



Southwest Georgia Workforce Development Board
Policy/Procedure Name: Incumbent Worker Policy
Policy/Procedure #: WIOA-2017-067
Effective Date: June 1, 2017
Rescinds current Policy #65 Dated 3/2/16
Revision Date: December 11, 2019

References:

Technical College System of Georgia – Office of Workforce Development (OWD) Policy and Procedure Section 3.4.1.4 Incumbent Worker Training (IWT)
Workforce Implementation Guidance (WIG) Letter: WIG PS16-005, Incumbent Worker Workforce Innovation and Opportunity Act Section 134 (d) (4) and Section 188 and Workforce Innovation and Opportunity Act Regulations 20 CFR 680.780, 680.790, 680.800, 680.810, 680.820, 680.830, 680.840, 683.260 683.270, 683.275, 683.280.

Background and Definition:

Incumbent Worker Training (IWT) is designed to improve the skills of employees and the competitiveness of an employer. It is intended to upskill existing employees or avert a potential layoff. In training scenarios not related to layoff aversion, it is strongly recommended that the IWT program will create the opportunity for the employer to backfill the trainees' positions with a new or existing employee. IWT may be offered to employers or groups of employers (which may include employers in partnership with other entities for the purposes of delivering training) who, after assessment, are found to be in need of training for existing employees in order to remain competitive.

Incumbent worker training must satisfy the requirements in WIOA sec. 134(d)(4) and increase the competitiveness of the employee or employer. CFR 680.790 specifies that the training be conducted with a commitment by the employer to retain or avert the layoffs of the incumbent workers trained.

Local Policy

Incumbent Worker Training must:

1. Occur between employees and employers with an established relationship of at least six months at the time of the training (see Incumbent Worker Eligibility for cohort exception);
2. Improve the skills of the existing workforce to align with new job requirements;
3. Increase both an individual's and a company's competitiveness;
4. Mitigate the impact of a layoff if utilized as part of a layoff aversion strategy; and
5. Wherever possible, allow the individual to gain industry recognized training experience and ultimately should lead to an increase in wages.

In a non-layoff aversion scenario, the training must be to the benefit of the employee and the employer. Under these circumstances, the IWT must meet at least one of the following criteria:

- A. Result in a wage increase or other financial incentive, such as a bonus;
- B. Result in an opportunity for promotion within the company; or
- C. Result in an enhanced title to reflect increased responsibilities with the company.

Funding:

Local Workforce Development areas (LWDA/s) may reserve and use no more than 20 percent of Adult and Dislocated Worker funds allocated to the local area to pay for the Federal share of the cost of providing incumbent worker training. (WIOA Section 134 (d)(4)(A)(i)). The 20 percent may be used for IWT activities that are programmatic in nature, as administrative activities must be paid from LWDA administrative funds.

No WIOA funds shall be used to pay the wages of incumbent employees during their participation in economic development activities provided through a statewide workforce development system.

Incumbent Worker Eligibility:

All employees participating in incumbent worker training must meet the eligibility requirements below:

- A. Employed full time with the participating employer
- B. At least 18 years of age;
- C. A citizen of the US or a non-citizen whose status permits employment in the US;
- D. Males born on or after January 1, 1960 must register with the selective service system within 30 days after their 18th birthday or at least before they reach the age of 26;
- E. Meet the Fair Labor Standards Act requirements for employer-employee relations and have an established employment history with the employer for 6 months or more with the following exception: In the event that the incumbent worker training is being provided to a cohort of employees, not every employee in the cohort must have an established employment history with the employer for 6 months or more as long as the majority of those employees are being trained to meet the employment history requirement. (20 CFR 680.780);

An incumbent worker does not have to meet the eligibility requirements for career and training services for WIOA, unless they also are enrolled as a participant in the WIOA adult or dislocated worker program. As such, they are not included in calculations for the State performance measures. States and LWDA's are, however, required to report on individuals who receive incumbent worker training, including employment status after training, wages after training and credential attainment.

Employer Eligibility:

1. For the purpose of determining the eligibility of an employer to receive funding, the LWDA shall take into account factors (which help to evaluate whether training would increase the competitiveness of the employees or both the employees and the employer) consisting of:
 - a) The characteristics of the individuals in the training. Consideration should be given to employers who propose to train individuals with barriers to employment as defined in WIOA Section 3(24).

