

(b) Funds available under the program shall not be used for activities that induce, encourage, or assist any displacement of currently employed workers by trainees, including partial displacement by means such as reduced hours of currently employed workers, or replacement of laid off workers by trainees, or any relocation of operations outside of the State, resulting in a loss of employment at previous workplaces located in the State.

(c) No activities funded by the program shall impair existing contracts for services or collective bargaining agreements, except that activities which would be inconsistent with the terms of a collective bargaining agreement may be undertaken with the written concurrence of the collective bargaining unit and employer who are parties to the agreement.

(d) Each employer that receives customized training services shall contribute a minimum of 40 percent of the total cost of the customized training services, except that the Commissioner shall set a higher or lower minimum contribution by an applicant, if warranted by the size and economic resources of the applicant or other factors deemed appropriate by the Commissioner. Examples of contributions to the costs of services include items such as a portion of trainee wages, training material, direct funds and training personnel. Non-employer applicants may be required to contribute to the cost of customized training services at an amount determined by the Commissioner and/or otherwise demonstrate a commitment to training programs through identification of prior programs, staffing or other measures as determined by the Commissioner. However, applications of non-employers would not be rejected on the basis of an inability to make contributions.

(e) Each employer receiving customized training services shall hire or retain in permanent employment for a period of not less than six months each worker who successfully completes the training and education provided through the customized training program. Failure to adhere to this requirement may result in the employer's having to refund grant dollars allocated to train these workers. The employer shall be entitled to select those workers who will participate in the customized training, except that if any collective bargaining unit represents an employed worker, the selection shall be conducted in a manner acceptable to both the employer and the collective bargaining unit. The Commissioner of Labor shall withhold a minimum of 10 percent of the Award as final payment for customized training services contingent upon the hiring and retention of the workers completing the training program. The final payment amount will be stipulated in the contract for customized training services executed between the approved applicant for customized training services and the Department of Labor.

(f) The Department of Labor requires that if the company receiving financial assistance for customized training services relocates out of State within three years following

the ending date of the customized training contract, the company must return all monies provided to the company by the State for customized training services.

(g) Any employer seeking customized training services for workers represented by a collective bargaining unit shall notify the collective bargaining unit and permit it to participate in developing the plan. No customized training services shall be provided to a business employing workers represented by a collective bargaining unit without the written consent of both the business and the collective bargaining unit.

(h) Any employer receiving customized training services shall be responsible for providing workers' compensation coverage for any worker participating in the customized training.

Amended by R.1997 d.465, effective November 3, 1997.
See: 29 N.J.R. 3233(a), 29 N.J.R. 4690(a).

In (d), substituted "a portion of the trainee wages" for "training facilities"; and in (e), added requirement to retain trainees for not less than 6 months, inserted the second sentence, and set the minimum amount withheld by the Commissioner as 10 percent of the Award.

12:23-2.5 Review and evaluation of customized training applications

(a) In accordance with N.J.S.A. 34:15D-1 et seq., the factors that will be required in reviewing and evaluating and approving or disapproving applications for training services will at least include the following:

1. The number of jobs that the training will create, retain or upgrade;
2. How much the training will increase marketable skills and earning power of the participants;
3. How important the training is to the applicant's ability to either remain in business or to supply a trained workforce for occupations that are in demand;
4. What percentage of the individuals trained will receive training for work primarily in the direct production of goods and services;
5. How much the long-term Human Resources Development Plan will enhance the productivity and competitiveness of the employer's operations in the State and the employment security of workers employed by the employer in the State; and
6. The extent to which an applicant who is a previous recipient of a customized training contract has provided opportunity for occupational development, increased productivity and earning power.

(b) All applications will be reviewed and evaluated, with notice of approval or disapproval issued by the Department of Labor.

(c) No application will be funded unless approved by the Commissioner of Labor.

(d) All approved applicants will be required to submit information on training results as required by the Commissioner of Labor. These results may include, but are not limited to, the individual demographics of the participants, data on post training skills and wages, the impact of the training investment on company performance.

(e) The Commissioner retains the authority to modify application review factors based on the changing needs of the New Jersey economy and to establish appropriate application review and approval methods consistent with those conditions.

(f) Upon approval of the application, a contract for customized training services containing the terms and conditions of the application will be executed between the applicant and the Department. A copy of the mandatory contract provisions is available from the Department of Labor upon request.

(g) The grantee/contractor shall agree to make available to the Department all records and documentation necessary to monitor and evaluate their performance under the terms and conditions of the Customized Training contract.

(h) A for-profit grantee/contractor shall agree to provide a written report by an independent accountant on compliance with the terms and conditions of the grant agreement and applicable laws and regulations within 60 days of the conclusion of the contract, or within 60 days of the fiscal year end which includes the grant period. Such report on compliance can be part of the company's annual financial audit, or can be a separate report.

(i) A not-for-profit or governmental unit grantee/contractor shall agree to have completed a single audit under either OMB Circular A-128, "Audits of Institutions of Higher Learning and Other Non-Profit Institutions," or whichever OMB circular that pertains to their situation.

(j) All subgrantees/sub-contractors shall follow the same grantee/contractor audit requirements that pertain to their individual situations.

(k) All costs related to the independent audit and written reports by the accountant/auditor are the responsibility of the grantee. These costs cannot be included as part of the grant award.

(l) The Department reserves the right to conduct an audit of the grantee/contractor on all Workforce Development Partnership funds provided pursuant to the customized training contract.

(m) The grantee/contractor shall agree to list any new job openings with the Workforce New Jersey Division of Employment and Training which is the labor exchange provider of the One-Stop Career Centers.

Amended by R.1997 d.465, effective November 3, 1997.

See: 29 N.J.R. 3233(a), 29 N.J.R. 4690(a).

Deleted (a)6; recodified (a)7 as (a)6; and added (g) through (m).

12:23-2.6 Where to obtain and send an application

(a) Customized training applications may be obtained from the Department of Labor, Office of Customized Training.

(b) Assistance in completing an application is available from the Office of Customized Training.

(c) Completed applications should be forwarded to:

Division of Business Services
New Jersey Department of Labor
PO Box 933
Trenton, New Jersey 08625-0933

Amended by R.1997 d.465, effective November 3, 1997.

See: 29 N.J.R. 3233(a), 29 N.J.R. 4690(a).

12:23-2.7 Disclosure of information

(a) Disclosure of information obtained from applicants in the course of administering customized training services under the Workforce Development Partnership Program shall be authorized unless the information requested is non-public information as defined below:

1. Public information includes the name and location of applicants and approved applicants for customized training services as well as the number of trainees, type of training, grant amount and grant time period.

2. Non-public information includes all records concerning financial or proprietary information submitted by applicants or potential applicants for customized training services and by applicants approved for services.

(b) The Department of Labor may deny access to any correspondence, documents or other information where non-disclosure is necessary to protect the public interest.

12:23-2.8 Refunds and fines

(a) The Department has the authority to recover all customized training grants improperly paid for any reason, in accordance with N.J.S.A. 34:15D-19.

(b) A \$500.00 fine shall be imposed for each incident where the grant recipient fails to comply with the provisions set forth in the customized training contract. This includes the failure to file reports as directed including, but not limited to, the closeout report, impact analysis report and auditing report. Penalties for the failure to comply with WDP contribution requirements are found at N.J.A.C. 12:16.