

New Jersey

Workforce Innovation Notice 9-16, Change 1(A)

TO: Local Workforce Development Boards

FROM: John Bicica, Chief
WIOA Technical Assistance and Capacity Building

DATE: March 29, 2017

SUBJECT: Incumbent Worker Training under the Workforce Innovation and Opportunity Act

Purpose

To provide guidance to local workforce development boards regarding the use of Workforce Innovation and Opportunity Act (WIOA) Title I Adult and Dislocated Worker funds to pay for incumbent worker training.

Background

WIOA Sec. 134(d) (4) states that local boards may reserve up to a maximum of 20 percent of their combined total adult and dislocated worker allocations funds to pay for the Federal share of the cost of incumbent worker training. The United States Department of Labor issued Training and Employment Guidance Letter 19-16, which provides additional guidance related to incumbent workers under WIOA. This additional guidance, which is provided in this amended document, includes the specification that individuals who are served as incumbent workers under WIOA are reportable individuals, but are not included in WIOA performance calculations.

Incumbent Worker Training

Incumbent worker training (IWT) must:

- Increase the competitiveness of the employee or employer.
- Be carried out by the local board in conjunction with an employer or group of employers (which may include employers in partnership with other entities for the purposes of delivering training)
- Be designed to meet the special requirements of an employer (or group of employers as described above) to retain a skilled workforce or avert the need to lay off employees by assisting the workers in obtaining the skills necessary to retain employment or avert layoffs.
- IWT policies must be consistent with State and Local Plans, as well as with career pathway and sector strategy approaches for in-demand occupations.

Employer Eligibility

Local boards are to consider the following when determining the eligibility of an employer to receive WIOA funds for incumbent worker funding:

- (I) The characteristics of the participants in the program;
- (II) The relationship of the training to the competitiveness of a participant and the employer; and
- (III) Such other factors as the local board may determine to be appropriate, which may include:
 - The number of employees participating in the training,
 - The wage and benefit levels of those employees (at present and anticipated upon completion of the training),
 - The existence of other training and advancement opportunities provided by the employer.

Below are sample criteria that a local area may use when determining eligibility of an employer to receive WIOA Incumbent worker funds:

1. The characteristics of the incumbent workers to be trained and how they would benefit from retention or advancement. Consideration should be given to employers who propose to train individuals with barriers to employment.
2. The quality of training. Whenever possible, the training should allow the participant to gain industry-recognized training experience and/or lead to industry-recognized credentials and/ or an increase in wages;
3. The number of participants the employer plans to train or retrain;
5. The occupation(s) for which incumbent worker training is being provided must be in demand;
6. The employer is:
 - a. In a high-growth/high-demand sector; or
 - b. If not in a high-growth/high-demand sector, there are compelling reasons (e.g., evidence of long-term viability of the employer) justifying investment in incumbent worker training.
7. The employer must not have laid off workers within 120 days to relocate from another state;
8. The employer is current in unemployment insurance and workers' compensation taxes, penalties, and/or interest or related payment plan

Generally, IWT should be provided to private sector employers; however, there may be instances where non-profit and local government entities may be the recipients of IWT funds. For example, IWT may be used in the health care industry where hospitals are operated by non-profit or local government entities and a nursing upskilling opportunity is available. **(TEGL 19-16)**

These employers do *not* have to be on the eligible training provider list. The WIOA Final Rules at 20 CFR 680.530 state that providers of incumbent worker training (as well as on-the-job training, customized training, internships, paid/unpaid work experience and transitional jobs) are not subject to the same requirements as entities listed on the eligible training provider list.

Underemployed Workers (TEGL 19-16)

IWT can also be used for underemployed workers—e.g. workers who would prefer full-time work but are working part-time for economic reasons. While these workers are employed, they may have accepted reduced hours to gain or maintain employment or a previous dislocation has led them to

accept reduced employment and often lower wages that may have a permanent effect on their careers.

The use of these strategies may focus on increasing skills for underemployed frontline workers in an effort to advance these workers to more skilled positions with the same employer or industry sector leading to an increase in earnings through more work hours or an increase in pay.

Upskill/Backfill Strategy

As part of an incumbent worker upskilling strategy, State and Local Workforce Development Boards (WDBs) are also encouraged to develop an upskill/backfill strategy which involves filling jobs vacated by workers who are moving into more advanced positions in the company with other WIOA participants.

