

EmR1317

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Effective Dates: October 1, 2013 through February 27, 2014
Extension Through: June 27, 2014

The statement of scope for this rule, SS 109-13, was approved by the Governor on August 15, 2013, published in register No. 692, on August 31, 2013, and approved by the Department of Workforce Development on September 11, 2013.

This emergency rule was approved by the Governor on September 20, 2013.

**State of Wisconsin
Department of Workforce Development
Division of Employment and Training**

Wisconsin Fast Forward Grants

DWD 801

Emergency Rule

The Wisconsin Department of Workforce Development proposes to create DWD 801, relating to workforce training grants under the Wisconsin Fast Forward program.

Analysis Prepared by the Department of Workforce Development

Finding of Emergency

The Department of Workforce Development (DWD) finds that an emergency exists and emergency rules are necessary for the immediate preservation of the public peace, health, safety, or welfare. The reason for the emergency is:

DWD proposes to create new rules in Chapter DWD 801 to implement the program of workforce training grants enacted by 2013 Wisconsin Act 9. DWD held a public hearing on the permanent rule for this new program on July 15, 2013 and has made revisions to the text of the proposed permanent rule in response to the comments received. It would now benefit the public welfare to proceed with the rules in emergency form so that the program can begin this fall.

Statutory authority: Sections 103.005(1) and 106.27(2g), Wis. Stats.

Statute interpreted: Section 106.27, Wis. Stats.

Related statutes or rules: the federal Workforce Investment Act of 1998 (WIA), Public Law 105-220, 112 Stat. 936, 29 U.S. Code §2801 et seq.

Explanation of agency authority and the basis and purpose of the rule.

2013 Wisconsin Act 9 creates a program in the Department of Workforce Development (DWD) for the development and implementation of workforce training grants to be used for the training of unemployed and underemployed workers in this state or for the training of incumbent employees of businesses in this state.

Act 9 mandates that grantees report to DWD regarding how grant money was used and the outcomes achieved, and requires DWD to promulgate rules prescribing the information to be contained in these reports. It also requires DWD to create grant application forms, procedures, and criteria, and permits DWD to audit and inspect the records of grantees.

Summary of the proposed rule.

This rule establishes the general criteria, procedures, requirements and conditions for the award of Wisconsin Fast Forward workforce training grants. It allows for grant applications from any public or private organization, including an employer or an economic development agency or training provider that is working with an employer, or a consortium of such entities.

The rule provides for the solicitation of applications for grants in the form of Grant Program Announcements (GPAs). Each grant applicant will be asked to provide information about itself and a description of its proposed training program, including the proposed program budget and the proposed matching funds to be provided by the applicant.

The proposed rule provides that grant applications shall receive a preliminary review to ensure that they meet the basic requirements of the GPA. Applications which satisfy this review shall then be evaluated and ranked in relation to a series of factors relating to the capability of the applicant, the specifics of the proposal, and the potential economic and workforce capacity impacts of the proposal. The Department may also consider factors such as underserved populations and geographic areas.

The rule establishes an overall procedure for awarding grants and guidelines for grant administration, the use of grant funds and the provision of matching funds by grantees. Each grantee will be required to report on the use and effect of the grant funds in terms of information on the number of trainees, the trainees that have completed the program, and whether trainees have obtained new employment with increased wages or increased hours of work.

Grant program announcements and related forms will be available at the website of the DWD Office of Skills Development: <http://dwd.wisconsin.gov/osd/>

Summary of analytical methodology.

The rules of other public grant programs were reviewed as part of the process for developing this proposed rule. No other data or analysis was needed.

Comparison to federal law.

The federal Workforce Investment Act of 1998 provides funding for employment and training programs. DWD, with the approval of the Council on Workforce Investment, provides grant allocations to 11 regional workforce development boards, which fund and supervise local programs. Programs for employment placement/retention, job training, and education-related training programs are delivered through Wisconsin Job Centers.