- b) The quality of training and its ability to increase the competitiveness of the employee and the employer. Consideration should be given to training that will allow the participant to gain industry-recognized training experience, lead to industry-recognized credentials, and/or result in an increase in wages or other benefits.
 - c) Such other factors as the LWDB may consider appropriate, including, but not limited to:
 - 1) the number of employees participating in the training;
 - 2) the wages and benefit to the employee before the training and anticipated after the training;
 - 3) the existence of other training and advancement opportunities provided by the employer;
 - 4) layoffs averted as a result of the training;
 - 5) utilization as part of a larger sector strategy and/or training for in-demand occupation; or
 - 6) employer size
2. IWT should be provided for private sector employers; however, non-profit and local government entities may be recipients of IWT funds.
 3. Employers must be in operation at least twelve months and employ at least five full-time employees, be financially viable and current on all state and federal tax obligations.
 4. Any employer that has received payments under previous on-the-job training, customized training or IWT and that exhibited a pattern of failure to provide workers continued, long term employment as regular employees with wages and working conditions at the same level and to the same extent as similarly situated employees is ineligible to enter into further WIOA IWT contracts.
 5. In considering an employer's eligibility for an IWT contract, LWDA's should consider the employer's past history with IWT, OJT and customized contracts, financial stability, history of layoffs, relocation and labor disputes as well as occupational and industry outlooks.
 6. LWDA's must conduct an employer pre-award review checklist containing requirements of WIOA 683.260 and TEGL 19-16.

Employer Non-Federal Share/Employer Reimbursements:

1. WIOA Section 134 (d)(4)(C) and Section 134 (d)(4)(D)(i-iii). Employers deemed eligible must provide a portion of the training costs as a non-federal share. The LWDB shall establish the non-Federal share of such cost (taking into consideration such other factors as the number of employees participating in the training, the wage and benefit levels of the employees (at the beginning and anticipated upon completion of the training), the relationship of the training to the competitiveness of the employer and employees, and the availability of other employer-provided training and advancement opportunities.
2. The portion of the non-federal share that an employer must contribute is dependent upon the size of the employer and shall not be less than:
 - a. 10 percent of the training costs for employers with fewer than 50 employees;
 - b. 25 percent of the training costs for employers with 51 to 100 employees; or
 - c. 50 percent of the training costs for employers with greater than 100 employees.
3. Employer size is based on the number of employees currently employed at the local operation where the incumbent worker training placements will be made. Employer Size is determined by the number of employees at the time of the execution of the incumbent worker training contract. This applies to all employers, including employers with seasonal or intermittent employee size fluctuations. Employers must provide documentation that indicates employer size. If multiple Employer sites exist within an LWDA: Employer agreements may be limited to

physical locations within the LWDA area or the LWDA may develop one agreement with multiple locations, training descriptions and budgets.

4. The non-Federal share provided by an employer may include the amount of the wages paid by the employer to a worker while the worker is attending training, equipment purchased for training, curriculum development expenses, travel and lodging costs, etc.. The employer may provide the share in cash or in kind, fairly evaluated. The employer non-Federal share must not be paid by the Federal government under another Federal award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs.
5. The employer will be required to calculate its non-federal share as a part of the application for training funds and an actual share at the conclusion of the training. Should the non-federal share not meet the limits, the funds could potentially have to be repaid. Official payroll records, time and attendance records, invoices for equipment purchased, etc. must be utilized to determine the amount of the employer's share of cost.
6. Employer cost share contributions must be tracked and documented in the contract file and recorded on the Financial Status Report. In addition, the methodologies for determining the value of in-kind contributions must be documented in the contract file and conform to cost sharing requirements at 2 CFR 200. 306 and 2 CFR 2900.8.
7. No WIOA funds shall be used for Incumbent Worker wages. (Section 181 (b) (1)).

