

WORKFORCE DEVELOPMENT BOARD  
Workforce Innovation and Opportunity Act Area 8  
Workforce Innovation and Opportunity Act Policy Letter  
No. 15-23 -March 29, 2016

<b>Policy number</b>	200
<b>Subject</b>	Incumbent Worker Training (IWT) Guidelines
<b>This policy obsoletes</b>	WIA Policy (undesignated)- state WIOAPL 15-23
<b>May apply for waiver</b>	NA
<b>Board approved</b>	2/8/2017
<b>Effective date</b>	Same
<b>Revisions approved</b>	

I. Purpose

The purpose of this policy is to provide guidance on the requirements for incumbent worker training.

II. Effective Date

Immediately

III. Background

Work-based training is employer-driven with the goal of unsubsidized employment after participation. Generally, work-based training involves a commitment by an employer or employers to fully employ successful participants after they have completed the program. It can be an effective training strategy that can provide additional opportunities for participants and employers in both finding high quality work and in developing a high quality workforce. Work-based models can be effectively used to target different job seekers and employer needs.

Incumbent worker training (IWT) is one type of work-based training model and is designed to either assist workers in obtaining the skills necessary to retain employment or to avert layoffs and must increase both a participant's and a company's competitiveness. Local workforce development areas may use up to 20 percent of their local adult and dislocated worker formula funds for incumbent worker training. The training should, wherever possible, allow the participant to gain industry-recognized training experience.

#### IV. Definitions

Incumbent worker: a worker employed with the company for at least six months when the incumbent worker training starts.

Incumbent worker training: training designed to meet the special requirements of an employer (including a group 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 maintain or retain employment or have the opportunity for increased earnings potential through promotion.

Layoff aversion: a continuum of strategies targeted to specific employers or industries that are experiencing a decline and have the potential to undergo layoffs, or are experiencing a serious skills gap that impacts their ability to compete and retain workers. A layoff is considered to be averted when:

1. A worker's job is saved at an existing employer facing a risk of downsizing or closing; or
2. A worker at risk of dislocation faces a brief gap of unemployment when transitioning to a different job with the same employer or is hired at a new job with a different employer.

Planning region: two or more local workforce development areas assigned by the State to align workforce development activities and resources with larger regional economic development areas and available resources to provide coordinated and efficient services to both job seekers and employers.

#### V. Requirements

IWT is a business service designed to develop a highly skilled workforce which will result in increased business financial viability, stability, competitiveness, and productivity. To avert the risk of closing, IWT may be developed with a business or business association to maintain their competitive status, incorporate new technology, or prevent downsizing.

Workers participating in IWT will benefit 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. IWT will also allow the opportunity for backfilling vacated positions resulting from the promotion of newly trained workers.

Local workforce development boards (WDB) have several options when determining how best to **serve eligible employers**. A WDB can arrange training using the traditional array of individualized career services and training services. Local WDBs and planning regions may also implement innovative training strategies that best meet the needs of the business community.

#### Types of Incumbent Worker Training

IWT is restricted to skill attainment activities. The training should benefit workers by making them more qualified in their line of business and/or by providing them with skills for new products or processes. It is desired that the training results in credentials or industry recognizable skills that promote the worker's career and increases the overall employability.

Allowable types of training for incumbent workers:

- 1) Skills upgrading and retraining: Short-term training that enhances occupation-specific skills or basic skills that lead to a credential/certificate.
- 2) Customized training: Customized training is conducted with a commitment by an employer or group of employers to employ an individual upon successful completion of training. Workforce Innovation and Opportunity Act Policy Letter (WIOAPL) No. 15-24, Customized Training Guidelines, contains further details on customized training.
- 3) Occupational skill training (individual training accounts): Training that leads to an industry recognized credential or a certificate. WIOAPL No. 15-11, Use of Individual Training Accounts, provides additional requirements for ITAs.

Eligibility for Participating Businesses

IWT is one of many business services offered through local workforce development boards (WDB). The criteria which the WDB must take into account for an employer to be eligible to receive local incumbent worker funds include:

- 1) The characteristics of the participants in the program;
- 2) The relationship of the training to the competitiveness of a participant and the employer; and
- 3) Other factors the WDB determines appropriate, including number of employees trained, wages and benefits including post training increases, and the existence of other training opportunities provided by the employer.

