



Summary of Written and Oral Comments for the October 30, 2007 Public Hearing

Seventeen written comments were received by the close of business on Monday October 29, 2007 from the following interested parties of the Incumbent Worker Training Program. (4 Employers, 1 Employer/Training Provider and 12 Training Providers)

1. Tyron D. Picard, Acadian Ambulance Service, Inc., Safety Management Systems, LLC and Acadian Integrated Solutions, LLC – Employer/Training Provider - Lafayette
2. Dennis Fanguy, Bollinger Shipyards, Inc. - Employer – Houma
3. Melissa Hymel, John Deere - Employer - Thibodaux
4. Carol Hendrix, CenturyTel - Employer - Monroe
5. Lisa Patrick, Caldwell Memorial Hospital – Employer Columbia
6. Richard Emberling, International Safety Consulting Services, LLC (ISCS) - Training Provider – Duson
7. Chad Vanover, Vanover and Associates, Inc. - Training Provider - Duson
8. Melissa Tauzin, Superior Energy - Training Provider – New Iberia
9. Neil Collins, Technical Resource Services, Inc. - Training Provider – Broussard
10. Phyllis Coleman Mouton, Baton Rouge Community College - Training Provider – baton Rouge
11. Dr. Donna Austin & Tisha Taylor, LSU - Training Provider – Shreveport Cont. Ed. Dept. - Shreveport
12. Cathy Andries, LSU - Training Provider - Alexandria Cont. Ed. Dept. - Alexandria
13. Georgia Sanderson, ULM - Training Provider – Monroe
14. Wes Carr, PEC Premier - Training Provider – Mandeville
15. Terri Rech, TR Training Solutions - Training Provider – Shreveport
16. Elaine D. Livers, ULL - Training Provider – Lafayette
17. John Hough, LCTCS - Training Provider – Baton Rouge

A public hearing to review proposed rule changes to the Incumbent Worker Training Program (IWTP) was held on Tuesday, October 30, 2007 at the Louisiana Department of Labor (LDOL), 1001 N. 23rd St., 4th Floor Auditorium, Baton Rouge, LA 70804. The hearing began at 9:03 a.m. and ended at 11:08 a.m.

The following individuals were in attendance: (3 LDOL, 2 Employers, 2 Employer/Training Provider and 28 Training Providers)

1. Michael Harris, LA Dept. of Labor – Baton Rouge
2. Wendy Thibodeaux, LA Dept. of Labor – Baton Rouge
3. Peter Wright, LA Dept. of Labor – Baton Rouge
4. Mark Trahan, Acadian Ambulance Service, Inc., Safety Management Systems, LLC and Acadian Integrated Solutions, LLC – Employer/Training Provider - Lafayette
5. Melissa Juneau, Acadian Ambulance Service, Inc., Safety Management Systems, LLC and Acadian Integrated Solutions, LLC – Employer/Training Provider - Lafayette*

6. Phyllis Coleman Mouton, Baton Rouge Community College - Training Provider – Baton Rouge*
7. Sandra Taylor, Baton Rouge Community College - Training Provider – Baton Rouge
8. Alisha Crowder, Bossier Parish Community College - Training Provider - Bossier City
9. Lisa Wargo, Bossier Parish Community College - Training Provider - Bossier City
10. Lisa Wheeler, Bossier Parish Community College - Training Provider - Bossier City *
11. Marcy Bourgeois, LA Bankers Association - Training Provider - Baton Rouge
12. John Hough, LCTCS System Office - Training Provider - Baton Rouge*
13. Cathy Andries, LSU - Training Provider - Alexandria*
14. Lisa Verma, LSU - Baton Rouge Cont. Ed. Dept. - Training Provider - Baton Rouge*
15. Kristy Anthony, LSU – Baton Rouge Cont. Ed. Dept- Training Provider - Baton Rouge
16. Dr. Donna Austin, LSU - Training Provider - Shreveport*
17. Tisha Taylor, LSU - Training Provider - Shreveport*
18. Tulin Melancon, LSU - Training Provider – Shreveport
19. Tiffany Ingargiolia, New Horizons - Training Provider - New Orleans*
20. Wes Carr, PEC Premier - Training Provider - Mandeville*
21. Chris England, PEC Premier - Training Provider - Mandeville
22. Valerie Roy, PSA - Training Provider- Shreveport*
23. Chad Hebert, Safety & Training Consultants - Training Provider - Houma*
24. Pamela Crotts, SEOT - Training Provider – Lafayette
25. Linda Larkin, Skylark Services - Training Provider – Lafayette
26. Tanya Gilliland - Smart Institute - Training Provider - Hammond*
27. Dr. Gerald Guidroz, Southeastern LA University - Training Provider – Hammond
28. Veda Abene, Southeastern LA University - Training Provider – Hammond*
29. Melissa Tauzin, Superior Energy Services Training Provider – New Iberia*
30. Elaine Livers, ULL - Training Provider – Lafayette*
31. Georgia Sanderson, ULM - Training Provider – Monroe*
32. Dr. Rhonda Jones, ULM - Training Provider– Monroe
33. Dennis Fanguy, Bollinger Shipyards - Employer – Houma*
34. Chuck Fontenot, Bollinger Shipyards – Employer – Houma
35. Jim Morgan, LTC Delta Ouachita – Training Provider - West Monroe*