Comparison with statutes and rules in adjacent states

Minnesota. The Minnesota Job Skills Partnership Program is a state grant program which links state businesses with colleges, technical colleges, and universities to provide skill development training to workers. Approximately 70% of the grants have provided skills training involving state manufacturers; the next most numerous category is health care industries. It is a financial match program in which employers provide approximately 2 dollars for every public dollar provided. Partnership grants are awarded in amounts up to \$400,000. About 80% of the grants are awarded to Colleges and Technical Colleges within the Minnesota State Community and Technical College system. Minnesota uses state general purpose revenue to fund this program.

Illinois. The Illinois Department of Commerce and Economic Opportunity, Office of Business Development, offers a grant program entitled Employer Training Investment Program. Grants may be awarded to individual businesses or to intermediary organizations operating multi-company training programs. The grants are intended to enable companies to remain competitive, expand into new markets or introduce more efficient technology. ETIP grants may reimburse Illinois companies for up to 50 percent of the eligible cost of training their employees. In fiscal year 2010 this program gave out 15 grants totaling \$6.4 million ranging from \$60,000 to \$1.1 million.

Iowa. The Skilled Iowa Initiative offers assessments, certification programs and internships in cooperation with public schools, community colleges, and universities, to work with employers seeking to expand the number of available "middle-skill" workers.

Michigan. The Michigan Industry Cluster Approach strategy focuses on five industry clusters (agriculture, energy, healthcare, information technology, and manufacturing) and works with employers to identify industry demand and vacancies, and provide input into the design of educational program offerings and skills requirements. The state's policy is to align services and programs with the identified needs for workers and skills.

Programs are listed on Michigan's "WIA Eligible Training Provider List" based on input from employers.

Effect on small business. The proposed rule has no effect on a small business that does not apply for a workforce training grant. Any business that chooses to apply for a grant, with or without partners, will have to comply with the administration and reporting requirements of the rule and the grant agreement.

Analysis used to determine effect on small business. The analysis is based upon the text of 2013 Wisconsin Act 9 and the proposed rule.

Additional documents. The following items are included as attachments:

- The fiscal estimate and economic impact analysis.
- The Rules Clearinghouse Report of the Legislative Council. The recommendations of the report have been accepted in whole.
- A list of the persons who appeared or registered for or against the proposed rule, or for information, at the public hearing.
- A summary of the public comments on the proposed rule and DWD's responses.

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SECTION 1. Chapter DWD 801 is created to read:

Chapter DWD 801

Wisconsin Fast Forward Workforce Training Grants

- DWD 801.01 Authority and purpose.**
- DWD 801.02 Applicability.**
- DWD 801.03 Definitions.**
- DWD 801.04 Project eligibility.**
- DWD 801.05 Application.**
- DWD 801.06 Grant awards.**
- DWD 801.07 Restrictions.**
- DWD 801.08 Match requirement.**
- DWD 801.09 Use of grant funds.**
- DWD 801.10 Amount of grants.**
- DWD 801.11 Reporting requirements.**

DWD 801.01 Authority and purpose. This chapter is created to establish the rules that shall govern the administration and granting of funds for the training of unemployed and underemployed workers and incumbent employees in this state, as authorized under s. 106.27, Stats.

DWD 801.02 Applicability. This chapter applies to the department, to applicants for grants awarded by the department, and to public and private organizations that are awarded grants by the department, all in connection with workforce training grants applied for and awarded under s. 106.27, Stats.

DWD 801.03 Definitions. In this chapter:

(1) “Administrative costs” means costs associated with implementing grant objectives and activities, such as the provision of office space, telephone service and employees.

(2) “Applicant” means a public or private organization that applies for a grant from the department for the development or implementation of a workforce training program.

(3) “Capital equipment” means equipment having a value greater than \$5000 and a useful life of more than one year.

