



U.S. Department  
of Transportation

**Federal Highway  
Administration**

# Memorandum

Subject: INFORMATION: Guidance on Implementation  
of On-the-Job (OJT) Training Requirements

Date: October 19, 2023

**IRENE RICO**

by IRENE RICO

Date: 2023.10.19 10:32:19 -04'00'

From: Irene Rico  
Associate Administrator  
Office of Civil Rights

In Reply Refer to:  
HCR-30

To: Directors of Field Services  
Resource Center Director  
Division Administrators  
Civil Rights Specialists

The Federal Highway Administration (FHWA) On-the-Job Training (OJT) Program is a part of FHWA's Equal Employment Opportunity (EEO) policies and procedures as set forth in FHWA regulations at 23 CFR Part 230, Subpart A. The OJT Program is an essential element of the Federal-aid Highway Program. The successful implementation of OJT by a State Department of Transportation (State DOT) helps develop a competent and diverse workforce to meet current and future hiring needs for highway construction. In addition, the successful implementation of the FHWA OJT Program supports the Department's focus on workforce development, particularly with respect to the Program's primary objective of recruiting, hiring, and advancing traditionally underrepresented individuals in the highway construction workforce.

The current OJT regulations were issued in 1975 with only minor amendments since that time, and none since 1981. Over time, State DOTs have implemented various methods of administering the OJT requirements and FHWA has identified a need to clarify implementation of the regulations while continuing to allow some flexibility in their application.

This memorandum is intended to facilitate communication between the Divisions and State DOTs regarding FHWA's expectations for implementing effective and compliant OJT Programs. Except for the statutes and regulations cited, the contents of this document do not have the force and effect of law and are not meant to bind State DOTs in any way. This document is intended only to provide information and clarity regarding existing requirements under the law or agency policies.

- 1) FHWA’s EEO Policies on Federally-assisted Highway Construction Projects: By statute, State DOTs receiving funding from FHWA for highway construction projects are required to assure that employment in connection with proposed projects will be provided without regard to race, color, creed, national origin, or sex. *See* 23 U.S.C. § 140(a). Training programs associated with FHWA-assisted projects must also be implemented in line with EEO requirements. *See id.* In accordance with this statute, “[it] is the policy of the FHWA to require full utilization of all available training and skill-improvement opportunities to assure the increased participation of minority groups and disadvantaged persons and women in all phases of the highway construction industry.” 23 CFR § 230.107(b). In furtherance of these EEO policies, FHWA regulations direct that each FHWA-assisted contract must contain a set of EEO requirements, including provisions requiring contractors to make “full use of training programs,” such as apprenticeships and on-the-job training programs. *See id.*, § 230.109(a) and 23 CFR Part 230, Subpart A, Appx. A, para. 7.b (note that the language in Paragraph 7.b. has been modified, as reflected in FHWA Form 1273, Section II, para. 6.b. (rev. October 23, 2023)).
- 2) Training Special Provisions: FHWA’s regulations at 23 CFR § 230.111(b) require State DOTs to pursue overall on-the-job training goals each year. To achieve these overall goals, the regulations direct States to select certain contracts on which to set specific OJT goals (i.e., number of trainees and the minimum number of training hours), in accordance with guidelines set forth at § 230.111(c) (the Guidelines). Such contracts must include the Training Special Provisions set forth at 23 CFR Part 230, Subpart A, Appx. B, in place of the general contract training provisions included on other contracts, as set forth in 23 CFR Part 230, Subpart A, Appx. A, para. 7.b. The requirements assigned to each project using this method do not consider the prime contractor’s current workforce utilization or capacity to conduct OJT. This is known as a project-specific implementation method.
- 3) Flexibilities in Meeting OJT Requirements: While the regulations contemplate a “project-specific” method for implementing the OJT requirements, as described above, other methods of achieving OJT goals—the “contractor-based” and “hybrid” methods—have developed over time that FHWA recognizes as consistent with the purpose of the regulations. These other methods are described below:

Contractor-based: This method is based on the contractor’s capacity to conduct OJT, including its current workforce utilization, and other considerations. Under this method, an annual training plan and OJT goals based on a contractor’s anticipated awards and the considerations in the Guidelines are incorporated into an enforceable OJT Agreement between the contractor and the State DOT.<sup>1</sup> These agreements apply to contracts awarded and active during the applicable OJT implementation year. State DOTs monitor compliance throughout the year based on the contractor’s efforts to implement the requirements of its OJT Agreement on its awarded contracts.

Hybrid: Any combination of the project-specific and contractor-based approaches.

---

<sup>1</sup> An enforceable OJT Agreement is a signed document that sets forth the contractor’s obligations for the OJT implementation year, such as annual training goals and training plan, training standards, systematic and direct recruitment, trainee enrollment, training program approvals, remedies/penalties for non-compliance, etc. As an OJT Agreement may include requirements in addition to those covered by the contract training provisions, State DOTs should make compliance with such agreements a condition of a contractor’s participation in the Federal-aid Highway Program.

- 4) OJT Implementation Plans: While the regulations do not expressly require State DOTs to develop OJT Implementation Plans, FHWA encourages State DOTs to establish and maintain such plans to ensure consistency and transparency in how they are implementing the requirements found in 23 C.F.R. §230.111 and this guidance. For this purpose, FHWA has created an OJT Implementation Plan Development Tool. This tool is available through FHWA’s public website at: [On-the-Job Training \(OJT\) Implementation Plan Development Tool \(dot.gov\)](#).

An OJT Implementation Plan should include a description of standards and procedures related to the following areas, including, but not limited to: Annual Goals, Individual Training Programs, Wages and Contractor Reimbursements, Systematic and Direct Recruitment, TSP Implementation, OJT Agreements (if applicable), Compliance Monitoring, Enforcement, and Reporting. State DOT OJT Implementation Plans should also include a copy of all relevant forms, specifications, or other documents used to administer the requirements. State DOTs should keep their OJT Implementation Plans updated to reflect the current state of practice consistent with regulatory requirements and guidance. State DOT OJT Implementation Plans, including subsequent revisions, should be shared with FHWA Division Offices for review. Division Office Civil Rights Specialists should upload a copy of the most current OJT Implementation Plan in the appropriate State DOT SharePoint folder at: [State OJT Implementation](#)

- 5) Flexibilities in Use of the Training Special Provisions: In light of the length of time since FHWA’s OJT regulations were last revised, FHWA has allowed State DOTs some flexibilities in implementing the Training Special Provision requirements to account for changes in industry practices and inflation. For example, specifying the minimum number of training hours to be completed or a requirement to use a training program in a specific craft are acceptable changes. Adding the term “disadvantaged individuals,” where appropriate, is another example of an acceptable change to the TSP. In addition, as explained further below, the hourly reimbursement rate may vary from .80/hour, as stated in Appendix B.

State DOTs that use a contractor-based implementation method, where goals are assigned to contractors through an enforceable OJT Agreement, have the option of using the TSP or a similar training provision that synthesizes the TSP general requirements and procedural steps with the requirements set forth in the OJT Agreement. In other words, if a similar training provision is used in lieu of the TSP, the general requirements found in the TSP should be incorporated into that training provision and the OJT Agreement to effectuate compliance. State DOTs that assign annual contractor goals without using an enforceable OJT Agreement should use the TSP as described in the preceding paragraphs.

The State DOT OJT Implementation Plan should include a copy of the TSP or similar training provision used in contracts along with a boilerplate/template copy of the OJT Agreement used to administer contractor-based requirements.