* Provided oral testimony at public hearing

The major issues discussed at the public hearing are identified, followed by the proposed language with areas of concern underlined, a summary of comments from the attendees and LDOL’s responses.

Issue Number 1: Employer Serving as Their Own Training Provider

Established by Law R.S. 23:1514 D (1) (*Proposed New Rule*)

Chapter 1, Section 103 Eligibility

C.1. All applications by eligible applicants for customized and/or preemployment training shall be submitted in conjunction with the primary training provider selected by the applicant to provide the customized training, unless all training is to be performed by the applicant’s employees, in which case the application shall be submitted by the applicant.

2. Training may be provided by the awardee's employees rather than by a training provider when the secretary determines that such training is in the best interest of the applicant and the trainees. Documentation shall be submitted to support the need for using the applicant's employees as instructors (*e.g.*, training requested is highly technical or specific to the company, or lack of training or resources

such as instructors, equipment, flexible training schedules or curricula from local training providers). Auditing procedures that require more frequent on-site auditing reviews in order to ensure compliance with the terms and conditions of the training award contract will apply. Requirements governing training providers (e.g., accreditation, certification, licensing, training history, related parties) are not applicable to training done by an awardee's employees.

Comments: The group as a whole did not support the concept of training by the employer's employees and questioned the practice. Attendees felt this could leave room for employers to supplant what training they are already providing

Response: In rare instances the employer is the best or only source of training. This generally involves highly specialized or unique skills or work processes. This proposed rule implements the IWTP law. Employers requesting to serve as their own training provider will be subject to the same requirement as employers selecting primary training providers to disclose and attest to the amount and description of training expenditures incurred for the previous year and their projection and commitment to maintain the same level of funding for the following year. The IWTP staff along with the LDOL Audit Unit will be responsible for developing additional procedures to ensure that training is not being supplanted. LDOL plans to maintain the proposed language. (Supplanting has always been prohibited in the IWTP rules).

Comments: The group also expressed concern about questionable fiduciary practices or lack of oversight of the training with the employer as the administrative entity, the participant and the reporting entity. They felt this could potentially leave LDOL open for possible corruption. They commented that having a third party to provide oversight of the training provided checks and balances that are necessary to ensure that all rules and regulations of the program are being followed. While training providers recognized that some employers were good on the instructional side, they shared experiences where these same employers were not good about record keeping and the challenges they faced with trying to collect support documentation required by the Department of Labor (e.g. sign in sheets) in order for the training expenses to be reimbursed. Comments were made that employers would need to hire or dedicate staff and have them trained specifically for reporting and tracking purposes of the IWTP contract.

Response: Employers will be held to the same standards of accountability as training providers who participate in this program. The IWTP staff along with the LDOL Audit Unit will be responsible for developing procedures that allow for more frequent on-site visits and auditing reviews in order to ensure the employer is compliance with the terms and conditions of the training award contract. LDOL plans to maintain the proposed language.