State and Local WDBs are encouraged to develop contracts such that once incumbent workers advance with the employer; the employer then provides an opportunity to the State or Local WDBs to fill this now vacant position with a local WIOA participant. **(TEGL 19-16)**

Incumbent worker training may be used for upskilling apprentices who already have an established working/training relationship with the Registered Apprenticeship program. **(TEGL 3-15)**

Documentation

State and Local WDBs must develop a process for documenting the six month work-history requirement for IWT recipients with the employer. The contract between the Local WDB and the employer must include this as a term of the contract. Local boards must document their policies and that these criteria have been met when approving the use of WIOA funds to pay for incumbent worker training with an employer. The Governor or the State Board may make recommendations to a local board regarding incumbent worker training that has a state-wide impact. As such, the State recommends a priority for training that is within high-growth, high-demand sectors.

Employer Share of Training Costs

Employers who have employees receiving incumbent worker training are required to pay the non-WIOA (non-federal) share of the cost of the training. The minimum non-federal share of the incumbent worker training costs are based on the total number of the employers' employees as follows:

Number of Employees	Minimum Employer Share
50 or Fewer	10 Percent
51 to 100	25 Percent
More Than 100	50 Percent

Subject to the limits provided, the local board establishes the non-federal share of the costs considering such factors as:

- The number of employees participating in the training

- The wage and benefits levels of the employees (at the beginning and anticipated upon completion of training)
- The relationship of the training to the competitiveness of the employer and employees
- The availability of other employer-provided training and advancement opportunities.
- The employer’s payment for the non-federal share can be cash payments, fairly evaluated in-kind contributions, or both.

Participant Eligibility

Local areas that use funds for incumbent worker training must establish policies and definitions to determine which workers, or groups of workers, are eligible for incumbent worker services [WIOA sec. 134(d)(4)]. To qualify as an incumbent worker, the incumbent worker needs to be:

- 1) A U.S. Citizen or otherwise authorized to work in the U.S.
- 2) Age 18 or older
- 3) Registered with Selective Service (males who are 18 or older and born on or after January 1, 1960) unless failure to register is determined unwilling or unknowing.
- 4) Employed by a private entity
- 5) Meet the Fair Labor Standards Act requirements for an employer-employee relationship
- 6) Have an established employment history with the employer for six months or more.

Exception: When incumbent worker training is provided in a cohort, a majority, but not all, of the employees must have an employment history with the employer of six months or more (which may include time spent as a temporary or contract worker performing work of the employer receiving IWT funds).

Incumbent workers must meet the criteria specified above. An incumbent worker **does not** have to meet the eligibility requirements for career and training services for Adults and Dislocated Workers under WIOA unless they are *also* enrolled as a participant in the WIOA Adult or Dislocated program. **(20 CFR 680.780)** Due to WIOA sec. 134’s unique eligibility requirements, the Department does not consider individuals who receive only IWT to be participants required for inclusion in the WIOA performance accountability calculations. **(TEGL 19-16)**

An individual who *only* receives incumbent worker training and does not become a core program participant will not be included in the calculation of the State primary indicators of performance for negotiations and accountability purposes. However, states and Local WDBs are required to report the outcomes of individuals in receipt of IWT on the primary indicators of performance (i.e. employed 2nd quarter after exit, employed 4th quarter after exit, median earnings, measurable skills gain, and credential attainment), among other required elements. Although there are fewer required elements for an individual who receives only IWT and is not an Adult or Dislocated Worker, the required elements for these “IWT-only” individuals will mostly be limited to the elements that are used to identify whether the incumbent worker was employed in certain quarters after exit, the wages earned during these quarters, whether a measurable skill gain or gains were achieved, and whether a credential was attained (see TEGL 10-16, Attachment 8 for the specific list of required elements).

For the purposes of calculating these metrics, the exit date for a participant who has only received IWT will be the last date of training, as indicated in the training contract. If the individual receiving IWT is also a participant in another program, the State is required to report that program's performance reporting information. **(TEGL 19-16)**

Prohibitions (20 CFR 680.830 and 680.840)

Funds provided to employers for incumbent worker, or any other work-based training may not be used to directly or indirectly:

- Assist, promote or deter union organizing
- Aid in the filling of a job opening which is vacant because the former occupant is on strike, or is being locked out in the course of a labor dispute involving a work stoppage.

Required Action

Local areas that provide incumbent worker training services must establish policies and definitions to determine which workers, or groups of workers, are eligible for incumbent worker services, based on the guidance provided in this document. As per TEGL 19-16, boards that utilize an incumbent worker strategy must also develop a process for documenting the six-month work history of participating employees.

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References and Links:

WIOA sec. 3(23); WIOA sec. 134 (d) (4); 20 CFR 680.780; 20 CFR 680.830; 20 CFR 680.840; TEGL 3-15 <https://www.congress.gov/113/bills/hr803/BILLS-113hr803enr.pdf>

Authority

New Jersey Department of Labor and Workforce Development	X
State Employment And Training Commission	

Questions

For questions regarding this guidance, contact John Bicica, Chief, Office of WIOA Technical Assistance and Capacity Building at john.bicica@dol.nj.gov