- 6) Reimbursement of Training to Contractors: State DOTs may choose one of three options regarding the reimbursement of training: 1) Reimburse contractors at the TSP-prescribed rate of 80 cents per hour of training; 2) Establish a fixed hourly rate of reimbursement greater than 80 cents per hour; or 3) Allow contractors to bid on training per 23 CFR § 230.111(g). Where the State DOT chooses to establish a fixed hourly rate greater than 80 cents, this rate should be based on a reasonable estimate of a contractor’s hourly cost in

providing training that complies with the requirements set forth in the TSP. The rate of reimbursement, including the basis for rates greater than 80 cents per hour, should be explained in the State DOT's OJT Implementation Plan.

- 7) Training of Disadvantaged Persons: In addition to women and members of minority groups identified in Appendix C to Subpart A of Part 230, disadvantaged persons, such as those receiving welfare assistance, also fall within the statutory intent (See 23 U.S.C. 140(a)) and regulatory objectives set forth in 23 C.F.R. §230.111. State DOTs may include other categories of disadvantaged individuals according to the definitions provided under State law.

When applicable, the OJT Implementation Plan should define other categories of "disadvantaged" individuals and describe how they are identified during the OJT enrollment process. For example, before a State DOT approves a training program submitted by a contractor, it may require the submission of an OJT enrollment application that serves to identify the trainee's demographic information. This information would include the gender, minority, or disadvantaged category claimed by the trainee applicant. State DOTs may consider gathering this information through an electronic form submission or concurrently with the training program submitted for approval. This information is necessary to measure program effectiveness and to determine whether a contractor's systematic and direct recruitment efforts were successful in fulfilling the training obligation.

- 8) Annual OJT Goals: The regulations at 23 CFR § 230.111(b) state that the FHWA Office of Civil Rights (HCR) is to publish "suggested" minimum training goals annually based on the Federal apportionment and minority populations in each State. If a State falls short of attaining its annual goal in a given year, the regulations require the State to inform FHWA of the reasons for failing to meet the goal and steps to be taken in the following year to attain the goal. Based on the State's shortfall analysis, FHWA may adjust the State's training goal for the following year.

Experience with goal-setting over time led HCR to modify its practice and allow State DOTs to establish their own OJT goals. In current practice, each State DOT establishes a proposed annual OJT goal and submits it in writing to its respective FHWA Division Office for approval before the beginning of each OJT implementation year<sup>2</sup>.

The State DOT's proposed annual goal should include the numerical goal(s) and corresponding measure(s), along with an explanation of how the relevant factors from the Guidelines in 23 CFR 230.111(c) were used in determining the proposed goal. At a minimum, State DOTs should propose an annual OJT goal for the number of trainees to be employed during the upcoming implementation year. However, additional goal measures, such as the estimated number of training hours and number of training programs to be completed, may also be considered. Regardless of the number of goal measures used, State DOTs are expected to maintain a system that allows for the tracking of each trainee's progress under an approved training program, i.e., the number of training hours completed

---

<sup>2</sup> A State DOT's OJT implementation year may follow the calendar year, federal fiscal year, or State fiscal year. By exception, State DOT's may request a different implementation year with proper justification and approval from the FHWA Division Office. State DOTs should consider aligning their OJT implementation years with projects programmed in year one of their Statewide Transportation Improvement Program (STIP).

and training program completion status.

Annual OJT goals should reflect an estimate of training slots or hours that can reasonably be achieved across the program of federally assisted projects planned for the upcoming implementation year. Regardless of a State DOT's method of implementing the OJT requirements (i.e., project-specific, contractor-based, or hybrid), the relevant factors found in the Guidelines should be applied in determining the proposed annual OJT goal(s). In addition, State DOTs may use other considerations, such as those that are unique to a contractor-based method of implementation (e.g., a contractor's current utilization of women and minorities, the ratio of trainees/apprentices to journey workers, and a contractor's capacity to provide training based on its estimated contract awards). In any case, proposed annual OJT goals, including project goals, should not be solely based on contract value (e.g., one trainee per two million dollars of contract value).