Comments: Lack of quality training as employers conducting their own training would be exempt from the requirements governing training providers (e.g. accreditation, certification, licensing, training history, related parties).

Response: The pre-employment provision was never intended to open the floodgates for employers to become their own training providers, but rather to allow this in rare instances where the need existed for highly specialized or company specific training that is limited or not offered by local training providers. LDOL will require that such employers clearly document and attest to the fact that their employees are in fact the best-qualified or specialized instructors for the training being requested.

Issue Number 2: Preemployment Training

Established by Law R.S. 23:1514 D (5) (Proposed New Rule)

Chapter 1, Section 105 Criteria for Customized and Pre-Employment Training

F.1. The secretary may annually set aside an amount up to 10 percent of the amount appropriated to the account by the legislature for preemployment training in any year in which the legislature appropriates funds for training equal to or exceeding those funds appropriated in the previous year to the Rapid Response Fund created by R.S. 51:2361 or the Louisiana Economic Development Fund created by R.S. 51:2315 the secretary may set aside an amount not to exceed 10 percent of the Incumbent Worker Training Program's annual appropriation for preemployment training.

2. Preemployment training shall only be available to an applicant that:

a. Has entered into a contract with the Louisiana Department of Economic Development (LED) related to expansion of the applicant's Louisiana operations.

b. Agrees to stated job placement outcomes. The applicant shall agree to hire a specified number or percent of the trainees who complete training, which shall be determined on a case-by-case basis by the secretary taking into account, in consultation with the Louisiana Department of Economic Development (LED), the economic impact of the training to be provided, the general demand for the skills for which training is provided, the amount of preemployment funds to be provided to the applicant by LDOL, the percent and amount of the employer's matching contribution, and other factors the secretary deems relevant to the individual application.

c. Agrees to make a matching monetary contribution as required by the secretary of up to 50 percent of the total training cost. An employer may offer to make a larger matching contribution, which the secretary may take into account in deciding required job placement outcomes.

d. Agrees to pay trainees who are hired wage rates commensurate with the preemployment training provided. Whether wage rates are commensurate shall be based upon consideration of the competitive wage rates paid to other employees in the job market having skills, training and experience comparable to that of the trainees.

3. In making award decisions, the secretary also may consider other relevant factors, including, but not by way of limitation, the employer's commitment to provide future training after the expiration of its contract.

Comments: The group as a whole representing both as employers paying into the Unemployment Insurance (UI) system and as training providers did not support pre-employment training through IWTP. They felt it went against the original spirit of IWTP (training only incumbent workers) and that there were other avenues (e.g. WIA) that could be accessed for preemployment training. Concerns were expressed about what value pre-employment training would bring and the need to clearly define the requirements in order to answer several questions listed below:

Response: By amending the law governing the program, the legislature has determined that pre-employment training should be available on a limited basis. Our intention was to provide funding for short term, high impact pre-employment training for companies planning major expansions in Louisiana, and to allow it only in conjunction with Department of Economic Development initiatives. The goal was to provide an economic incentive by encouraging companies to stay in Louisiana rather than leave. The scope was intended to be narrow with a focus on large projects that would have a major impact and help to ensure the overall well being of the citizens and employers in our state. In order to show their commitment, employers will be expected to

make monetary contributions towards the training costs and hire a certain number of participants that successfully complete the training.

Question: How will performance objectives be measured?

Response: Each contract will specify the performance objectives (number of participants to be trained and hired) as identified in an approved application for pre-employment training. The same method used to determine the success of a contract for training incumbent workers would be applied to contracts for pre-employment training. A contract will be considered successful if the average of both performance objectives meets or exceeds 75%. In calculating the overall percentage of completion, the maximum percentage for each performance objective will not exceed 100%.

Question: Who is responsible and who will be held accountable for meeting the performance objectives - the employer or the training provider? What happens if the employer does not hire the trainees upon completion of the training?

Response: The same accountability concept applied to contracts for training incumbent workers will apply to contracts for pre-employment training. LDOL will not hold the training institution financially responsible for the failure of an employer to meet its specified performance objectives. Nor will LDOL hold the employer responsible for failure of the training institution to meet its performance objectives.

