

PART 250 OF THE REGULATIONS OF THE COMMISSIONER OF THE DEPARTMENT OF ECONOMIC DEVELOPMENT ARE AMENDED TO READ AS FOLLOWS:

EMPLOYEE TRAINING INCENTIVE PROGRAM

§ 250.1 Purpose and general description.

The purpose of these regulations is to set forth the application process for the Employee Training Incentive Program. Pursuant to section 444 of the Economic Development Law, the Department of Economic Development has been granted the authority to promulgate regulations, in consultation with the Department of Labor, to establish eligibility criteria for business entities desiring to participate in the program, procedures for the receipt and evaluation of applications from business entities to participate in the program, and such other provisions as the commissioner deems to be appropriate. The Department of Economic Development shall administer the program, including the issuance of tax credit certificates.

§ 250.2 Definitions.

(a) Advanced technology means the research, development, and manufacturing of goods and their applications in the areas of advanced materials and processing technologies, integrated electronics, optics, biotechnology, information and communication technologies, automation and robotics, electronics packaging, imaging technology, remanufacturing, and such other areas as the commissioner shall determine.

(b) Approved provider of eligible training means an entity that provides training in methods, processes, or the use of equipment which meets the following criteria to the satisfaction of the commissioner:

(1) business activity providing training for at least one year;

(2) a written curriculum describing the skills and knowledge to be gained by individuals completing training with the approved provider;

(3) employment of individuals with the necessary knowledge and credentials to provide eligible training; and

(4) accreditation or certification, where applicable, in the subject matter of training provided by the approved provider.

(c) Approved provider of an eligible internship program means a business entity providing internship training in advanced technology or life sciences, or an entity providing internship training in advanced technology pursuant to a contract with a business entity employing the intern receiving training in advanced technology or life sciences, which meets the following criteria to the satisfaction of the commissioner:

(1) a written curriculum describing, at least, the duration of the internship, the activities to be engaged in by the intern participating in the internship, and skills and knowledge to be gained by the intern as a result of participating in the internship training; and

(2) employees qualified, with accreditation or certification where applicable, to provide the internship training.

(d) Business need means the absence of a method, a process, or equipment related to the revenue-generating activities of a business entity.

(e) Capital investment means an investment in tangible property (including, a building or a structural component of a building) owned by a business entity that is depreciable pursuant to section 167 of title 26 of the United States Code; is acquired by purchase as defined in section 179(d) of title 26 of the United States Code; and has a situs in this State. Capital investments do not include operating expenses such as office supplies, training expenses, utilities, rent, and other recurring expenses. Section 167 and section 179(d) of title 26 of the United States Code are available for public inspection and copying at the following address: New York State Department of Economic Development, 625 Broadway, 8th Floor, Albany, NY 12245.

(f) Certificate of tax credit means a certificate issued by the Department which states the amount of the employee training incentive program tax credit that a business entity has qualified for, based upon the Department's analysis under section 443 of the Economic Development Law and the provisions of this Part. Such certificate may include, but is not limited to, the following information: name and address of the business entity, the amount of the tax credit to be received by the business entity, and a disclaimer stating that actual receipt of the tax credit is subject to the statutory maximum amount of credits that are allocated for the program.

(g) Commissioner means the Commissioner of Economic Development.

(h) Culturally focused training means training intended to provide knowledge about, or skills in interacting with, persons identifying with demographic characteristics including, but not limited to, race, nationality, gender, age, gender identity, or sexual orientation.

(i) Current student means a person enrolled, at the time of the commencement of such person's participation in an eligible internship program, on a full-time basis at a university or college in the State of New York in a course of study leading to a bachelor's degree or post-graduate degree in advanced technology.

(j) Department means the New York State Department of Economic Development.

(k) Eligible internship program means an internship program providing internship training in advanced technology, or providing internship training in life sciences at a life sciences company, that is approved by the commissioner and provided by an approved provider of internship training on or after August 1, 2015.

(l) Eligible training means training provided by an approved provider that is:

(1) to upgrade, retrain or improve the productivity of employees;

(2) provided, in New York State, to employees [filling net new jobs, or to existing employees]in connection with a significant capital investment by a participating business entity;

(3) determined by the commissioner to satisfy a business need on the part of a participating business entity;

(4) not designed to train or upgrade skills as required by a Federal or State entity;

(5) not training the completion of which may result in the awarding of a license or certificate required by law in order to perform a job function; and

(6) not culturally focused training.

(m) Internship training means work-based learning opportunities in advanced technology or life sciences that:

(1) are provided by an approved provider of an eligible internship program;

(2) do not exceed 12 months in duration;

(3) are provided, in New York State, to current students, recent graduates, and recent members of the armed forces; and

(4) are provided to interns who have not previously participated in an eligible internship program and who are not current or former employees of the business entity submitting the application to provide the eligible internship program.

[(n) Net new job means a job created in this State that:

(1) is new to the State;

(2) has not been transferred from employment with another business located in this State through an acquisition, merger, consolidation or other reorganization of businesses or the acquisition of assets of another business, and has not been transferred from employment with a related person in this State;

(3) is either a full-time wage-paying job or equivalent to a full-time wage-paying job requiring at least 35 hours per week;

(4) is filled for more than six months;

(5) is filled by a person who has received eligible training; and

(6) is comprised of tasks the performance of which required the person filling the job to undergo eligible training.]