FHWA Division Offices should upload a copy of the approved OJT goal along with the supporting explanation in the State folder at the following SharePoint link: [State OJT Implementation](#)

A State DOT's ability to achieve its annual OJT goal may be affected by various circumstances throughout the implementation year. These include, but are not limited to, significant changes in project scope, delays in construction that affect the start of training, trainee attrition rates or termination, contract awards that occur late in the OJT implementation year, etc. Conversely, OJT accomplishments, are often based on training carried over from contract awards in previous OJT implementation years, thus having the potential to offset current year accomplishment shortfalls. State DOTs should describe the extent to which these circumstances affected goal accomplishment in their Annual OJT Reports to FHWA.

9) Requirements for Individual Training Programs (§230.111(e), (f)):

To fulfill its training obligations on an FHWA-assisted contract or pursuant to an enforceable OJT Agreement, a contractor must use an approved training program designed to qualify the trainee for journey worker status in a particular job classification by the end of the training period. To meet this requirement, contractors may use the following types of training programs:

- a) Training programs submitted by the State DOT to the FHWA Division Office for approval, as part of the State DOT's OJT implementation Plan or separately before the start of training. Training programs may be designed in manageable parts to encourage trainee retention where such training requires multiple years/construction seasons to complete. In addition, training should target the skilled crafts related to highway construction. However, training of semi-skilled laborers (e.g., mason tenders or other trade-specific laborer classifications) is permissible provided that such laborer positions are consistent with industry practice. By exception, training may be conducted in lower-level management positions related to highway construction, provided that the training program substantially conforms to the requirements below. Training in administrative functions is not permissible.

- b) Each training program submitted for FHWA approval should:
- i) Have a corresponding work classification for which there is a prevailing wage listed under the Davis-Bacon wage decision applicable to the contract on which the training period begins.
  - ii) Describe the terms of employment, including a progressive schedule of wage rates in lieu of prevailing Davis-Bacon wages for journey workers that conform to Appendix B to Subpart A of 23 C.F.R. Part 230. Notwithstanding, all contractors are required to pay the higher of either the rate that conforms to the progressive schedule of wage rates or the minimum wage rate set forth under EO 14026 or EO13658. (Refer to the applicable Davis-Bacon Wage Decision). The training program should also provide a training outline, listing the breakdown of competencies or tasks to be learned and the time allocated to each. To the extent feasible, the training outline should be consistent with the elements of a standardized and credentialed curriculum for the selected craft<sup>3</sup>. However, all training plans must be designed to develop the skills, knowledge, and abilities expected of a journey worker or semi-skilled laborer in the selected highway construction craft<sup>4</sup>.
  - iii) Require a minimum of 2,000 hours<sup>5</sup> of on-the-job learning for skilled crafts, which may include some academic or classroom learning. (Training programs for semi-skilled laborer classifications require a minimum of 800 hours.) If the program is designed to be conducted in phases, all phases, except for the last phase, should be no less than 600 hours. For example, a carpenter training program requires 2,000 hours of training. The program has been subdivided into four separate levels as follows: Carpenter I (600hrs), Carpenter II (600hrs), Carpenter III (600hrs), Carpenter IV (200hrs). Components of a training plan previously completed under a job readiness/pre-apprenticeship program within two year(s) of training program approval may be counted toward the total number of hours required. However, State DOTs cannot reimburse contractors for creditable training hours that were previously completed.
  - iv) Identify the training supervisor who is a journey worker in the selected craft. Supervision by a foreman is generally considered insufficient to provide the specific training required by the plan. Also, the ratio of trainees to journey workers in the work classification covering the training program should be consistent with proper supervision, training, and safety requirements. This ratio typically falls between 1:4 and 1:10; however, this ratio may be specified in collective bargaining or registered apprenticeship training agreements.