(4) “Department” means the department of workforce development.

(5) “Evaluation committee” means a committee of department members, and other persons invited by the department, that reviews and evaluates applications.

(7) “Governmental body” means a state or local agency, department, committee, council or public body created by constitution, statute, ordinance or rule.

(8) “Grant” means an agreement between the department and the grantee whereby the department provides funds from the appropriation under s. 20.445(1)(b), Stats., for the purposes specified in s. 106.27(2g), Stats.

(9) “Grantee” means a public or private organization or agency receiving a grant either directly or indirectly from the department.

(10) “Grant Program Announcement” or “GPA” means a document that describes a grant program, invites applications for the grant, specifies who may apply, and establishes application procedures, criteria for awarding grants, and conditions and restrictions that accompany grants.

(12) “In-kind contributions” means the value of noncash contributions provided by the grantee or third parties which directly benefit and are specifically identifiable to the program.

(13) “Incumbent employee” means an employee or worker who is currently employed by a qualified employer.

(14) “Instructional materials, software and equipment” means instructional materials, software and equipment to be directly used or consumed by the trainees during instructional activities.

(15) "O*Net" means a United States government system of classifying occupations. O*Net occupation codes are unique numbers assigned to each occupation. O*Net is used for career exploration, job analysis, and statistical analysis.

Note: More information about O*Net can be found at the U.S. Department of Labor websites <http://www.onetonline.org/> and <http://www.onetcenter.org/> .

(17) "Private organization" means a private for-profit or non-profit business or service provider.

(18) "Public agency" means any governmental body, including but not limited to a county, city, village, town, school district, technical college district or district board, and an agency of the state government or a formally constituted subunit of any of these entities.

(20) "Supplant" means the substitution of existing training funds with grant funds simply because training funds are awarded under this program.

(21) "Underemployed worker" means an employee or worker who is currently employed but not in a capacity that reflects the skills and experience of the employee or worker and is reflected in less than desirable terms of compensation, hours or responsibility.

(22) "Unemployed worker" means an individual who is currently out of work and is available for work, excluding an individual who is not working but anticipates being called back to his or her regular employment.

DWD 801.04 Project eligibility. (1) ELIGIBLE APPLICANTS. Any private organization or public agency that is current on all federal and state tax obligations and is financially viable is eligible to apply for funds and provide program services.

(2) ELIGIBLE PROJECTS. An eligible program or project is one which demonstrates plans and progress in increasing new jobs, reducing layoffs, and increasing overall employment in the state by increasing workers' skills to better match employers' needs.

DWD 801.05 Application. (1) WHO MAY APPLY. An applicant may be any of the following:

- (a) A public agency.
- (b) A private organization.
- (c) A coalition or partnership of entities under the auspices of a public agency or a private organization.
- (d) The tribal governing body of a federally recognized tribe or band of Indians, or an organization appointed by the tribal governing body.

Note: Interested organizations are encouraged to consult and partner with local or regional economic development organizations and an appropriate training provider. Information on economic development organizations and training providers can be obtained from the Department's Office of Skills Development at <http://dwd.wisconsin.gov/osd/> .

(2) SOLICITATION. The department shall solicit applications for initial grants by preparing one or more GPAs, publishing a notice of the availability of each GPA on the department's website, and distributing copies of the GPA on request.

(3) APPLICATIONS. (a) An application for a grant shall be made on forms included in the GPA.

(b) The GPA shall specify a date by which the applicant must apply.

(c) The application shall be submitted to the department in accordance with the deadline and processes indicated in the GPA, which may include instructions for applications on paper or in an electronic format.

(d) The department shall issue grant guidelines and may update the guidelines as necessary. The guidelines may contain application instructions, requirements and procedures, application deadline date, allowable uses of funds, and award limits.

(4) CONTENT OF APPLICATION. An application for a grant shall include all of the following:

(a) An application summary sheet.

