

SOUTHWESTERN AREA WORKFORCE DEVELOPMENT BOARD

Incumbent Worker Training Activities Policy 17-20.1

Effective Date

August 14, 2025

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 directions to service providers regarding the permissible use of Adult and Dislocated Worker funds for Incumbent Worker Training activities.

References

- A. Workforce Innovation and Opportunity Act (WIOA), July 22, 2014, §108, §122, §134, §181, and §194.
- B. WIOA Final Rules – U.S. Department of Labor (Title I): 20 CFR §680.780, §680.790, §680.800, §680.810, §680.820, §680.830, and §680.840.
- C. Office of Management and Budget (OMB), Uniform Guidance at 2 CFR §200, et al., Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- D. Training and Employment Guidance Letter WIOA No. 19-16 Operating Guidance for the Workforce Innovation and Opportunity Act.
- E. Training and Employment Guidance Letter WIOA No. 10-16, Change 3
- F. Fair Labor Standards Act (FLSA) §203

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

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 an occupation meets the high-priority criteria.

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.

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.

- a. Such training may also include upskilling an employer's current workforce, which may lead to additional opportunities for potential jobseekers.

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 different industry sectors.

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 to have a significant impact on the state, regional, or local economy, as appropriate.

Note: The local board, as appropriate, uses business and labor market projections and statistics to determine whether an industry sector or occupation is in demand in a local area. 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 eligible for incumbent worker training.

Reservation and Use of Funds

The 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 the IWT program (See WIOA section 134(d)(4)).

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 programmatic incumbent worker training activities, as administrative activities must be paid out of the board's administrative funds. Neither USDOL nor the SAE places any additional requirements on using such funds; however, LWDBs are encouraged to exercise caution, as this will reduce the funds available for other job seekers, especially those experiencing barriers to employment.

Funding IWT

Employers receiving funds for incumbent worker training must pay for the non-federal share of the cost of 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.

Employers participating in the IWT program must pay the non-Federal share of the cost of training.

- A. For employers with 50 employees or less, the non-Federal share may not be less than 10 percent of the cost.
 - B. 25 percent of the cost for employers with 51 to 100 employees; and
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- C. 50 percent of the cost for employers with more than 100 employees.

Employer contributions may be made through both cash payments and fairly valued in-kind contributions. The employer contribution may include the wages the employer pays to the incumbent worker trainee while the worker is attending training. LWDBs shall track and document employer cost-share contributions. Official payroll records documenting the workers' 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. The number of employees determines employer size 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 employer's 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.

Unallowable Costs

Service Providers shall be familiar with the limitations and prohibitions restrictions on using 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 business's relocation 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 120 days have 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 shall 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 that 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.

Development of IWT Strategies

IWT activities must be consistent with the career pathways and sector strategy approaches in the New Mexico WIOA Plan and the LWDB's Local Plan, or with in-demand occupations based on business and labor market projections.

IWT may be used for underemployed incumbent workers who would prefer full-time employment but work part-time within a company 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 permanently affect their

careers. The use of these strategies may focus. This strategy focuses on increasing the skills of underemployed frontline workers 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 a pay increase.

Eligibility Criteria

A. Incumbent Worker Eligibility

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

- a. be 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.

There is one exception to the six (6) month requirement: IWT is being provided to a cohort of employees; not every employee in the cohort must have an established history with the employer for six months or more if most of those employees being trained meet the employment history requirement.

The employer determines incumbent worker eligibility; therefore, the incumbent worker does not have to meet the eligibility requirements for career and training services for the Adult and Dislocated Worker programs under WIOA. If the incumbent workers meet those requirements, they may also be enrolled as a participant and receive other services from the WIOA Adult or Dislocated Worker programs.

The competitiveness of workers participating in IWT may be increased by enhancing existing skills, learning new skills, earning employer or industry-recognized credentials, retaining employment, maintaining their careers, and/or increasing their earnings potential. An ideal IWT project allows employers to promote incumbent workers with increased skill levels, which creates backfill opportunities for other WIOA participants, including fewer skilled or underemployed employees within the company, or for WIOA participants seeking employment.

B. Employer Eligibility

The service provider must consider the following factors when determining the eligibility of employers to receive the IWT 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 represent populations 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.
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- e. The wage and benefit levels of participants at the beginning of the training and anticipated upon completion of the training (the new wage rate after training is completed must be higher than the employee's prior wage rate).
- f. Layoffs averted as a result of the training
- g. 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.
- h. Employer's industry status, including whether the employer is in:
 - i. an in-demand industry as defined by WIOA Section 3(23) and determined by labor market information; or
 - ii. a stable industry as determined by labor market information; or
 - iii. a declining industry, but there are compelling reasons (e.g., evidence of long-term viability of the employer) justifying investment in incumbent worker training
- i. Recent lay-offs and relocations. The employer must not have laid off workers within 120 days to relocate from another state

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

IWT is designed to increase the employer's competitiveness by developing a highly skilled workforce that will result in increased business financial viability, stability, and productivity. Training provided should increase employee skills as a layoff avoidance strategy or lead to a significant upgrade in employee skills.

C. Employer Regulatory Requirements

- a. 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.
- b. Business must not be presently disbarred, suspended, declared ineligible or voluntarily excluded from participation by USDOL.
- c. LWDBs shall require employers to disclose any known outstanding tax liabilities, including those with other states, prior to entering the IWT agreement.
- d. Business must have current approvals and licenses required to conduct business in New Mexico.
- e. Businesses must not have any outstanding civil, criminal, or penalties owed to or pending in New Mexico.
- f. The employer must not have laid off workers within 120 days to relocate from another state

Performance Accountability

Individuals receiving IWT services are not subject to the eligibility criteria for participants in the Adult or Dislocated Worker programs; individuals receiving career services under those programs may be subject to eligibility criteria. Individuals who receive only IWT and no other WIOA Title I career or training service(s) are not included in WIOA performance indicator calculations. However, Individuals who receive only IWT are considered reportable; therefore, providers must collect and report the

outcomes of individuals who receive incumbent worker training IWT on the primary indicators of performance.

Process for collecting performance and data entry:

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

Conflict of Interest

State and local board members and members of standing committees may not vote or 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, an 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 for 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 August 14, 2025.

SAWDB Chair