

# Overview of Workforce Development Provisions under Federal Transportation Law

March 2009

This memorandum provides a brief overview of job training provisions established or amended under SAFETEA-LU.

## *A. On-the-Job Training (OJT) and OJT Supportive Services (OJT/SS)*

Federal-aid highway construction contracts and subcontracts are subject to non-discrimination requirements under 23 U.S.C. 140(a). As part of these requirements, states can require contractors to set aside a certain number of on-the-job training (OJT) and apprenticeship slots and hours for women, minorities, and other disadvantaged individuals. The percentage of slots that must be made available is determined by states. Contractors must make their best efforts to enroll eligible individuals in approved training programs designed to enhance skills in specified trades and occupations towards journeyman status. Contractors may pay trainees reduced wages during the course of the training program, and may be reimbursed for a percentage of wages paid to OJT participants.

The OJT/SS program was established by 23 U.S.C. 140(b), and is administered by the Federal Highway Administration's (FHWA) Office of Civil Rights. The law authorizes the Secretary of Transportation to set aside up to \$10 million of federal surface transportation funds to support programs that enhance training opportunities for members of minority groups and women (states may also set aside highway formula funds, but it is not clear that any do so at this time). Services can include pre-apprenticeship and pre-employment training, remedial training, counseling, transportation, physical examinations, etc. In FY 2008, 22 states applied for and received OJT/SS funding for 56 projects, with awards ranging from \$40,000 to \$427,500.<sup>1</sup>

The American Recovery and Reinvestment Act included \$20 million in funding for OJT/SS.

## *B. Surface Transportation Workforce Development, Training, and Education*

The 1998 Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21) included a provision permitting federal surface transportation funds to be used for tuition and direct educational expenses of state and local transportation agency employees. The federal share under this provision was limited to 80%, and overall funding was capped at ½ of one percent of STP funding. Congress amended this provision with §5204(e) of SAFETEA-LU, which permits states to obligate funding from five core programs (STP, HBRRP, National Highway System, Interstate Maintenance, and Congestion Mitigation and Air Quality Improvement Program) for surface transportation workforce development, training, and education. Permitted activities under the new provision include training and professional development for surface transportation workers not employed by state or local transportation agencies, including activities for women and minorities. §5204(e)(2) establishes the federal share for such activities at 100%.

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<sup>1</sup> FY 2008 data provided by OCR staff.

Conversations with staff at the Federal Highway Administration (FHWA) confirm that these funds can be used for training non-agency employees. However, it appears that only two states are currently using funds in this way. Michigan established the Road Construction Apprenticeship Readiness Program (RCAR) in April of 2008,<sup>2</sup> which is part of a larger Road Construction Workforce Development (RCWD) program currently funded at \$4 million for Fiscal Years 2009-2011.<sup>3</sup> There are at least two highway projects in Missouri that have agreed to utilize ½ of one percent of project funds towards workforce development programs: the I-64 Project in St. Louis, and the kcICON project in Kansas City. These funds are being used to provide pre-apprenticeship training for socially and economically disadvantaged individuals.<sup>4</sup>

### *C. Transportation and Local Workforce Investment – “Sense of Congress” provision*

Section 1920 of SAFETEA-LU included a “sense of Congress” provision related to job training and local participation in federal transportation projects. It is reproduced in full below:

(a) FINDINGS.—Congress finds the following:

(1) Federal-aid highway programs provide State and local governments and other recipients substantial funds for projects that produce significant employment and job-training opportunities.

(2) Every \$1,000,000,000 in Federal infrastructure investment creates an estimated 47,500 jobs.

(3) Jobs in transportation construction, including apprenticeship positions, typically pay more than twice the minimum wage, and include health and other benefits.

(4) Transportation projects provide the impetus for job training and employment opportunities for low income individuals residing in the area in which a transportation project is planned.

(5) Transportation projects can offer young people, particularly those who are economically disadvantaged, the opportunity to gain productive employment.

(6) The Alameda Corridor, a \$2,400,000,000 transportation project, is an example of a transportation project that included a local hiring provision resulting in a full 30 percent of the project jobs being filled by locally hired and trained men and women.

(b) SENSE OF CONGRESS.—It is the sense of Congress that Federal transportation projects should facilitate and encourage the collaboration between interested persons, including Federal, State, and local governments, community colleges, apprentice programs, local high schools, and other community-based organizations that have an interest in improving the job skills of low-income individuals, to help leverage scarce training and community resources and to help ensure local participation in the building of transportation projects.

It is unclear whether local hiring preferences in federal contracts are legal. 23 CFR 635.117(b)<sup>5</sup> has been interpreted by the U.S. Department of Transportation to prohibit such preferences, and while Missouri Department of Transportation acknowledged the “Sense of Congress” provision in their workforce utilization agreements for the two highway projects referenced above, they have asserted that the provision is not legally binding.

### *D. Human Resources Programs for Public Transportation*

49 U.S.C. 5322 (as amended by sec. 3022 of SAFETEA-LU) permits the Secretary of Transportation to issue grants for programs that address human resource needs as they apply to

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<sup>2</sup> <http://www.upjohninst.org/miworks/Min02-07-2008%20WDB.pdf>

<sup>3</sup> [http://www.michigan.gov/documents/mdot/MDOT-Trans-Comm-Minutes-01-31-08\\_226667\\_7.pdf](http://www.michigan.gov/documents/mdot/MDOT-Trans-Comm-Minutes-01-31-08_226667_7.pdf)

<sup>4</sup> See <http://www.kcicon.org/workforce.html> and [http://www.thenewi64.org/new6\\_workforcedevelopment.jsp](http://www.thenewi64.org/new6_workforcedevelopment.jsp) for information on the Kansas City and St. Louis programs.

<sup>5</sup> <http://www.fhwa.dot.gov/programadmin/contracts/tabover.cfm>

public transportation activities. Programs may include employment training programs; an outreach program to increase minority and female employment in public transportation activities; research on public transportation personnel and training needs; and training and assistance for minority business opportunities. The program was administered by the Federal Transit Administration.

The grant program authorized under this section (CFDA 20.511) has received no funding since FY 1993, and was cancelled in June 2005. Between FY2000-2007, only two grants were issued under this program: a grant of \$2.4 million to the state of Washington in FY 2000, and a \$100,000 grant to the District of Columbia in FY04.<sup>6</sup>



Prepared by The Workforce Alliance | [www.workforcealliance.org](http://www.workforcealliance.org) | 202.223.8991  
For more information, contact Kermit Kaleba at [kermitk@workforcealliance.org](mailto:kermitk@workforcealliance.org)

The Workforce Alliance is now National Skills Coalition

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<sup>6</sup>[http://www.fedspending.org/faads/faads.php?fiscal\\_year=&cfda\\_program\\_num=20.511&sortby=u&datatype=T&reptype=r&database=faads&detail=0&submit=GO](http://www.fedspending.org/faads/faads.php?fiscal_year=&cfda_program_num=20.511&sortby=u&datatype=T&reptype=r&database=faads&detail=0&submit=GO)