



**WORKFORCE INNOVATION AND
OPPORTUNITY ACT (WIOA)
PROGRAM POLICY NOTICE
NO. 17 Rev. 1**

EFFECTIVE DATE: June 13, 2025

SUBJECT: **INCUMBENT WORKER TRAINING ACTIVITIES**

Policy Statement

The Workforce Investment Act (WIA) of 1998 did not promote the use of local funds for incumbent worker training, but did allow the use of statewide funds for such training. Under WIA a Local Workforce Development Board (LWDB) was only permitted to conduct incumbent worker training if a waiver had been granted. Unlike WIA, the Workforce Innovation and Opportunity Act (WIOA) of 2014 explicitly allows for and encourages the use of Incumbent Worker Training (IWT) as a workforce strategy.

Purpose of Policy

The guidance is to provide directions to LWDBs regarding the permissible use of Adult and Dislocated Worker (DW) funds for Incumbent Worker training activities.

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 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. 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.

Policy and Procedures

IWT 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, IWT 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.

RESERVATION AND USE OF FUNDS

Northern Board may use up to 20 percent of their combined totals of Adult and DW allocated funds to pay for the Federal share of the IWT program (See WIOA section 134(d)(4)).

For example, if a LWDB 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, this policy encourages LWDBs to exercise caution as this will reduce the funds available for other jobseekers, especially those experiencing barriers to employment.

FUNDING IWT

Employers receiving funds for incumbent worker training shall 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.

Employers participating in the IWT program are required to pay the non-Federal share of the cost of training. The non-Federal share may not be less than:

- 10 percent of the cost for employers with 50 employees or less
- 25 percent of the cost for employers with more than 50 employees but not more than 100 employees; and
- 50 percent of the cost for employers with more than 100 employees

Employer contributions may be made 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. LWDBs shall track and document employer cost share contributions and use official payroll records documenting the worker's hours and wages 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. If the employer has more than one location, then the total amount of employees at all locations will not be aggregated. This applies to all employers, including employers with seasonal or intermittent employee size fluctuations.

UNALLOWABLE COSTS

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

- 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.
- 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.
- WIOA work-based training funds shall not be used to directly or indirectly assist, promote, or deter union organizing.
- 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.

DEVELOPMENT OF IWT STRATEGIES

LWDBs shall establish policies and definitions to determine which workers, or groups of workers, are eligible for IWT services. IWT policies must be consistent with the career pathway and sector strategy approaches in the New Mexico WIOA Plan and LWDB Local Plan, or with in-demand occupations based on business and labor market projections and statistics.

IWT may be used for underemployed incumbent workers that would prefer full-time employment but are working 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 have a permanent effect on their careers. This strategy focuses 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.

ELIGIBILITY CRITERIA

Incumbent Worker Eligibility. LWDBs shall consider the following factors when determining incumbent worker eligibility. An Incumbent worker must:

1. Be employed.
2. meet Fair Labor Standards Act requirements for an employer-employee relationship; and
3. have an established employment history with the employer for six (6) months or more.

There is one exception to the six (6) month requirement, if 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 (6) months or more as long as a majority of those employees being trained meet the employment history requirement.

Incumbent worker eligibility is determined by the employer; 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 worker would 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, and earning employer or industry-recognized credentials, in addition to retaining employment, maintaining their careers, and/or increasing their earnings potential. An ideal IWT project allows the opportunity for 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.

EMPLOYER ELIGIBILITY

The Northern board shall consider the following when determining the eligibility of an employer to receive IWT funding:

1. The strategy of the LWDB in fulfilling the vision and goals established for the local area (i.e., the local plan).
2. 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 skills gain that results in retention or advancement).
3. The quality of the training (e.g., industry-recognized credentials, advancement opportunities, etc.).
4. The number of participants the employer plans to train or retrain.
5. 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).
6. Layoffs averted as the result of the training.

7. 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.
8. Employer's industry status, including whether the employer is in:
 - a. an in-demand industry as defined by WIOA Section 3(23) and determined by labor market information; or
 - b. a stable industry as determined by labor market information; or
 - c. a declining industry, but there are compelling reasons (e.g., evidence of long-term viability of the employer) justifying investment in incumbent worker training
9. Recent layoffs and relocations.

Northern Board shall document the factors that were considered in approving an incumbent worker training project with an employer.

IWT is designed to increase the competitiveness of the employer 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 that leads to a significant upgrade in employee skills.

EMPLOYER REGULATORY REQUIREMENTS

1. 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.
2. Business must not be presently disbarred, suspended, declared ineligible or voluntarily excluded from participation by USDOL.
3. LWBDs shall require employers to disclose any known outstanding tax liabilities, including those with other states, prior to entering into the IWT agreement.
4. Business must have current approvals and licenses required to conduct business in the state of New Mexico.
5. Businesses must not have any outstanding civil, criminal or penalties owed to or pending in the state of New Mexico.
6. 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 that apply to 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 LWDBs are required to collect and report the outcomes of individuals in receipt of incumbent worker training IWT on the primary

indicators of performance.

ACTIONS REQUIRED

Northern Board shall establish a local IWT policy that outlines the following:

1. Criteria for determining employer eligibility.
2. The process for documenting the incumbent worker's six-month work history requirement with the employer.
3. The amount of the employer's non-Federal share, based on the size of the employer's workforce
4. The process for documenting how employer cost match contributions will be tracked and documented
5. The process for collecting, from the employer, performance information and data entry
6. Contracting process with employers providing IWT
7. Provide proof that the employee remains employed upon successful completion of training.

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 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.

Compliance

The local boards are required to establish written Incumbent Worker Training policies and procedures which adhere to this guidance within 90 days of the issuance of this guidance and forward to the NMDWS SAE WIOA Operations and Program Manager upon completion.

EQUAL OPPORTUNITY AND NONDISCRIMINATION STATEMENT

All recipients, and subrecipients/sub-grantees must comply with WIOA's Equal Opportunity and Nondiscrimination provisions which prohibit discrimination on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity) national origin (including limited English proficiency), age, disability, political affiliation or

belief, or, for beneficiaries, applicants, and participants only, on the basis of citizenship status or participation in a WIOA Title-I financially assisted program or activity.

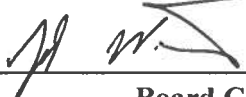
References

- Workforce Innovation and Opportunity Act (WIOA), July 22, 2014, §108, §122, §134, §181 and §194.
- 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.
- 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.
- Training and Employment Guidance Letter WIOA No. 19-16 Operating Guidance for the Workforce Innovation and Opportunity Act.
- Training and Employment Guidance Letter WIOA No. 10-16, Change 3
- Fair Labor Standards Act (FLSA) §203.

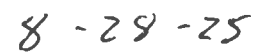
This policy rescinds any previous NALWDB policy

regarding subject. INQUIRIES: Contact WIOA

Program Manager at 505-986-0363.



Board Chair



Date

