

State of New Mexico
Waiver Request
On-the-Job Training (OJT) Employer Reimbursement

Federal statutory/regulatory requirements to be waived:

Pursuant to the waiver requirements and request process of Title I of the Workforce Innovation and Opportunity Act (WIOA) (at WIOA §189(i)(3)(B); 20 CFR §679.620 and TEGL 8-18) and the Wagner-Peyser Act, the New Mexico Department of Workforce Solutions (NMDWS), the designated state workforce agency for the State of New Mexico, is requesting a waiver of the requirements of WIOA §134(c)(3)(H)(i) and 20 CFR §680.720(b) in order to increase on-the-job training (OJT) employer reimbursement up to 90 percent for businesses with less than 50 employees. Pursuant to 20 CFR §680.720, employers may be reimbursed up to 50 percent of the wage rate of an OJT participant, and up to 75 percent using the criteria in 20 CFR §680.730, for the extraordinary costs of providing the training and additional supervision related to the OJT. This waiver request would allow for a sliding scale for OJT training employer reimbursements that ranges from 50 - 90 percent, dependent on the number of employees. New Mexico is requesting this waiver for the WIOA Title I 2021 program year (July 1, 2021 - June 30, 2022).

Actions for the removal of state or local statutory or regulatory barriers:

There are no state or local statutory or regulatory barriers to implementing the requested waiver.

State strategic goals/US Department of Labor priorities supported by waiver request:

NMDWS seeks to address and enhance critical business and workforce needs in the state through an incentivized, industry sector-based approach to workforce training. On-the-job training is a proven, reliable method to instill work-based training in an effective and efficient way that meets the immediate workforce needs of the state, especially in times of recovery from natural or other disasters. Employers need a durable and trained workforce, but when one is not readily available, quick and effective turnaround training is critical for the state's economy.

With the impact of COVID-19, the State of New Mexico is in need of such workforce training activities to provide immediate and effective relief to workforce shortages, especially in the following industry sectors: Healthcare, Aerospace and STEM, Intelligent Manufacturing, Sustainable and Value Added Agriculture, Sustainable and Green Industries, Film and Digital Media, Tourism and Outdoor Recreation, Information Technology and Cybersecurity, Education and International Trade. (Construction) While general academic knowledge is important, learning skills through hands-on training allows for a quick ramp-up of the state's workforce. OJT allows employers to meet their immediate and long-term objectives, while providing jobseekers with learning opportunities in an actual work environment that lead to a career pathway.

For smaller businesses and employers that do not typically have a large workforce on standby, this waiver will allow them opportunities to employ individuals who are dislocated from other employment due to the COVID-19 economic disaster, while still being able to utilize their limited resources for other critical aspects of business.

On-the-job training strategies prioritized by the state match USDOL's priority of work-based learning activities. OJT connects education and training strategies and fulfills the workforce gaps in industry sector-driven demand areas.

NMDWS will provide the following guidance for the increased reimbursement rate, once the waiver is approved:

Reimbursement and Contract Requirements 20 CFR 680.720. Reimbursements under OJT contracts are deemed to be compensation for the extraordinary costs associated with training participants and the cost associated with the lower productivity of the participants. The standard reimbursement rate for OJT contracts is up to 50%. (20 CFR 680.730) An OJT contract reimbursement rate may be up to 75% if a higher rate is justified based on one or more of the following factors:

- I. The characteristics of the participant (e.g. long-term unemployed, little or no work history, physical or mental disability, ex-felon);
- II. the size of the employer (50 or fewer employees);
- III. the quality of employer-provided training and advancement opportunities;
- IV. the training is in an apprenticeable occupation and the employer has agreed to sponsor a registered apprenticeship

When an approved and current USDOL ETA waiver is in effect, an OJT contract reimbursement rate may be up to 90% if the higher rate is justified based on one or more of the above factors.

Projected programmatic outcomes from waiver:

Approval of this waiver request would increase flexibility for smaller businesses to redirect their business resources to critical operational areas, and would increase their labor force, increasing their competitive position for jobs that are typically provided to larger companies and corporations that are able to absorb the cost of a larger workforce. The waiver would also build capacity for small businesses to draw from the local area's workforce talent, versus having to conduct costly and lengthy national recruitment activities. This waiver request's proposed scale for on-the-job training reimbursements is:

- 50 or fewer employees: up to 90 percent on-the-job training employer reimbursement
- 51-250 employees: up to 75 percent on-the-job training employer reimbursement
- > 250 employees: up to 50 percent on-the-job training employer reimbursement

NMDWS anticipates an increase in WIOA OJT participation should this waiver get approved, although a quantifiable amount is not readily apparent. Based on local outreach, there is certainty that employers have been impacted by the COVID 19 economy and are hesitant to hire. NMDWS has observed that the incentive of OJT funding not encourages employers to hire someone with a lower skillset, who they may not have otherwise hired. For instance, an employer planning to hire in June would be able to hire in February with the benefit of additional OJT funds. We have found that employers are more likely to participate in the OJT program when reimbursement rates are 75% or higher, and are more likely to provide valuable skills and in most cases retain the individual as an employee.

Individuals, groups or populations impacted by the proposed waiver:

NMDWS intends for this waiver to benefit the large number of jobseekers who have been dislocated by the COVID-19 economic disaster. NMDWS further intends for this waiver to benefit a large number of employers who are in critical need for an immediate workforce to address the significant demands placed on those specific industry sectors as a result of the COVID-19 crisis. Finally, NMDWS intends for this waiver to benefit the state's economic condition, which has been dramatically impacted as a direct result of COVID-19.

Long-term benefit to OJT participants:

NMDWS intends that this waiver will result in long-term benefits and gains to jobseekers by creating gainful and sustainable career pathways, as well as creating a sustainable trained workforce for employers for the long recovery period.

Procedure for monitoring progress of waiver implementation/collection of outcome information:

NMDWS will continue monitoring state and local area performance to assess the effectiveness of this waiver using both state and federal accountability systems to ensure that all negotiated performance measures are met including expenditure percentages, results are accurately reported and will provide necessary technical assistance to the local Boards, one-stop operators and service providers. As part of the monitoring and performance accountability process, NMDWS will collect data on waiver outcomes, which will be included in the WIOA Annual Report. Any waiver renewal requests will include the most recent available outcomes data.

Assurance of state posting of the request for public comment and notification of affected local workforce development boards:

NMDWS will provide for meaning public review and comment. It will publish the proposed waiver in compliance with New Mexico statutory requirements and will review and develop a response to all comments received. NMDWS notified all Boards that the agency is seeing this waiver request and sought their input before submitting this request to USDOL ETA.