



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

EFFECTIVE DATE: JANUARY 11, 2019

SUBJECT: LOCAL WORKFORCE DEVELOPMENT BOARD INCUMBENT WORKER TRAINING ACTIVITIES

PURPOSE.

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

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, Fair Labor Standards Act (FLSA) §203.

BACKGROUND.

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 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 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 or not 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. Such training may also include the upskilling of 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 other 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 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.

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.

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:

- At least 10 percent of the cost for employers with 50 or fewer employees;
- At least 25 percent of the cost for employers with 51 to 100 employees; and
- 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. The NALWDB will 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.

RESTRICTIONS.

Under WIOA title I-B §181 and Part 680 of federal regulations, restrictions are 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 must 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.

ELIGIBILITY CRITERIA.

Incumbent Worker Eligibility. An Incumbent worker must be:

1. 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. 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 following factors will be used when determining the eligibility of employers to receive the WIOA incumbent worker funds:

1. The vision and goal 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 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).

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 (before and after training).
6. 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.
7. The employer must be in:
 - an in-demand industry as defined by the NALWDB (See NALWDB Program Policy No. , *In-Demand Occupations*) and determined by labor market information; or
 - a stable industry as determined by labor market information; or
 - a declining industry, but there are compelling reasons (e.g., evidence of long-term viability of the employer) justifying investment in incumbent worker training.
8. Recent lay-offs and relocations. The employer must not have laid off workers within 120 days to relocate from another state.
9. 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.

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

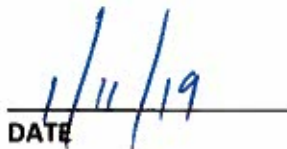
PERFORMANCE ACCOUNTABILITY.

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. However, Local WDBs 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.

This policy rescinds any previous NALWDB policy regarding subject.

INQUIRIES: Contact WIOA Program Manager at 505-986-0363.


NALWDB CHAIR


DATE

Staff must document the employer eligibility factors and upload to the employers' NMWCOS file.

E. Trainee Eligibility Criteria:

Customized Training funds may be used to provide training to eligible employed workers for an employer (or group of employers) when the following conditions are met:

- Employee is not earning a self-sufficient wage;
- All other provisions of Customized Training are met; and
- Customized Training relates to the introduction of new technologies, introduction to new production or service procedures, upgrading to new jobs that require additional skills or workplace literacy.

Exception: Customized training is generally for hiring new or recent employees and not for retraining existing employees which is reserved for incumbent worker training, although there may be instances where customized training is appropriate in that circumstance. In those instances customized training may be used for individuals making more than self-sufficient wages if all appropriate criteria are met and it leads to comparable to or higher than previous employment.

F. Customized training processes:

While CT is a service that focuses on the needs of business, it shall still follow all the regular requirements for providing individual participant training. All required CT documentation shall be kept on file in the participants' electronic file in the New Mexico Workforce Connection Online System (NMWCOS).

- A. Eligibility shall be determined and eligibility documents shall be compiled and maintained in the electronic file within the NMWCOS.
- B. Staff will send AE staff the pertinent information to create a CT contract number and enter the provider information into the NMWCOS.
- C. An individual employment plan (IEP) shall be completed for each participant identifying the goal/purpose of the training and maintained in the participants' electronic file.
- D. Streamlined CT processes can include the following:
 - (1) Staff may work with an employer to provide the eligibility documentation on potential participants. Special attention shall be paid to eligibility documentation requirements to ensure all data validation requirements are met.
 - (2) Once eligibility is determined, staff must work with the employer to complete an overall IEP for each participant, identifying the need for CT (individualized career service) which may be uploaded in the NMWCOS for each participant. For the purposes of the CT an abbreviated IEP may consist of the employment goal and achievement objective and can be a paper document included for all participants or recorded electronically in the NMWCOS plan at the discretion of the sub recipient program director.

G. Contracts

Title 1 service providers must address the following factors when developing a customized training contract:

- Special training requirements of the employer (or group of employers);
- Agreement that the employer will pay for the significant cost of the training;
- Agreement that an appropriate commitment is made by the employer to employ the individuals upon successful completion of the training;
- Performance outcomes;
- Description of and agreement on the curriculum; and
- A clearly stated goal.

Staff must document the factors that were considered in approving a customized training contract with an employer (or group of employers).

H. Customized training documentation:

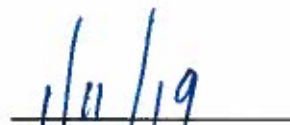
The CT agreement, related information and documentation must be kept by the Title I service provider. The service provider is responsible for ensuring the information and documentation is uploaded and available for monitoring and review as required.

- A. Customized training agreement/contract
- B. Assurances
- C. Customized training plan
- D. Customized training plan modification (if applicable)
- E. Case notes to track customer interaction (recorded in NMWCOS).

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