State of California

M e m o r a n d u m

To: Panel Members

Date: October 24, 2002

From: Peter McNamee, Executive Director

File:

Subject: LIMITATION ON TRAINING FOR MANAGERS

This memo provides background, options, and a recommendation regarding the Employment Training Panel's (ETP) current regulatory limitation of 40 percent on training managers and supervisors. This limitation reflects the enabling legislation's emphasis on training "to invest in a skilled and productive work force, and in

BACKGROUND

From ETP's inception, the primary intent of the program was to provide California businesses with a skilled workforce by funding training for frontline workers. In 1994, Senate Bill 96 was enacted, which clarified ETP's role by implicitly stating that the role of ETP was to train frontline workers to meet the State's economic challenges of out-of-state competition. Senate Bill 96 amended the Panel's enabling legislation to provide that, in order to address out-of-state competition, "California's employers, workers, labor organizations, and government need to invest in a skilled and productive workforce, and in developing the skills of frontline workers." (Unemployment Insurance Code § 10200(a)). The legislation defines a frontline worker as "a worker who directly produces or delivers goods or services."

Research has shown that, generally, employers provide only limited training to their employees. Although large companies are more likely to provide job-skills training than smaller companies, most of the training provided by employers is directed at workers in higher-level positions, such as managers and supervisors. Thus, ETP's focus is on providing increased training for frontline workers, while also serving as a catalyst for employers to provide increased training for frontline workers on their own.

In order to ensure a continued emphasis on the training of frontline workers, in 1995 ETP promulgated a regulation (Title 22, California Code of Regulations (22 CCR), § 4415) to impose a cap on the number of supervisory/managerial workers that could be trained in any one project. (Prior to the promulgation of 22 CCR § 4415, there was no specific policy restricting the participation of managers and supervisors in ETP

funding to a certain percentage. Proposals to train frontline workers as well as managers and supervisors were considered by the Panel on a case-by-case basis.) This regulation provides:

> "The Panel shall fund training for frontline workers, in addition to training for other support staff.
>
> (1) Retraining of supervisors and managers shall not exceed 40 percent of the total trainees in a retraining contract. The Panel shall waive this requirement for small businesses with 50 or fewer employees.
>
> (2) The 40 percent cap on training of supervisors and managers shall not apply to Total Quality Management training, nor to training for a high performance workplace, as defined in Section 10201(b)(3) of the Unemployment Insurance Code. The Panel shall waive this requirement for special employment training projects as defined under Unemployment Insurance Code Section 10214.5."

The Panel believed the 40 percent cap on managers and supervisors would ensure that the majority of trainees in a project were frontline workers while, at the same time, provide sufficient flexibility to meet employers' needs for the training of management staff, when necessary.

The regulation also contains some exemptions to the percentage cap. The Panel did not impose the 40 percent limit on high performance workplace training due to the fact that the principle of a high performance workplace requires full participation of managers and supervisors. The Panel also determined the limit should be waived for small businesses with 50 or fewer employees.

Additionally, to provide flexibility for its then recently established Special Employment Training (SET) category, the Panel determined that the limit on training for managers and supervisors should be waived under certain SET categories (e.g., "barriers to employment," "new and emerging industries," "defense cutbacks"). In 2000, however, legislative changes restructured the SET program to focus exclusively on training for frontline workers. Subsequently, the Panel, through regulations, has further defined SET frontline workers as: (1) workers earning at least the state average hourly wage; (2) workers in high unemployment areas; (3) small business owners; and, (4) workers with multiple barriers to employment. Therefore, given SET's specific focus on training for frontline workers, the 40 percent limit waiver for training managers under SET may no longer be appropriate.

DEFINING MANAGERS/SUPERVISORS:

With the enactment of Senate Bill 96 (1994) mandating the Panel's role of providing training for frontline workers, the Panel adopted a definition of "manager/supervisor" for the purpose of clarifying the distinction between a frontline worker and a manager. (This definition was critical for determining a project's compliance with 22 CCR § 4415, Workforce Training which applies a 40 percent cap on the number of managers that can be trained in any project.)

22 CCR § 4400, Definitions (ee), defines a frontline worker as follows:

"Frontline worker" means an individual who meets one of the following criteria:

(1) Is not exempt from overtime under state or federal law, providing he or she directly produces or delivers goods or services.

(2) Is covered by a collective bargaining agreement, providing he or she directly produces or delivers goods or services.

(3) Is exempt from overtime under state or federal law and not covered by a collective bargaining agreement if his or her primary job responsibility is directly producing or delivering goods or services.

(4) For purposes of Special Employment Training projects, a frontline worker may also be the owner (a) of a business with at least 1, but less than 10 full-time employees, and (b) whose primary duties consists of directly producing or delivering goods or services.

Therefore, any individual that does not meet the above definition of "frontline worker" is considered to be a manager or supervisor.

TYPES OF TRAINING PROVIDED TO MANAGERS/SUPERVISORS:

Historically, the Panel has funded training for managers and supervisors in the context of supporting an employer's overall training goals such as transitioning to a high performance workplace or continuous quality improvement. Typically, such training for managers has been necessary to an employer's success in training its entire workforce (i.e. managers learning manufacturing or computer skills along with the frontline workers they will supervise). The Panel does not fund management training exclusive of, or unrelated to workforce training (i.e. Hiring, Firing, and Discipline; or Labor Laws and Legal Issues). Staff's review of all FY 2001-2002 contracts that included training for managers indicates that almost all of the training was for Continuous Improvement, Computer Skills, Management Skills, Business Skills, and

Manufacturing Skills – typical of a high performance workplace or continuous improvement training plan. Therefore, ETP training for managers and supervisors appears to support the program's priority on high performance workplaces and support for a business' overall training goals. This can be and is enforced administratively.