(b) Identification and contact information for the project point of contact, the financial officer for the project and the signatories authorized by the proposed grantee to execute legal documents.

(c) The application checklist included in the GPA.

(d) A description of the critical work force shortage that exists in the project target area.

(e) An abstract that briefly describes the project and highlights the project's purpose.

(f) A summary of the budget request, including the amount and source of matching funds to be used in the project in accordance with requirements established by the GPA.

(g) A justification of the proposed budget detailing cost estimates used in compiling the budget request.

(h) A narrative description of the program.

(i) A statement of assurance in accordance with s. DWD 801.12.

(j) Written documentation of any agreement with any partner agency or organization.

(k) Documentation verifying compliance with the state and federal laws relating to lobbying.

(L) Information on the proposed use of one or more subcontractors in accordance with standards established by the GPA.

(m) Any other information required in the GPA.

(5) REVIEW OF APPLICATIONS. (a) *Preliminary review.* All grant applications shall include all of the application contents specified in sub. (4). The department or evaluation committee shall review each application for compliance with the format and content specifications of sub. (4) and the GPA. The department may deny any application that fails to meet all of the criteria.

(b) *Evaluation criteria.* The department or evaluation committee shall evaluate grant applications that meet the criteria as specified in par. (a) against criteria specified in sub. (4) and the GPA. The criteria shall include all of the following:

1. The applicant's organizational and programmatic capacity to implement the proposed project.

2. The applicant's understanding and ability to communicate the needs of the target population.

3. The applicant's stated purpose and objectives for the program and methods and timetable for implementing the program.

4. The extent to which the applicant's proposed budget is clear and justified.

5. An evaluation plan for the project.

6. The potential impact on economic development.

7. The potential impact on economic opportunities for the business, the trainees and the local workforce.

8. The potential impact of the project on building the capacity of the workforce to find and retain employment.

(6) RANKING APPLICATIONS. (a) The department or evaluation committee shall weight the importance of each evaluation criterion by assigning points to it. The criteria weighting shall be provided in the GPA.

(b) Using the evaluation criteria specified in subs. (4) and (5), the department or evaluation committee shall evaluate each application against each applicable criterion and assign points signifying the degree to which the application meets the criterion up to the maximum number of points specified in the GPA. The total points assigned to the application for all applicable criteria will be the score for the application.

(c) The department shall numerically rank each application for each GPA.

(d) In addition to the staff rankings and evaluation committee recommendations, considerations may include underserved populations, strategic priorities, past performance, underserved geographic areas, potential to replicate the program and available funding.

DWD 801.06 Grant awards. (1) MAKING AWARDS. Except as provided in sub. (2), for each GPA, the department shall award a grant to the applicant with the highest numerical score under s. DWD 801.05(6).

(2) EXCEPTIONS. In reviewing a grant application, the department:

(a) May reject any application which fails to meet the content specifications under s. DWD 801.05(4). Rejection of an application for failure to meet the content specifications under s. DWD 801.05(4) is not subject to appeal.

(b) May negotiate the amount of an award, authorized budget items and programmatic goals and objectives before awarding a grant to an applicant.

(c) May consider additional factors, including underserved populations, strategic priorities, past performance, underserved geographic areas, potential to replicate the program and available funding.

(3) NOTIFICATION. The department shall notify each applicant, in writing, within 60 days of the deadline stated in the GPA for submitting a grant application, of the department's decision on the application.

(4) APPEAL. Except as provided in s. DWD 801.05(5) (a) and sub. (2)(a), an applicant for a grant may appeal to the department an adverse decision of the department. The appeal shall be in writing and shall fully identify all contested issues. The appeal shall be filed with the department within 10 working days of the date on which the notice of awards is postmarked.

(5) CONTRACT. (a) The department shall make each grant award through a contract between the department and the applicant selected to receive the grant.