There are also businesses that should not participate in this activity due to past or current violations of local, state, or federal law; unfair labor practices; and other conditions identified during the course of conducting initial employer assessments and reviewing contract requirements, assurances, and certifications with the local WDB director or staff. Businesses that fail to meet any of the following qualifying criteria are not eligible to receive funds for incumbent worker training:

- 1) Businesses must not be presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from participation in transactions by USDOL or the state of Ohio. Below are three websites that may be helpful in checking tax, environmental compliance, and debarment status.

Federal Exclusion and Debarment Site: <http://www.sam.gov>

Ohio Department of Taxation: <http://www.tax.ohio.gov>

Business Filing Search: <http://www.sos.state.oh.us>

- 2) Businesses shall not have any outstanding tax liability to the state of Ohio for over six months. WDBs will require the businesses to disclose any known outstanding tax liabilities with other states prior to entering into contract. The local WDB may consider existing out-of-state violations when determining eligibility to receive incumbent worker training funds. The local WDB must document any resolution of outstanding tax liability, which may include letters from the business or from the State from which the tax liability occurred.
- 3) Businesses must ensure that they are not on the most recent list established by the Ohio Secretary of State that would identify them as having more than one unfair labor practice contempt of court finding.
- 4) Ohio businesses must have all of the approvals, licenses, or other qualifications needed to conduct business in the state and all must be current. Should this status change during the course of the local IWT program activities and the business is disqualified from conducting business in Ohio, all training under the IWT program must cease.
- 5) Governmental entities, including the city, county and state, may not participate in the local IWT program. Health care providers that are operating as not-for-profit entities are the only allowable exceptions to this prohibition.
- 6) Businesses that have relocated to Ohio and have laid-off workers at their former location in the United States may not be considered for this program until they have been in operation at the new location for 120 days.

To verify that a business is not relocating employment from another area, a pre-award review must be undertaken and documented by the local WDB. The review must include the names under which the establishment conducts business, including predecessors and successors in interest; the name, title, and address of the company official certifying the information, and whether WIOA assistance is being sought in connection with past or impending job losses at other facilities of their company. The pre-award review should also include a review of whether appropriate notices have been filed, as required by the Worker Adjustment Retraining Notification (WARN) Act. The review may also include consultations with labor organizations and others in the affected local area(s).

- 7) Businesses must not have any outstanding civil, criminal or administrative fines or penalties owed to or pending in the state of Ohio.

Eligibility of Incumbent Workers

Local workforce development areas must establish policies and definitions to determine which workers, or groups of workers, are eligible for incumbent worker services. To qualify as an incumbent worker, the incumbent worker needs to be employed, meet the Fair Labor Standards Act requirements for an employer-employee relationship, and have established employment history with the employer for six months or more. An incumbent worker does not necessarily have to meet the eligibility requirements for career and training services for adults and dislocated workers under WIOA.

### Training Provider Considerations

Incumbent worker training may be provided through ITAs or through contracts for services. If the training is provided through an ITA, all requirements of such ITA must be followed, including the use of approved eligible training providers. If a contract is used to provide the IWT, this contract must have been established through proper procurement procedures.

Training providers without satisfactory past performance, accreditation, curricula that lead to credentials, relevant training experience, accredited instructors, high job placement rates, and/or high training completion rates, should be avoided.

The training facility should provide an environment that supports learning and be within reasonable proximity to the trainees so the cost and time required for travel is minimized.

