibility and data reporting requirements; however, WIOA allows exceptions for certain training options based on their record of success and/or an inherent requirement for employers to hire participants. These work-based learning strategies include OJT, IWT, RAPs, and customized training. Additionally, WIOA allows local areas to pursue any allowable training activity through direct contracting with providers under certain circumstances. In these cases, providers are not responsible for satisfying ETP eligibility and performance requirements, although they must comply with nondiscrimination requirements. These training options are designed to meet specific employer needs and should be considered when available training programs and/or curricula do not meet the specific training requirements of employers.

As established in [20 CFR 680.530](#) and [TEGL No. 08-19](#), the Governor may establish performance criteria for OJT, IWT, customized training, and contracted training that are otherwise exempt from the Section 122(a) through (f) eligibility/performance requirements. Local workforce development boards must collect this information, if required, and determine whether the providers meet the Governor’s performance criteria before entering into contracts with training providers that meet these criteria. AJC operators must disseminate information identifying providers and programs that have met the Governor’s performance criteria, along with the relevant performance information about them, through the AJC delivery system.

- **May states establish performance or general criteria for non-ITA-based training, or are criteria only determined by the local workforce development boards?**

States may not outright prohibit or otherwise limit a local area’s ability to use non-ITA-based training. However, the state may establish policy that is not contradictory to statute, regulation, and guidance. Local WDBs therefore, may also set policies, but those policies must not conflict with state policy or WIOA. [TEGL No. 08-19](#) specifically states that the Governor may include performance criteria that must be met and reported when contracting for training services.

- **Under 20 CFR 680.320, one of the acceptable reasons for local workforce development boards to execute contracts directly with training providers is when it determines that there are an insufficient number of training providers within the local area. How does a local workforce development board determine that there are an inadequate number of providers?**

WIOA and its regulations do not address the process by which the local WDB determines that the number of training providers in the local area is insufficient. The state and/or local area may develop such criteria. As a reminder, the local plan must describe how contracts for training services will be procured.

One possible measure of “insufficiency” could be a situation when there is no ETP program 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. Another possible measure of “insufficiency” could be the lack of training providers with experience working with individuals with underserved populations, including individuals with disabilities, requiring contracting directly with a provider who provides customized employment services for youth and adults with disabilities who require such service in order to become employed in competitive, integrated employment. It is important to understand, however, that contracting with such providers cannot and must not replace serving individuals with disabilities in programs that are not disability-specific, if a particular individual with a disability is qualified for such a program and wishes to participate in it. *See* 29 CFR 38.12(c), (d). The non-disability-specific program retains the legal obligations to provide physically accessible facilities (where required), equally effective communications, and reasonable accommodations / modifications to participants with disabilities.

- **Are the processes used in determining an insufficient number of training providers described in the Local Plan annually or as modification to the plan?**

Any local area that wishes to contract with providers because there are an inadequate number of providers in the local area must provide notice of its intention to do so for a 30-day public comment period. The local WDB board may elect to do this concurrently with, or as a part of, the public comment period required of the local plan.

The state does not need to update the process for determining insufficiency of training providers unless that process changes. However, consistent with the requirements at 20 CFR 679.530, the Governor could conceivably require local areas to review specific local policies on a more frequent basis. ETA encourages states and local workforce development areas to reexamine their policies on a regular basis for the purposes of continuous improvement.

- **Is the Local Plan comment period an additional period to the 30-day comment period for interested providers?**

The regulation at 20 CFR 680.320 states that one of the circumstances in which mechanisms other than an ITA may be used to provide training services includes when the Local WDB determines there are an insufficient number of ETPs in the local area. The regulation also

states, “The determination process must include a public comment period for interested providers of at least 30 days and be described in the local plan.” Because the process must be described in the local plan, the minimum 30-day comment period under 680.320(a)(2) could be done either concurrently with the local plan comment period described in 20 CFR 679.550(b) or it may be done separately, so long as the local plan describes the determination process. The 30-day comment period under 680.320(a)(2) would be conducted consistent with the process described in the local plan.

- **How does the Local WDB determine program effectiveness?**

WIOA and its programmatic regulations do not prescribe the criteria a local WDB must use for determining program effectiveness for contract-based training. The local WDB must have standard criteria in place to determine demonstrated effectiveness of a given training program, and may include in the criteria, the list provided in 20 CFR 680.320(a)(3).

- **Can the state select the criteria from above that must be used? Can the state require additional criteria outside of what is stated above?**

The WIOA programmatic regulations reserve this process for the local area, but the state may require or encourage the use of certain criteria, including criteria that are not listed in 20 CFR 680.320(a)(3).

- **In terms of non-ITA training contracts and exceptions, what is the definition of a provider of training services? Is the term defined differently from an Eligible Training Provider?**

A training provider, as defined under WIOA, may be a local or national community-based organization or intermediary; a community college; a university; a joint-labor management organization; an Apprenticeship provider; a Title II provider; or another public or private provider of training services. These non-ITA contractors are not held to the same requirements as ETPs (with the exception of the requirement to comply with the WIOA nondiscrimination regulations at 29 CFR part 38) but should still provide quality training services.