---

<sup>3</sup> A standardized and credentialed training program is a curriculum for a construction craft that is used by a trade school, community college, registered apprenticeship or other industry training program, or a nationally recognized entity that develops such programs for industry use, e.g., the National Center for Construction Education and Research (NCCER).

<sup>4</sup> State DOTs are encouraged to collaborate with industry organizations to determine the sufficiency of training plans for selected crafts.

<sup>5</sup> FHWA has adopted U.S. DOL's minimum time-based standard for on-the-job learning of 2,000 hours, which can be found in 29 C.F.R. §29.5. However, existing training programs approved by nationally recognized industry organizations (e.g., NCCER or the Association of General Contractors) are exempt from this requirement.

- v) Include a plan for review and evaluation of the listed training, including the submission of progress records/reports to the State DOT.
  - c.) Any apprenticeship training program that is registered with the U.S. Department of Labor (USDOL), Employment and Training Administration (ETA), or a State Apprenticeship Agency (SAA) is acceptable. Such programs, including their minimum wage provisions, are acceptable for use, provided they are administered in a manner that meets the EEO obligations of the contractor. Apprenticeship training programs meeting the above criteria do not require formal approval by the State DOT or the FHWA Division Administrator. Nonetheless, State DOTs should acknowledge and track the use of registered apprenticeship programs.
  - d.) Other Training Programs approved, but not necessarily sponsored, by the USDOL or a State workforce agency (such as registered apprenticeship programs administered by organized labor unions) are also acceptable without formal approval of the State DOT or FHWA Division Administrator provided:
    - i) The U.S. Department of Labor has clearly approved the program aspects relating to equal employment opportunity and the payment of trainee wage rates in lieu of prevailing wage rates.
    - ii) They are reasonably calculated to qualify the average trainee for journey worker status in the classification concerned by the end of the training period.
    - iii) They are administered in a manner calculated to meet the equal employment obligations of the contractors.
- 10) Contractor Efforts to Recruit/Enroll Women, Minority, and Disadvantaged Individuals: While the training requirements inserted into contracts or OJT Agreements shall not discriminate against any applicant for training, State DOTs must evaluate a contractor's efforts to locate and enroll women, minorities, and disadvantaged individuals to fulfill their training obligations. State DOT procedures should ensure that contractor efforts are timely and appropriate in consideration of the project scope and the construction phase(s) related to the selected training programs. State DOTs should establish a process to engage contractors before the start of construction to ensure direct recruitment efforts are undertaken in a timely manner and enhanced through OJT supportive services (OJT/SS) activities. Collective bargaining agreements do not relieve contractors of their obligation to carry out independent recruitment efforts to meet their obligations (See Appendix A to Subpart A of Part 230—Special Provisions). Best practices to remove barriers and support contractor recruitment efforts include the use of job readiness training programs using OJT/SS funding, establishing and promoting the use of a referral network consisting of social services programs, and community-based and industry organizations that serve women, minorities, and disadvantaged individuals.
- 11) Annual OJT Reporting: The regulations found in §230.111(b) established a reporting requirement for States DOTs that did not attain their annual training goals during the OJT implementation year. However, FHWA's policy requires all State DOTs to report their annual OJT accomplishments, which allows our agency to measure program outcomes. By January 30<sup>th</sup> annually, each State DOT is required to report accomplishments pertaining to its most recent implementation year (i.e., calendar, State or Federal fiscal year) ending prior to the report submission. For this purpose, an annual OJT Report has been made available

in the Civil Rights Connect System (CRCS). The report requires each State DOT to describe its accomplishments relative to its annual OJT goal(s). This report also requires demographic information for each trainee or apprentice employed pursuant to the OJT requirements placed in contracts or OJT agreements during the year. Any State DOT that does not achieve its approved annual OJT goal shall provide an explanation reflecting its analysis of the reasons why this occurred. The State DOT must sufficiently describe the applicable action steps it will take to address these reasons in the following OJT implementation year.