



# Memorandum

TO: Panel Members

Date: October 23, 2009

FROM: Maureen Reilly  
General Counsel

SUBJECT: CONTRACTOR RELOCATION REGULATION

Staff recommends amendment of Title 22, California Code of Regulations (CCR) Section 4446.5, Contractor Relocation, so that it will also apply to a Multiple Employer Contract (MEC).

The existing regulation authorizes the Panel to “clawback” funds disbursed under single-employer contracts, even after payment has been earned, if the contractor relocates the facility at which training was provided to a location out-of-state within three years of contract termination. The existing regulation allows the clawback to be exercised at the Panel’s discretion case-by-case. It also directs the Panel to consider, as mitigating factors, the employer’s efforts to offer job transfers, assist in job-search and provide transitional health benefits.

The proposed amendment would apply the clawback to participating employers in a MEC, as follows:

“...for training that occurred on or after the date the participating employer knew or should have known that the facility would be moved or job(s) transferred to a location out-of-state. At the Panel’s discretion, the MEC contractor may be reimbursed pro rata for its administrative costs related to said training.”

The proposed amendment would also clarify that the clawback may be exercised within the term of the ETP Agreement and up to three years from termination. (See ~~strikeout-~~underline text attached.)

The purpose of this proposed amendment is to give the Panel greater control over the expenditure of training funds under circumstances where training has continued at the behest of a participating employer after plans were underway for plant closure or job transfer.

This amendment presumes that knowledge of a pending closure or transfer would be exclusive to the participating employer, and would not be known by the MEC in its role as contract administrator, until such time as it is made public. For this reason, the Panel would retain the discretion to pay administrative fees pro rata.

The Panel was faced with this situation recently when NUMMI, Inc. (NUMMI) announced the closure of its plant in Fremont on August 27, 2009, at which time some \$2 million in training costs has been earned. NUMMI was a participating employer under ET08-0193 between the Panel and the California Manufacturers and Technology Association (CMTA), a MEC that was originally approved on August 24, 2007. The funds for NUMMI were approved by the Panel on February 27, 2009 in a contract amendment made retroactive to the participating employer's "enrollment" date of December 17, 2008.

At its meeting last month, the Panel had several questions as to when either of NUMMI's parent corporations, Toyota, Inc, or General Motors, Inc., knew or should have known of the plant closure in Fremont and, by implication, should have stopped training billable to ETP. As of that meeting, the invoices for NUMMI had been submitted by CMTA but not yet paid by ETP. (See Minutes for details on this line of questioning.)

### **Procedures**

If approved by the Panel, the proposed amendment will be noticed for a 45-day public comment period through the Office of Administrative Law. In general, the full rulemaking process takes 90-180 days to complete. This amendment may be adopted immediately.

### **Recommendation**

Staff recommends that the Panel approve the proposed amendment of Title 22, CCR Section 4446.5, for notice-and-comment rulemaking, as set forth herein.

Attachments: Strikeout-and-Underline Text

§ 4446.5. Contractor Relocation.

(a) A single-employer contractor (Contractor) that moves a facility at which training was provided to a location out-of-state, within three years from expiration of the Training Agreement term, may be required to return payment earned under the Agreement.

(b) A Contractor that transfers jobs for which training was provided to a location out-of-state, within the term of the Employment ~~three years from expiration of the Training Panel Agreement term~~ and up to three years from its termination, may be required to return payment earned under the Agreement.

(c) The requirement to return payment earned under this regulation may be imposed by the Panel at its discretion, on a case-by-case basis.

(d) In exercising its discretion the Panel shall consider, as mitigating factors, whether the Contractor made efforts to minimize the State's loss of jobs/skills, or to reduce the financial burden on affected employees. Examples of such efforts include, but are not limited to:

- (1) offering job transfers to another facility operating in California,
- (2) providing job-search and placement assistance,
- (3) providing transitional health benefits, severance pay or incentives for early retirement.

(e) The provisions in subsection (a)-(d) above shall extend to a participating employer under a Multiple Employer Contract (MEC) for training that occurred on or after the date the participating employer knew or should have known that the facility would be moved or job(s) transferred to a location out-of-state. At the Panel's discretion, the MEC contractor may be reimbursed pro rata for its administrative costs related to said training.