Comment: LCTCS commented that employers should qualify for these funds without a requirement that they 'enter into a contract with LED to expand operations' and that LDOL should be flexible in defining "expanding business".

Response: Because LED routinely works with companies planning expansions within the state, we felt this would provide a good mechanism for LDOL to identify potential companies for pre-employment training. Only limited funding of pre-employment training is permitted, and the department believes this requirement will best leverage use of the funds for maximum impact.

Issue Number 3: Skills Assessments - When Not Available by LDOL (Change to Existing Rule)

Chapter 1, Section 111 General Award Provisions for Customized and Pre-Employment Training

B. Use of Funds

1. The account offers financial assistance in the form of a grant for reimbursement of eligible training costs specified in the award agreement.

2. Eligible training costs may include the following:

a. Tuition costs, which may include the cost of courses at a Louisiana accredited public or private educational institution, a public or private licensed proprietary school, an independently certified training program, or other training programs possessing similar independent sanction appropriate to the training provided, that have demonstrated a history of successful training to LDOL. Such costs may include the cost of courses, contracts for vendor trainers, training seminar fees, and wages, but not the cost of related benefits, for instructors employed by the awardee.

b. Trainees' travel costs are limited to 30 percent of the total training award and are reimbursable if provided for in the contract, but only to the extent permitted by State Travel Regulations, PPM 49.

c. Materials and supplies costs for items such as training texts and manuals, audio/visual materials, skills assessment (documents or services to determine training needs), raw materials (for-training purposes only), Computer Based Training (CBT) software; and office supplies used for contract-related purposes.

d. Facility rental associated with the training contract

e. Screening, skills assessment and testing costs, but said services shall be coordinated and administered through LDOL

Comments: Regarding “screening, skills assessments and testing”, LCTCS suggested adding the wording, “when available”.

Response: LDOL concurs with this minor technical recommendation and proposes to change language accordingly. (See revised language below.)

Suggested Change:

e. Screening, skills assessment and testing costs, but said services shall be coordinated and administered through LDOL **when available**.

Issue Number 4: Changes to Administrative Costs
(Change to Existing Rule)

Chapter 1, Section 111 General Award Provisions for Customized and Pre-Employment Training

i.1. Payment for administrative services performed by a training provider in a total amount not to exceed 10 percent of the amount of the grant. Administrative costs will be negotiated on a contract-by-contract basis. In determining the maximum base amount of payments for administrative services the cost of equipment shall be excluded. Where more than 25 percent of the tuition cost is outsourced by the primary training provider to one or more other training providers, LDOL may further reduce payment of the administrative services base amount.

2.a. Administrative services base amount payments must be earned and are payable only upon performance of the specific administrative services required by the training contract. A payment schedule for specified administrative services tasks shall be included in every contract, but, except for the additional payment permitted in subparagraph (c), the department will not pay base amount administrative services payments that exceed 10% of allowable invoiced training costs, excluding the cost of equipment, and no payment for administrative services will be made until training has commenced.

b. LDOL shall require the reporting and documentation of all base amount administrative services performed. If the primary training provider or applicant fails to perform all required administrative services, LDOL shall reduce payment for administrative services by a corresponding amount.

c. In addition to base amount administrative services payments, LDOL will reimburse the wages, but not the cost of related benefits, of primary training provider staff related to the purchase of equipment when supported by certified source documentation of the staff time devoted to equipment purchase administrative services tasks.

Comments from attendees:

The majority of the training providers present provided testimony opposing the changes to Administrative Cost.

Negotiating Administrative Costs On Case By Case Basis
(Change to Existing Rule)

Comments: Negotiating administrative costs on a contract-by contract basis could delay the approval process and bring up issues of fairness and impartiality. The determination of administrative costs should be standardized, as it is now where everyone involved is on the same playing field.

Response: LDOL views its current and proposed rule as permitting it to negotiate costs, as well as other contract terms, on a case-by-case basis, although it usually uses standard provisions. Occasionally the application of standard provisions would result an inappropriate windfall. The overall process of determining administrative costs will remain the same with the exception of rare instances where LDOL will reserve the right to reduce costs that appear excessive (e.g. purchasing \$400,000 in equipment does not justify allowing \$40,000 in Administrative Costs; outsourcing one highly specialized vendor for \$200,000 in training may not necessarily justify allowing \$20,000 in Administrative Costs).