(b) The contract shall provide for the retainage of a percentage of the grant funds, in accordance with a standard established by the GPA, to be paid upon compliance with the conditions of the grant.

(6) AVAILABILITY OF FUNDS. (a) The department shall decide the amount of funds available for grants from the expected appropriation under s. 20.445(1) (b), Stats., and shall announce the availability of funds in one or more GPAs.

(b) All funding decisions shall be contingent upon availability of funds under s. 20.445(1) (b), Stats. Any changes in the amount of funds available which were unforeseen at the time of the department's release of a GPA shall be accommodated by the department, as appropriate, by means of reduction, elimination or increase in

existing awards, by awarding of funds to applicants previously denied due to insufficient funds, or by release of a new GPA.

(c) Any funds that become available due to a denial of an award to a selected grantee as a result of failure of the selected grantee to sign the required agreement, or as a result of termination of a project by the department or the grantee, shall be reallocated by the department at its discretion but within the limits of the intent of the appropriation and this chapter.

DWD 801.07 Restrictions. (1) PROHIBITED USE OF FUNDS. Grant funds shall be used only for the payment or reimbursement of expenses which are reasonable, necessary and properly assignable to the purposes of an approved grant. Any other use of grant funds is prohibited.

(2) VIOLATION OF PROHIBITED ACTIVITIES. If a grantee uses grant funds for prohibited activities under sub. (1), the department may terminate the grant and recover funds previously paid to the grantee for that funding period on a recoupment schedule specified in the grant contract.

(3) GRANT ADMINISTRATION. (a) A grantee may not use grant funds to supplant existing employee wages and compensation. Grant funds may be used to train a person who will work for less than 40 hours per week.

(b) A grantee may not use grant funds to purchase capital equipment without the prior written approval of the department.

(c) A grantee shall cooperate with any audit of grant expenses.

(d) A grantee shall maintain grant records for at least 3 years and shall provide information to the department as required by the department for the purposes of

program or fiscal audits and, at the request of the department, shall appear before the department to respond to any questions about the project and the use of grant funds.

DWD 801.08 Match requirement. Match expenditures shall comply with the following criteria:

(1) A match expenditure shall be from locally-generated revenues or federal revenues specifically authorized by federal law to be used as match to state funds.

(2) A match expenditure under this chapter may not be used as match to any other state or federal funds.

(3) A match expenditure shall be made during the required matching period identified in the GPA.

(4) Expenditures for instructional materials may not exceed 20% of the total match expenditure for each application, unless the educational materials are associated with a nationally portable, industry recognized skills credential.

(5) Trainee wages, stipends and fringe benefits may be considered as match expenditures.

(6) In-kind contributions may be considered as match expenditures.

(7) The GPA or the grant may identify additional match conditions based on the specific nature of the proposal or agreement.

DWD 801.09 Use of grant funds. (1) ALLOWABLE USES. A grantee may use grant funds received under this chapter in any of the following ways:

(a) Developing or implementing curriculum of workforce training programs designed to do any of the following:

1. Increase the skills of unemployed workers to meet the needs of one or more employers.

2. Increase the skills of underemployed workers to a level which would qualify the workers for employment at the current employer or a new employer with higher wages, more hours or increased functionality.

3. Increase the skills of incumbent employees to a level which would qualify the employees for employment at the current employer with higher wages, more hours or increased functionality.

(b) Developing or implementing a special project that generates creative problem solving skills, creates a competitive work culture and environment, inspires underachieving workers, increases the productivity of an organization, or facilitates and encourages the development of individual employees.

(c) Renting capital equipment as specified and approved in the grant agreement.

(2) NONALLOWABLE USES. A grantee may not use grant funds received under this chapter in any of the following ways:

(a) Purchase of real estate.

(b) Construction or major remodeling.

(c) Kindergarten to 12th grade education.

(d) Support of the enactment, repeal, modification or adoption of any law, regulation or policy, at any level of government.