(n) Life sciences means agricultural biotechnology, biogenetics, bioinformatics, biomedical engineering, biopharmaceuticals, academic medical centers, biotechnology, chemical synthesis, chemistry technology, medical diagnostics, genomics, medical image analysis, marine biology, medical devices, medical nanotechnology, natural product pharmaceuticals, proteomics, regenerative medicine, RNA interference, stem cell research, medical and neurological clinical trials, health robotics, and veterinary science.

(o) Life sciences company is a business entity or an organization or institution that devotes the majority of its efforts in the various stages of research, development, technology transfer, and commercialization related to any life sciences field.

[(o)](p) Program means the employee training incentive program.

[(p)](q) Recent graduate means a person who has earned a bachelor's degree or post-graduate degree in advanced technology from a university or college no more than 12 months prior to the date such person commences participation in an eligible internship program.

[(q)](r) Recent member of the Armed Forces means a person who has received honorable or general discharge from the army, navy, air force, marines, coast guard or reserves of the United States no more than 12 months prior to the date such person commences participation in an eligible internship program.

[(r)](s) Related person means a "related person" as such term is defined in section 465(b)(3)(C) of title 26 of the United States Code as of November 17, 2015. Section 465(b)(3)(C) of title 26 of the United States Code is available for public inspection and copying at the following address: New York State Department of Economic Development, 625 Broadway, 8th Floor, Albany, NY 12245.

[(s)](t) Significant capital investment means a capital investment [of at least \$1,000,000]in new business processes or equipment, the cost of which is equal to or exceeds ten dollars for every one dollar of tax credit allowed to an eligible business entity under this program pursuant to subdivision fifty of section two hundred ten-B or subsection (ddd) of section six hundred six of the tax law.

[(t)](u) Stipend means monetary compensation paid to an intern for his or her participation in an eligible internship program. Stipend shall not include deferred compensation or any non-monetary benefit or form of remuneration.

[(u)](v) Strategic industry means an industry approved by the commissioner to participate in the program, based upon the following criteria as demonstrated by business entities applying to the program:

(1) shortages of workers trained to work within the applicant's industry;

(2) technological disruption in the applicant's industry, requiring significant capital investment for existing businesses to remain competitive;

(3) the ability and need of the applicant to relocate outside of the State in order to attract talent;

(4) the potential of the applicant to recruit minorities and women to be trained to work in an industry in which they are traditionally underrepresented; or

(5) the potential of the applicant to create jobs in economically distressed areas, which shall be based on criteria indicative of economic distress, as defined by the commissioner, including poverty rates, proportion of households receiving public assistance and unemployment rates.

Provided further that the following types of business are prohibited from participating in the program without a waiver from the commissioner:

(i) retail and wholesale businesses;

(ii) restaurants;

(iii) real estate brokers;

(iv) law firms or businesses providing legal services;

(v) medical or dental practices;

(vi) real estate management companies;

(vii) hospitality;

(viii) finance and financial services;

(ix) businesses providing personal services;

(x) businesses providing business administrative or support services;

(xi) accounting firms or businesses providing accounting services;

(xii) businesses providing utilities;

(xiii) businesses engaged in the generation or distribution of electricity, the distribution of natural gas, or the production of steam associated with the generation of electricity.

§ 250.3 Eligibility criteria.

In order to participate in the program, a business entity must satisfy the following criteria:

(a) A business entity applying to participate in the program in connection with providing eligible training to employees must:

- (1) operate in the State predominantly in a strategic industry;
- (2) demonstrate that it is obtaining eligible training from an approved provider;
- (3) [create at least 10 net new jobs or]make a significant capital investment in connection with the eligible training; and
- (4) be in compliance with all worker protection and environmental laws and regulations. In addition, the business entity may not owe past due State taxes or local property taxes.

(b) A business entity applying to participate in the program in connection with providing an eligible internship program must:

- (1) demonstrate that it will be providing an eligible internship program, not to exceed 12 months in duration, to one or more interns;
- (2) be located in the State;
- (3) be in compliance with all worker protection and environmental laws and regulations. In addition, the business entity may not owe past due State taxes or local property taxes;
- (4) certify that the eligible internship program will not displace employees of the business entity; and
- (5) employ fewer than 100 employees.

§ 250.4 Application process.

(a) Initial application.

- (1) A business entity must submit an initial application, in such form and at such time as the commissioner shall determine, to the Department prior to procuring eligible training from an approved provider or retaining interns to participate in an eligible internship program.
- (2) Upon receipt of a complete initial application the Department may, at its sole discretion, approve such application based upon the criteria set forth in section 250.6(a) of this Part.
- (3) After review of an initial application, the Department will notify a business entity of its eligibility and may issue a certificate of conditional eligibility to the business entity.

(b) Final application.

(1) A business entity must submit a final application no later than twenty-four months from the date the Department issues the business entity a certificate of conditional eligibility.