Reducing Administrative Costs When More Than 25% of Tuition is Outsourced
(Change to Existing Rule)

Comments: The majority of training providers that spoke felt that to reduce administrative costs to a primary training provider when 25% or more of the training was outsourced to other training providers would greatly limit the employers' accessibility to customized training.

One training provider described this as "our biggest concern".

The training providers described the work that went into outsourcing third party training which includes entering into third party contracts or agreements, oversight of the training, collection, review and consolidation of support documentation required for payment upon completion of the training (e.g. sign in sheets or certificates of completion), entering data into the online quarterly report, invoicing and reimbursing secondary providers, etc. One training provider described the complexity of outsourcing vendors that required time and effort of multiple people within the university (e.g. Sponsored Research & Grants, Provost, Vendor, Purchasing, Accounting, Etc.). She also commented that they are required to collect the contract support documentation required by the Office of Contractual Review (Disclosure of Ownership, W-9, Board Resolutions, etc.) in addition to resumes for each instructor.

Another training provider commented about the expenses he incurs to private attorneys to review any changes requested by secondary training providers to his standard third party contract.

One training provider described his experience in working with the Skills Development Fund in Texas, which is comparable to our IWTP fund here in Louisiana. He indicated that employers are limited to working with Technical and Community Colleges within assigned regions as primary training providers and because of this and their complex and lengthy review process the agency was having difficulty obligating and spending their funds. He commented that he had worked with six employers in Texas in an attempt to access their funding, and all employers backed out and said it was too much trouble and not worth the time and effort. He commented that while Louisiana has a waiting list of companies applying for funding, Texas has none. He stated that he had worked with the WIA in Louisiana, Mississippi and Alabama, the Louisiana Recovery Authority and the Texas Workforce Commission's Skills Development Fund, the Veterans' Administration, the STEP-OUT Program, MET and numerous other training programs and none of these programs even come close in comparison to how well Louisiana's IWTP works. He stated that it was in comparison by far the best "well oiled machine". His concern was that this rule change would be a step backwards for Louisiana. He felt the

reason LA's IWTP was so successful was largely due to the flexibility allowed to employers to access multiple training providers and specialized vendors.

Training providers stated that they would not have the resources to take on these additional duties without the administrative funding, and therefore would be forced to limit employers to request only a small amount of training outside of their entity.

Training providers acknowledged the fact that in most cases, a single training provider did not have the resources or expertise to deliver all training needed by employers since the needs are generally very diverse and specialized for the various occupations within a company. They felt the overall affect of limiting the amount of outsourced training would be a big disservice and in the end hurt our customers (the employers) and that it went against the spirit of IWTP's original intent of allowing this to be an "employer driven" program.

Response: LDOL acknowledges the time and effort that training providers put in to working with vendors and third party providers. As stated above, the overall process of determining administrative costs will remain the same with the exception of rare instances as stated above where LDOL will reserve the right to reduce costs that appear excessive. LDOL may reduce administrative costs if the primary training provider is functioning substantially as a "pass through" of the funds and does not have a substantial administrative role. However, LDOL understands that outsourcing specialized training in order to deliver customized training needed tailored to the employer's unique training needs usually will still require substantial, if not even more, administrative work by the primary training provider. LDOL does not intend to initiate a practice of routinely cutting payments for administrative services simply because more than 25% of the training is outsourced.

Excluding Equipment When Determining Administrative Costs
(Change to Existing Rule)

Comments: Training providers described the work and time involved in identifying, ordering, bidding, receiving, tagging, delivering, setting up, and maintaining required ongoing and annual inventory and surplus records for equipment, which often involves several people from different departments. One training provider stated that all equipment purchases were subject to audit by both Internal and State Auditors.

Most public training providers present were opposed to no longer allowing administrative costs to be based on a percentage of the purchase price of equipment. One training provider commented that she was in agreement to not allow administrative costs based on the purchase price of equipment but after hearing comments from several other training providers came back to clarify that her concern was that in some cases where high priced equipment is ordered and received, she did not see the justification for a school to receive a full 10% payment for administrative costs.