(e) Sectarian purposes or activities.

(f) Trainee wages, stipends or fringe benefits.

(3) LIMIT ON ADMINISTRATIVE COSTS. The department may limit the amount of grant funding that a grantee may spend on administrative costs to a percentage no higher than 5% of the total project budget.

(4) OWNERSHIP. The instructional materials developed for a grant funded project with grant funds are owned by the department. The grantee shall have the right to make future use of the materials, subject to any conditions established by the grant.

DWD 801.10 Amount of grants. The amount of a grant shall be based on the following:

(1) The amount requested by the applicant and approved by the department.

(2) The amount of match identified by the applicant and approved by the department.

(3) No grant may be awarded for an amount of less than \$5000.

(4) No grantee may receive more than \$400,000 in any combination of grants during a calendar year.

DWD 801.11 Reporting requirements. (1) A grantee receiving a grant under this chapter shall submit to the department data and information on the use and effect of the grant funds as specified in this section and in the grant guidelines. The grantee shall authorize the department to audit and inspect its records and to use business data for administrative purposes.

(2) The grantee shall submit quarterly Bureau of Labor Statistics multiple worksite survey forms.

(3) The grantee shall report:

(a) The O*Net occupation code for each trainee.

(b) The actual employer worksite location of each trainee after the completion of the training.

(c) The number of trainees initially enrolled in the program, identified by social security number and status at the time of enrollment as an unemployed worker, an underemployed employee, student or an incumbent employee.

(d) For each enrollee who is employed at the time of enrollment, whether the enrollee is an employee of one of the grant partners and the hourly wage of the enrollee.

(e) For each enrollee who is unemployed at the time of enrollment, whether the enrollee has obtained employment during the training, or within a specified time period after the completion of the training, whether the employment obtained is with one of the grant partners, and the hourly wages of the newly employed worker.

(f) The number of trainees, identified by social security number, that successfully complete the training, and the status of the trainees at the completion of the program as unemployed, underemployed, student or incumbent employee.

(g) For each enrollee who was underemployed at the time of enrollment, whether the enrollee has obtained new employment, whether any new employment is with a grant partner, and whether the new employment has provided an increased wage or increased hours of work.

(h) Such other information as may be required by the department.

DWD 801.12 Assurances and certifications. Each grantee shall assure and certify that the grantee and its contractors are in compliance with the terms of this section.

(1) AUTHORITY TO SIGN AND ACCEPT FUNDS. The grantee shall certify that the designated signatory official has the authority to sign on behalf of the grantee and has the authority to accept funds.

(2) COMPLIANCE STATEMENT. The grantee shall provide a statement that it is in compliance with applicable state and federal laws, rules and regulations, including tax laws, the unemployment insurance and worker's compensation laws, the requirements of this chapter, and the GPA.

(3) NONDISCRIMINATION AND EQUAL OPPORTUNITY. In accordance with s. 16.765, Stats., the grantee may not discriminate in violation of state or federal law and shall follow equal employment opportunity practices in the administration and delivery of program services and benefits to eligible applicants and participants.

(4) ADEQUATE AND DOCUMENTED SYSTEMS. The grantee shall have adequate and documented administrative, personnel, financial and program management systems, including the policies, procedures and controls necessary to ensure effective and efficient use of funds for the delivery of programs under this chapter.

DWD 801.13 Grant Administration. (1) GRANT RECORDS. The grantee shall maintain grant records, provide access to the records when requested by the department, and cooperate with monitoring and auditing activities of the department.

(2) RETENTION. The grantee shall retain grant records for at least three years after the conclusion of the grant.

(3) INVOICES. The grantee shall submit invoices for reimbursement in accordance with procedures established by the department.

SECTION 2. EFFECTIVE DATE. This rule shall take effect on October 1, 2013.

Dated this 19th day of September, 2013.

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/s/ Howard Bernstein, for

Reginald J. Newson, Secretary