

**SOUTHWESTERN AREA
WORKFORCE DEVELOPMENT BOARD**

**INCUMBENT WORKER TRAINING ACTIVITIES
POLICY 17-20**

DATE OF ISSUE

May 4, 2017

EFFECTIVE DATE

July 1, 2017

APPLICABILITY

This applies to Southwestern Area Workforce Development Board (SAWDB), Adult and Dislocated Workers service providers of Workforce Innovation and Opportunity Act (WIOA).

PURPOSE

The purpose of this guidance is to provide direction to service providers regarding the permissible use of adult and dislocated worker funds for training activities associated with incumbent workers.

BACKGROUND

The Workforce Innovation and Opportunity Act (WIOA) of 2014 explicitly allows for and encourages the use of incumbent worker training as a workforce strategy. This training strategy is designed to meet the special requirements of an employer (including groups of employers) 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. In addition, incumbent worker training must be focused on increasing the competitiveness of the employee or employer, and be conducted with a commitment by the employer to retain or avert the layoffs of the incumbent worker(s) trained.

DEFINITIONS

A. **High-Priority Occupation (HPO)** is an in-demand occupation that has higher skill needs and is likely to provide a self-sufficient wage. Statistical data, regional expert and local area inputs are combined to determine whether or not an occupation meets the high-priority criteria.

B. **Incumbent Worker** is an individual who is employed, meets Fair Labor Standards Act requirements for an employer-employee relationship, and has an established employment history with the employer for six (6) months or more.

C. **Incumbent Worker Training (IWT)** is training provided to an incumbent worker that is designed to meet the needs of an employer(s) to retain a skilled workforce or avert the need to lay off employees; increase the competitiveness of the employer or employee; and be conducted with a commitment by the employer to retain or avert the layoffs of the incumbent worker trained.

1) Such training may also include the upskilling of an employer's current workforce, which may lead to additional opportunities for potential jobseekers.

D. **In-Demand Industry Sector** is an industry sector that has a substantial current or potential impact (including jobs that lead to economic self-sufficiency and opportunities for advancement) on the state, regional, or local economy, as appropriate, and that contributes to the growth or stability of other supporting businesses, or the growth of other industry sectors.

E. **In-Demand Occupation** is an occupation that currently has or is projected to have a number of positions (including positions that lead to economic self-sufficiency and opportunities for advancement) in an industry sector so as to have a significant impact on the state, regional, or local economy, as appropriate.

Note: The determination of whether an industry sector or occupation is in-demand in a local area is made by the local board, as appropriate, using business and labor market projections and

statistics. Incumbent Worker Training must lead to an in-demand occupation, but does not necessarily have to lead to an HPO. However, all HPOs are considered in-demand occupations, and therefore, eligible for incumbent worker training.

RESERVATION AND USE OF FUNDS

Local workforce development board authorizes the use of not more than 20 percent of the overall adult and dislocated workforce funds allocated to the LWDB for the federal share of the cost of an incumbent worker training program. For example, if a Local WDB receives \$1.5 million in Adult funds and \$1.0 million in DW funds; it may use up to \$500,000 (20 percent of the total) for Incumbent Worker Training. This 20 percent can be used for incumbent worker training activities that are programmatic in nature, as administrative activities must be paid out of the board's administrative funds. Neither USDOL, nor the SAE places any additional requirements on the use of such funds; however, LWDBs are encouraged to exercise caution as this will reduce the funds available for other jobseekers, especially those experiencing barriers to employment.

EMPLOYER PAYMENT OF NON-FEDERAL SHARE

Employers receiving funds for incumbent worker training are required to pay for the non-federal share of the cost of providing such training. LWDBs are required to establish the non-federal share of such cost in accordance with WIOA Sec. 134(d)(4)(C-D) prior to the delivery of services.

The employer share is based on the size of the workforce (wages paid to the participant while in training can be included as part of that share and the share can be provided as cash or in-kind that is fairly evaluated) as follows:

- A. At least 10 percent of the cost for employers with 50 or fewer employees;
- B. At least 25 percent of the cost for employers with 51 to 100 employees; and
- C. At least 50 percent of the cost for employers with more than 100 employees.

Employer contributions may be done through both cash payments and fairly evaluated in-kind contributions. The employer contribution may include the wages the employer pays to the incumbent worker trainee while the worker is attending training. Official payroll records documenting the worker's hours and wages must be used to determine the amount of the employer's share of cost. LWDBs must track and document employer cost share contributions. Official payroll records documenting the worker's hours and wages must be utilized to determine the amount of the employer's share of cost.

The employer size means 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.