Another training provider commented that she was happy to see the "Administrative Services" definition in the proposed rules, but was against LDOL not paying 10% of the equipment costs towards administrative costs. She indicated that she felt it would be acceptable to withhold administrative costs based on equipment purchases until the 3rd quarter of a contract.

Some training providers indicated they felt it would be acceptable to allow a reduced percentage of administrative costs based on equipment.

Response: The overall process of determining administrative costs will remain the same with the exception regarding the purchase of equipment, which must be supported by certified source documentation of the staff time devoted to equipment purchase. LDOL will consider invoice support documentation required for equipment purchases as evidence of administrative duties. LDOL believes that limiting administrative costs for

equipment is the best means of assuring that the correlation of work performed in purchasing equipment is reflective of administrative costs.

Requiring A Schedule of Specific Tasks To Be Performed To Pay Administrative Costs
(Change to Existing Rule)

Comments: Training providers present stated that requiring a payment schedule for specified payment tasks would be very tedious and be a step backwards in terms of the work that was done by the agency in 2003 to streamline the paperwork and documentation needed to justify payment of administrative costs. An example was given whereby a training provider administering several grants concurrently can have numerous phone calls, faxes, emails, meetings, etc. within a given day from several grant recipients as well as secondary training providers. Due to the multitasking required to accommodate numerous grants and necessary changes within the grants simultaneously, they felt it would be almost impossible to break down specific tasks for payment.

Response: This proposed rule describes the process used currently by LDOL in approving payment of administrative services under Instruction Number 7. The only change in practice would be to include the description of administrative tasks in the contract. LDOL will consider reporting and documentation to include those documents submitted online (e.g. Quarterly Reports, Customer Satisfaction Reports and Invoices), in addition to support documentation submitted with invoices as evidence of administrative costs earned.

Other Comments Regarding Administrative Costs

Comments: Several training providers indicated their departments were self-supportive and were required to generate funds in order to make a profit or break even. One training provider commented about the importance of administrative costs in general and the fact that their most successful contracts were those where they had spent more face to face time with employers in meetings or participating in weekly telephone conference calls. She acknowledged that it was her job as a training provider to do the best that she could to accommodate and make the process easy for the employer throughout the contract period. She felt the only way they continue this was through the use of administrative dollars.

One training provider recommended raising the administrative fee to 15%. A few others commented that it would be nice to see an increase, but no evidence was provided to support that the current 10% limitation is insufficient.

Another training provider recommended LDOL paying the administrative costs upfront but others commented that this would open LDOL up for possible corruption.

One training provider commented that they rarely received a full 10% of the projected administrative costs because only training that has been “completed” can be reimbursed along with a proportionate share of the administrative costs, which cannot be based solely on large equipment purchases. Another training provider who had previously served on the IWTP Reauthorization Focus Group commented that a document from LDOL indicated that as of 12/31/06 only 8% of the total IWTP expenditures were spent on Administrative Costs as opposed to 69%, which had been spent on tuition.

Response: LDOL has considered all comments regarding administrative costs and acknowledges the time and effort that training providers put into administering IWTP contracts. The overall process of determining administrative costs will remain the same with the exception of rare instances where LDOL will reserve the right to reduce costs that appear excessive as stated above.

Issue Number 5: Payment of Invoices (Existing Rule)

Chapter 1, Section 111 General Award Provisions for Customized and Pre-Employment Training

C. Conditions for Disbursement of Funds

1. Funds will be available for payment following submission of original invoices and supporting documentation as prescribed by LDOL to the attention of the Incumbent Worker Training Program Director, Office of Workforce Development, by mail or hand delivery. Only funds spent or administrative services performed on the project after the secretary signs the contract will be considered eligible for reimbursement or payment. LDOL shall make a determination regarding an invoice within 15 working days after receipt of the invoice and will make payment within 15 working days of approval of said invoice. Certain invoices that need priority attention shall be clearly marked “priority” and LDOL shall make a good faith effort to expedite the processing of such invoices. Invoices regarding the purchase of equipment must be accompanied by documentation confirming delivery.