(2) The Department shall approve or disapprove the final application based upon the criteria set forth in section 250.6(b) of this Part. If the final application is approved, the Department shall issue a certificate of tax credit to the business entity. The Department shall provide a copy of such certificate of tax credit to the Department of Taxation and Finance. If the final application is disapproved, the Department shall provide the business entity with a notice of disapproval which shall state the reasons therefor.

§ 250.5 Allocation of the Employee Training Incentive Program credit.

(a) The total amount of tax credits listed on certificates of tax credit issued by the commissioner for any taxable year shall not exceed \$5,000,000, and, of that \$5,000,000, the amount of tax credits allocated for business entities providing eligible internship programs shall be at least \$250,000 and no more than \$1,000,000.

(b) In the event that the capital investment costs incurred by a participating business entity, as determined by the Department pursuant to paragraph (b) of section 250.6 of this Part, do not equal at least ten times the amount of the credit to which the business entity is entitled based upon its eligible training costs, then the Department shall issue a pro-rated certificate of tax credit in an amount equal to no more than one-tenth of the capital investment costs incurred by the participating business entity.

§ 250.6 Criteria for evaluation of applications.

(a) Initial application.

An initial application may be approved by the Department, at its sole discretion, provided that such application satisfies the following criteria:

(1) In the case of a business entity applying to participate in the program in connection with providing eligible training to employees, such application must:

(i) be complete;

(ii) be submitted prior to procuring eligible training from an approved provider;

(iii) be made by a business entity operating in the State predominantly in a strategic industry;

(iv) identify the approved provider from which the business entity proposes to procure eligible training;

(v) demonstrate, by providing a written curriculum and such other documentation as the commissioner may require, that the training to be provided by an approved provider is eligible training;

- (vi) estimate the total costs attributable to providing the eligible training;
- (vii) certify that such business entity is in compliance with all worker protection and environmental laws and regulations, and that such business entity does not owe past due State taxes or local property taxes;
- (viii) agree to allow the Department of Taxation and Finance to share the tax information of the business entity with the Department;
- (ix) agree to allow the Department of Labor to share its tax and employer information with the Department;
- (x) agree to allow the Department and its agents access to any and all books and records the Department may require to monitor compliance; and
- (xi) [for a business entity proposing to procure eligible training in connection with creating at least 10 net new jobs, identify the number of full-time equivalent employees of the business entity and any related persons of the business entity; and
- (xii)] include one of the following:
 - (a) at least three bids solicited from entities proposing to provide the eligible training; or
 - (b) an attestation that the business entity could not obtain at least three bids from entities proposing to provide the eligible training, and a written explanation for its inability to obtain such bids.
- (2) In the case of a business entity applying to participate in the program in connection with providing an eligible internship program, such application must:
 - (i) be complete;
 - (ii) be submitted prior to the business entity retaining interns to participate in the eligible internship program;
 - (iii) identify the approved provider that will provide the eligible internship program and the employees of such entity who will be responsible for managing and training interns retained by the business entity;
 - (iv) demonstrate, by providing a written curriculum and such other documentation as the commissioner may require, that the internship program to be provided is an eligible internship program;
 - (v) estimate the total costs for stipends to be paid to interns participating in the eligible internship program;

(vi) certify that such business entity is in compliance with all worker protection and environmental laws and regulations, and that such business entity does not owe past due State taxes or local property taxes;

(vii) agree to allow the Department of Taxation and Finance to share the tax information of the business entity with the Department;

(viii) agree to allow the Department of Labor to share its tax and employer information with the Department;

(ix) agree to allow the Department and its agents access to any and all books and records the Department may require to monitor compliance;

(x) certify that the eligible internship program will not displace employees of the business entity;

(xi) identify the number of full-time equivalent employees of the business entity; and

(xii) demonstrate that interns participating in the eligible internship program will comprise less than 50 percent of the workforce of the business entity.

(b) Final application.

A final application shall not be approved until a business entity demonstrates satisfaction of the following criteria to the satisfaction of the commissioner:

(1) In the case of a business entity submitting a final application in connection with providing eligible training to employees, such application must:

(i) be complete;

(ii) demonstrate that the eligible training described in such business entity's initial application is complete;

(iii) not contain material misrepresentations; [and]

(iv) be submitted no more than twenty-four months from the date of the Department's issuance of a certificate of conditional eligibility to the business entity; and

~~[(iv)](v)~~ demonstrate that such business entity [created at least 10 net new jobs or]made a significant capital investment in connection with the eligible training.

(2) In the case of a business entity submitting a final application in connection with providing an eligible internship program, such application must:

(i) be complete;

(ii) demonstrate that the eligible internship program described in such business entity's initial application is complete;

(iii) demonstrate that any interns participating in the eligible internship program were current students, recent graduates, or recent members of the Armed Forces;

(iv) not contain material misrepresentations; and

(v) demonstrate that no employees have been displaced as a result of the eligible internship program.

§ 250.7 Record retention.

Each business entity participating in the program shall maintain all relevant records for the duration of its program participation plus three years, and make such records available to the Department and its agents upon seven days' notice.