CURRENT LEVEL OF TRAINING FOR MANAGERS AND SUPERVISORS

In order to assess the most current level of ETP-funded training for managers and supervisors, staff reviewed data from contracts approved over the past two fiscal years (2000-2001 and 2001-2002). This data indicates the following:

- A total of $217 million was approved for 500 contracts, for the training and retention of 185,000 workers.
- Slightly more than one-half of these contracts (53 percent) included training for managers/supervisors. A review of a sample of these projects (90 contracts) indicated the following:
  - On average, 21 percent of the trainees were managers/supervisors (the median was 16 percent).
  - The exemptions to the 40 percent cap were utilized in only 10 percent of the contracts. If these are excluded, the average is 17 percent; the median is 14 percent.
  - In almost two-thirds of the contracts, less than 20 percent of the trainees were managers (with an average of 11 percent).
  - In contracts with between 20 and 40 percent managers being trained, the average percentage of management trainees was 27 percent.
  - All of the projects with more than 20 percent managers would have been exempt from the 40 percent cap, because the project was for either a small business, high performance workplace training, or SET.

Thus, staff's review of the data indicates that almost 80 percent of all trainees were frontline workers, and, importantly, the training of managers has primarily been to support a company's transition to a high performance workplace.

Given that most contracts with training for managers had fewer than 20 percent managers as trainees, arguably the 40 percent limit could be reduced -- perhaps to 20 or 25 percent. However, the data also indicates that almost all of the contracts with between 20 to 40 percent managers being trained would have qualified for a waiver to the 40 percent cap.

OPTIONS:

Given the above discussion, the Panel may want to choose one of the following options with respect to training for managers/supervisors:

1) Maintain the current 40 percent cap on training for managers/supervisors and the current exemptions for high performance workplace training, very small businesses, and SET: Given the available data, it does not appear that employers are training a high percentage of managers in relation to frontline workers. Projects with the highest percentage of managers (above 20 percent) were primarily high performance workplace projects where manager participation is critical to the success of the training.

2) Reduce the 40 percent cap to 25 percent – and maintain the exemptions for high performance work place training, very small businesses, and SET: Reducing the percentage of managers who can be trained per project would only nominally place greater emphasis on the training of frontline workers. However, reducing the limit to 25 percent does not appear necessary because: (1) ETP is currently effectively serving frontline workers (approximately 80 percent of all trainees are frontline workers), and (2) projects with training for managers (excluding high performance workplace, SET, and small business) typically train no more than 20 percent managers.

3) Maintain the 40 percent cap – providing an exemption for small businesses of 100 or less that contract directly with the Panel, and eliminating exemptions for high performance workplace or SET: Maintaining the 40 percent cap would ensure that the majority of trainees in any project are frontline workers, and at the same time allow flexibility to meet employers' needs for training of management staff, when necessary. Providing an exemption for direct contracts with small businesses of 100 or less is consistent with the Panel's Small Business Pilot Project designed to serve small businesses that are not eligible for Panel funding, under ETP's standard contracting requirements. In these small businesses, managers are likely to be working as frontline workers, directly producing or delivering goods or services. The legislative changes to SET in 2000 refocused SET specifically on frontline workers. Thus, an exemption to the 40 percent cap for SET is no longer relevant. Further, eliminating the exemption for high performance workplace training is not problematic, as data revealed that such exemptions were used in only 10 percent of sampled contracts. (Note: This option would require that 22 CCR § 4415, Workforce Training be revised. Draft Regulation is attached.)

4) Prohibit the training of all managers/supervisors: This option would restrict the Panel's overall ability to meet business' need for trained workers, given that approximately one-half of all projects include some training for managers and supervisors (reflecting employers' need for such training). This option would also greatly limit ETP's ability to serve: (1) employers transitioning to a high performance workplace; (2) very small

businesses; and, (3) employers who are difficult to serve under the Panel's regular funding criteria.

RECOMMENDATION:

It is recommended that the Panel adopt Option 3 to

(1) maintain the 40 percent cap on training of managers;

(2) provide an exemption for small business; however, provide no exemptions for high performance workplace or SET; and,

(3) approve the proposed revision to 22 CCR § 4415, Workforce Training.

ATTACHMENT

DRAFT

4415. ~~Workforce~~ **Limitation on** Training **of Managers**.

The Panel shall fund training for frontline workers, **as defined by 22 CCR § 4400 (ee).** ~~in addition to training for other support staff. Retraining of supervisors and managers shall not exceed.~~ **However, the Panel may permit a maximum of 40** percent of the total trainees in a ~~re~~training contract **to be managers and supervisors**. **Managers and supervisors are defined as those workers who do not meet the definition of 22 CCR § 4400 (ee)**

~~(1) Retraining of supervisors and managers shall not exceed 40 percent of the total trainees in a retraining contract.~~ The Panel shall waive this requirement for small businesses with **100** ~~50~~ or fewer employees **that contract directly for training**.

~~(2) The 40 percent cap on training of supervisors and managers shall not apply to Total Quality Management training, nor to training for a high performance workplace, as defined in Section 10201(b)(3) of the Unemployment Insurance Code. The Panel shall waive this requirement for special employment training projects as defined under Unemployment Insurance Code Section 10214.5.~~

Authority: Section 10205(k), Unemployment Insurance Code.
Reference: Sections 10200(a); 10201(b)(3), Unemployment Insurance Code.
Effective: April 14, 1995

Revised: _____