CONTRACT PROCESS

- A. Contract will be completed using the SAWDB Training Contract for Employed Individuals
- B. Contract will show the employers non-federal share for the cost of providing the training
- C. Contract will include the exhibits; Statement of Work, Training Application, Budget Worksheet, Drug Free Workplace, Employee Registration Form, Civil Rights Grievance Resolution, New Mexico's Workers Compensation Certificate, Monthly report, Final report and Allocation of Funds by the program

RESTRICTIONS

Service Providers must be familiar with the limitations and prohibitions on the use of funds allocated to the local area under WIOA title I-B §181 and Part 680 of federal regulations, as follows.

- A. WIOA funds cannot be used to pay the wages of incumbent employees during their participation in an economic development activity provided through a statewide workforce development system.

- B. When a relocation of a business results in the loss of employment of any employee of such business, no funds provided for employment training can be used for incumbent worker training until after 120 days has passed since the relocation that caused the loss of employment at an original business location in the United States.
- C. WIOA work-based training funds must not be used to directly or indirectly assist, promote, or deter union organizing.
- D. WIOA work-based training funds may not be used to directly or indirectly 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, or the filling of which is otherwise an issue in a labor dispute involving a work stoppage.

ELIGIBILITY CRITERIA

Incumbent Worker Eligibility

Service providers must consider the following factors when determining incumbent worker eligibility. An Incumbent worker must be:

- A. employed;
- B. meet Fair Labor Standards Act requirements for an employer-employee relationship; and
- C. have an established employment history with the employer for six (6) months or more. In the event that the incumbent worker training is being provided to a group of employees, only a majority of the employees in the group being trained must establish such employment history.

Incumbent worker training can also be used for underemployed workers, such as for 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.

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 worker program.

EMPLOYER ELIGIBILITY

The service provider must consider the following factors when determining the eligibility of employers to receive the WIOA incumbent worker funds.

- A. The strategy of the LWDB in fulfilling the vision and goals established for the local area (i.e., the local plan).
- B. The characteristics of the incumbent workers to be trained (i.e., the extent to which these individuals historically represent individuals with barriers to employment as defined in WIOA Section 3(24), and how such individuals would benefit from a skills-gain that results in retention or advancement).
- C. The quality of the training (e.g., industry-recognized credentials, advancement opportunities, etc.).
- D. The number of participants the employer plans to train or retrain.
- E. The wage and benefit levels of participants (before and after training).
- F. The occupation(s) for which incumbent worker training is being provided must be in-demand as defined by WIOA Section 3(23) and as determined by workforce development area-specific labor market information.
- G. Employer's industry status. Is the employer in:
 - 1) an in-demand industry as defined by WIOA Section 3(23) and determined by labor market information; or
 - 2) a stable industry as determined by labor

market information; or

- 3) a declining industry, but there are compelling reasons (e.g., evidence of long-term viability of the employer) justifying investment in incumbent worker training?
- H. Recent lay-offs and relocations. The employer must not have laid off workers within 120 days to relocate from another state.
- I. Employer's unemployment insurance and workers' compensation status. The employer must be current on unemployment insurance and workers' compensation taxes, penalties, and/or interest or related payment plan.

Service providers must document the factors that were considered in approving an incumbent worker training project with an employer.

PERFORMANCE ACCOUNTABILITY

Service providers are required to collect and report the outcomes of individuals in receipt of incumbent worker training on the primary indicators of performance, among other required elements in NMWCOS. Due to WIOA sec. 134's unique eligibility requirements, individuals who receive only incumbent worker training are reportable individuals and not participants required for inclusion in the WIOA performance accountability calculations. As a result, 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 primary indicators of performance for negotiations and accountability purposes.

PROCESS FOR COLLECTING PERFORMANCE AND DATA ENTRY

- A. Credential received from the employer for the training completion
- B. Credential scanned into NMWCOS and information entered

CONFLICT OF INTEREST

State and local board members and members of standing committees may not vote or nor participate in any decisions regarding the provision

of services by such members or any organization they directly represent, nor on any matter that would provide any direct financial benefit to that member or the member's immediate family. For example, a LWDB member who is also an employer who wants to use services on a fee-for-service basis would be prohibited from voting to approve the use of local area services, facilities, or equipment for employment and training activities to such board member's incumbent workers. Neither membership on the state board, local board, or standing committee, nor receipt of WIOA funds to provide training and related services, by itself, violates these conflict of interest provisions. In accordance with §200.112 of the Uniform Guidance, recipients of federal awards must disclose in writing any potential conflicts of interest. Sub-recipients must disclose in writing any potential conflict of interest to the recipient of grant funds.

INQUIRIES

Questions related to this policy should be directed to the Administrative Entity at (575) 744-4857.

ATTESTED

This policy was reviewed and approved by the SAWDB

on: _____

SAWDB Chairman

Date