Comments: Several training providers spoke that it generally takes between LDOL in excess of 30 days to make payments on invoices and that perhaps this language may need to be changed so that LDOL would not be out of compliance.

Additionally, one training provider clarified to the audience that LDOL per the administrative rules has 30 working days (6 weeks) and not 30 calendar days to make payment and that the majority of the payments are made within this time frame.

Response: We feel the time frame for making payments within 30 working days (approximately 45 calendar days) is sufficient. Our records for Fiscal Year 2007 indicate the average number of calendar days it took from the date of receipt of invoice to the date of payment was 38 calendar days. We do not foresee any reason at this time that we will not be able to maintain or improve our invoice processing time. LDOL plans to maintain the proposed language in this section.

Issue Number 6: Failure to Meet Performance Objectives – Possibility of Withholding or Reclaiming Funds (Existing Rule)

Chapter 1, Section 111 General Award Provisions for Customized and Pre-Employment Training

D. Compliance Requirements

1. Primary training providers, or if all training is performed by the awardee's employees, the awardee shall be required to complete quarterly reports describing progress toward the performance objectives specified in their contract. Primary training providers shall also be responsible for providing documentation to LDOL on a quarterly basis regarding the satisfaction of the business receiving training under the contract. All quarterly reporting must be submitted in a format prescribed by LDOL.

2. In the event the applicant or primary training provider fails to meet the performance objectives specified in its contract, LDOL shall retain the rights to withhold award funds, modify the terms and conditions of the award, and to reclaim disbursed funds from the awardee and/or primary training provider in an amount commensurate with the scope of the unmet performance objectives and the foregone benefits to the state.

Comments: An employer expressed concern that in the event performance objectives were not met, they may forfeit and have to repay all or part of the funds already expended for training that had been completed and invoiced for. They felt that often times, not meeting performance objectives was the result of things beyond the control of the training provider and/or employer (e.g. Hurricanes Katrina and Rita) and that the funding that had been expended for “completed” training should not be jeopardized. They also expressed concern that

employers may submit ultra conservative estimates if they felt they may be required to reimburse all or part of funding for “completed” training previously paid for by LDOL.

Several training providers expressed the same concern and felt that they had fulfilled their obligation of delivering the “completed” training and should not be penalized for conditions outside of their control. One primary training provider described an example where the school had fulfilled all of their obligations by completing the training, submitting the quarterly report and invoice and the employer had not provided the required updated participant wage data and they did not feel it was fair to reclaim funds.

Compromise language was offered by one employer Acadian Ambulance. “In the event the applicant or primary training provider fails to make a good faith effort to meet the performance objectives specified in its contract, except where such failure is as a result of circumstances outside of the direct control of the applicant or training provider, LDOL shall have the right to withhold that portion of the award funds or reclaim disbursed funds from the awardee and/or primary training provider in amount to the state, if any. In addition, LDOL may modify the terms and conditions of the award in coordination with the applicant or training provider to address the missed objective in furtherance of the benefits intended by the program.”

Response: Our goal is to see that a good faith effort is made on the part of the employer and training provider to meet the specified performance objectives. The current accountability concept described in our contract will remain. LDOL will not seek to withhold award funds or reclaim disbursed funds in the event the other party fails to meet its performance objectives. LDOL will not hold the training institution financially responsible for the failure of an employer to meet its specified performance objectives. Nor will LDOL hold the employer responsible for failure of the training institution to meet its performance objectives. LDOL plans to maintain the proposed language in this section.

Issue Number 7: Removing Preference For Selecting Public Training Providers (Change to Existing Rule)

Comments: LCTCS opposed removing this preference and felt it was in the best interest of the citizens of the State of Louisiana to keep this preference in the rules.

Response: LDOL plans to maintain the proposed language in this section. In working to reauthorize the program and draft changes to the rules, LDOL has met with business and industry representatives several times over the past year. These representatives have expressed strong feelings about the need to level the playing ground for both public and private training providers.

The agency has determined that employers should have open access to all training providers within the State and one provider should not be given preference over another. Our plans are to make minor changes to the current application rating form used by LDOL so that employers electing either public or private training providers are rated equally.