IWT Contract Requirements:

1. IWT is provided based on a formal, written contract with the employer or group of employers that is signed prior to the initiation of training with a copy given to the employer(s).
2. LWDA 17 will give priority to incumbent worker training contracts which:
 - a) Provide training in one of the LWDA's target industries;
 - b) The individual's hourly wage is no less than the living wage calculator for the State of Georgia (currently at \$10.69) and the position provides fringe benefits;
 - c) The individual has the opportunity for upward mobility into a higher-paying job classification; and
 - d) The employer indicates an interest or potential to "back-fill" entry level positions with WIOA participants.
3. An IWT contract must be limited to the period of time required for an individual to become proficient in the skills for which the training is being provided. In determining the appropriate length of an IWT contract, consideration should be given to the skill requirements of the occupation and the academic and occupational skill level of the individual. LWDA's shall utilize USDOL's O*NET Online specific vocational preparation (SVP) codes and an assessment of the individuals existing skills and experience.
4. IWT contracts will not be written to provide skills for seasonal, temporary or intermittent employment.
5. IWT may incorporate work-based, classroom and other training activities approved under WIOA to meet employer skill requirements. The employer or an intermediary may provide the training.
6. IWT contract must address:
 - a) Employer documentation of the six-month work history requirement;
 - b) Commitment by the employer to retain the individual as a full-time employee with the same wages, benefits, hours and conditions;
 - c) Hourly wage of the individual;
 - d) Length of training required;
 - e) Maximum allowable costs of training;

- f) Description of the occupations involved, skill(s) and competencies to be provided and learned;
- g) Assessment (examples include TABE, Career Scope, Prove It, etc.) and identification of the individual's skills gaps;
- h) Performance outcome requirements;
- i) Provision addressing termination for lack of funds or recapture of funds, lack of individual attendance or failure of employer to comply with initial or upgraded employment requirements;
- j) Provision for maintaining and providing records for LWDA, state, and federal monitoring and review; and,
- k) Employer Assurances (below) should be included in the IWT contract.

Employer Assurances:

1. 20 CFR 680.790 specifies that the training be conducted with a commitment by the employer to retain or avert the layoffs of the incumbent workers trained.

2. 20 CFR Section 680.820 specifies that employers participating in incumbent worker training are required to pay the non-Federal share of the cost of providing training to their incumbent workers. The amount of non-Federal share depends upon factors such as the number of employees participating in the training, the wage and benefit 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 and the availability of other employer provided training and advancement opportunities.

3. 20 CFR Section 680.830 specifies that funds provided to employers for incumbent worker training must not be used to directly or indirectly assist, promote or deter union organizing.

4. 20 CFR Section 680.840 specifies that WIOA funds may not be used to directly or indirectly aid in 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, or the filling is otherwise an issue in a labor dispute involving a work stoppage.

5. 20 CFR Section 683.260 specifies that WIOA funds must not be used for incumbent worker training for employees of any business or part of a business that has relocated from any location in the US until the company has operated at that location for 120 days, if the relocation has resulted in any employee losing their job at the original location.

6. 20 CFR Section 683.270 specifies that a participant in a WIOA program activity must not displace (including a partial displacement such as a reduction in the hours of non-overtime work, wages or employment benefits) any currently employed employee (as of the date of the participation).

7. 20 CFR Section 683.270 specifies that a WIOA program or activity must not impair existing contracts for services or collective bargaining agreements. When the program or activity would be inconsistent with a collective bargaining agreement, the labor organization and employer must provide written concurrence before the activity begins.

8. 20 CFR Section 683.270 also specifies that a participant may not be employed in or assigned to a job if: (1) any other individual is on layoff from the same or any substantially equivalent

job; (2) the employer has terminated the employment of any regular, unsubsidized employee or otherwise caused an involuntary reduction in its workforce with the intention of filling the vacancy created with the WIOA participant; (3) the job is created in a promotional line that infringes in any way on the promotional opportunities of currently employed workers as of the date of the participation.

9. 20 CFR Section 683.275 specifies that individuals employed in activities under WIOA must be compensated at the same rates, including periodic increases, as trainees or employees who are similarly situated in similar occupations by the same employer and who have similar training, experience and skills.

10. 20 CFR WIOA Section 683.275 specifies that individuals employed in programs and activities under WIOA must be provided benefits and working conditions at the same level and to the same extent as other trainees or employees working a similar length of time and doing the same type of work.

11. 20 CFR Section 683.280 specifies that health and safety standards established under federal and State law otherwise applicable to working conditions of employees are equally applicable to working conditions of participants engaged in programs and services under WIOA. To the extent that a State workers' compensation law applies, workers' compensation must be provided to participants in program and activities under WIOA on the same basis as the compensation is provided to other individuals in the State in similar employment. Information on how to comply with Georgia law is available at <http://sbwc.georgia.gov>.

12. WIOA Section 181 (b)(1) specifies that no WIOA funds shall be used to pay the wages of incumbent employees during their participation in economic development activities provided through a statewide workforce development system.

13. WIOA Section 188 specifies that no individual shall be excluded from participation in, denied employment in the administration of or in connection with any such program or activity because of race, color, religion, sex in a WIOA program or activity solely because of the status of the individual as a participant.

14. WIOA Section 188 specifies that no participants shall be employed to carry out the construction, operation or maintenance of any part of a facility that is used or to be used for sectarian instruction or as a place for religious worship with the exception of maintenance of facilities that are not primarily used for instruction or worship and are operated by organizations providing services to WIOA participants.

15. The Employer must comply with 29 CFR 38.10 (d) (e) (f). As provided in 20 CFR §38.3(b), 29 CFR part 32, subparts B and C and appendix A, which implement the requirements of Section 504 pertaining to employment practices and employment-related training, program accessibility, and reasonable accommodation, have been incorporated by reference. Employers, employment agencies, or other entities covered by Titles I and II of the ADA should be aware of obligations imposed by those titles. See 29 CFR part 1630 and 28 CFR part 35. Similarly, recipients that are also employers covered by the anti-discrimination provision of the Immigration and Nationality Act should be aware of the obligations imposed by that provision. See 8 U.S.C. 1324b.

16. 2 CFR 200. The Employer agrees that no individual in a decision making capacity will engage in any activity, including the administration of the IWT contract supported by WIOA funds, if a conflict of interest, real or apparent, is present. A conflict of interest may arise in the event that an employee under this contract is an immediate family member (or partner) of an individual engaged in a decision-making capacity with the LWDA, the LWDB, the employer or an organization that has a financial or other interest in the firm or organization selected for the contract. Immediate family is defined as husband, wife, son, son-in-law, daughter, daughter-in-law, mother, mother-in-law, father, father-in-law, brother, brother-in-law, sister, sister-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparents, grandchild, half-brother, half-sister, first cousin or individual residing in the same household. In the event of a potential conflict of interest, the employer will notify the LWDA in writing.

17. WIOA Section 194 (5) No person or organization may charge an individual a fee for the placement or referral of the individual in or to a workforce investment activity under this title.

18. WIOA Section 194 (13) Services, facilities or equipment funded under WIOA may be used, as appropriate, on a fee-for-service basis, by employers in a local area in order to provide employment and training activities to incumbent workers – (A) when such services, facilities or equipment are not in use for the provision of services for eligible participants under this title; and (B) if such use for incumbent workers would not have an adverse effect on the provision of services to eligible participants under this title; and (C) if the income derived from such fees is used to carry out the programs authorized under this title.

19. The Employer agrees to comply with Georgia law regarding worker's compensation insurance for all IWT employees.

20. The Employer agrees to participate in any follow-up efforts conducted by the LWDA or its authorized representative to evaluate the IWT effectiveness.

21. The Employer must meet the provisions of the Georgia Security and Immigration Compliance Act (GSICA). The GSICA requires that all public employers, contractors and subcontractors register and comply with the federal work authorization program operated by the United States Department of Homeland Security to verify new employee work eligibility.

REFERENCES

Technical College System of Georgia – Office of Workforce Development (OWD) Policy and Procedure Section 3.4.1.4 Incumbent Worker Training (IWT)

Workforce Implementation Guidance (WIG) Letter: WIG PS16-005, Incumbent Worker Workforce Innovation and Opportunity Act Section 134 (d) (4) and Section 188 and Workforce Innovation and Opportunity Act Regulations 20 CFR 680.780, 680.790, 680.800, 680.810, 680.820, 680.830, 680.840, 683.260 683.270, 683.275, 683.280.

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