### Procurement of Training

WDBs have several options to determine how best to provide the training needed by a business as described below:

- 1) Local WDBs may enter into contracts with eligible training providers (ETP) without any additional procurement requirements. Utilization of the state of Ohio's ETP list is for universally applicable off-the-shelf employer training and is not intended to include unique, specialized, or employer-specific training.
- 2) A business may be considered a "beneficiary" of this federal program and receive incumbent worker training assistance on a reimbursement basis. WIOA sub-recipients and vendors are not considered to be beneficiaries. In order for a business to utilize the beneficiary option, the following guidelines must be followed:
  - a) Business beneficiaries may receive reimbursement for their actual training costs incurred under this program, on a reimbursement basis, as outlined in this policy.
  - b) Local WDB approval of a training plan is required before reimbursement may be provided to a beneficiary. The development of training plans is the joint responsibility of the local WDB director and the business.
  - c) The training plan must identify all of the following:

- i) The provider(s) of training;
- ii) Type of training;
- iii) Planned start and end dates;
- iv) Number of individuals to be trained;
- v) The projected cost of training; and
- vi) Any other information required by the WDB.

All training costs must be allowable as defined in this policy. Training plans must be approved by the local WDB or WDB director prior to the start date of training. Beneficiaries must agree to provide all documentation required by the WDB in order to be reimbursed for the training.

d) Training providers are not required to be listed on the state's eligible training provider list for the purpose of providing training under paragraph 2 of this section. WDBs may assist business beneficiaries in identifying potential providers of training; however, the selection of a training provider is not subject to state or federal procurement requirements.

3) For businesses not following the guidelines in paragraph 2 of this section and have training needs that cannot be provided by Ohio's eligible training providers, local WDBs will need to follow proper procurement procedures as identified in rules 5101:9-4-07 and 5101:9-4-07.1 of the Ohio Administrative Code, or local procurement policies if more restrictive.

#### **Allowable and Unallowable Costs for Incumbent Worker Training Program**

Allowable costs may include only costs directly related to training. Allowable costs may include:

- 1) Instructor/trainer salaries;
- 2) Curriculum development, textbooks, manuals, training software, materials and non-consumables; and
- 3) Other necessary and reasonable costs directly related to training.

#### **Unallowable costs include but are not limited to:**

- 1) Foreign travel;
- 2) Purchase or lease of capital equipment;
- 3) Encouragement or inducement of a business or part of a business to relocate from any location in the United States;

- 4) Use of IWT funds to pay for a worker's training wages;
- 5) Use of IWT funds to train management employees in management skills such as Six Sigma and LEAN.

#### Cost Sharing Requirements for Incumbent Worker Training

Employers participating in the IWT shall be required to pay for the non-Federal share of the cost of providing the training to incumbent workers of the employers. The WDB and the planning region shall establish the non-Federal share of such cost taking into consideration such other factors as the number of employees participating in the training, wage and benefit levels of the employees, the relationship of the training to the competitiveness of the employer and employees, and the availability of other employer-provided training and advancement opportunities.

The non-federal share shall not be less than:

- 1) 10 percent of the cost, for employers with not more than 50 employees;
- 2) 25 percent of the cost, for employers with more than 50 employees but not more than 100 employees; and
- 3) 50 percent of the cost, for employers with more than 100 employees.

#### Local Workforce Development Area Policy

The local WDB and planning region shall establish criteria for identifying employers and any targeted industries and economic sectors, using resources such as business services representatives (BSR), Chambers of Commerce or the local media. Further, the local WDB and planning region are required to develop IWT program policies and procedures in a manner that coordinates with the array of business services available through JobsOhio, the Ohio Development Services Agency (DSA), and other state and local stakeholders.

The local WDB and planning region are encouraged to develop innovative program design strategies to meet the needs of its regional workforce. If the local WDB and planning region choose to offer incumbent worker services, the WDB and planning region must set criteria to select employers and/or incumbent workers and define its regional program requirements and application process.

Pursuant to NPRM 680.780, the local WDB, in coordination with the planning region, must establish policies and definitions to determine which workers or groups of workers, are eligible for incumbent worker services. The local policy must also include the criteria to be taken into account for an employer to be eligible for IWT as well as the amount of the non-federal share for the employer.

#### VI. Fiscal Reporting

Funds contracted to a sub-recipient or vendor for an IWT program are reported as program costs.

The fiscal agent must track funds used for incumbent worker training by funding stream and by the year of appropriation.

The administrative cost limit remains in effect. No separate amount may be set aside for administration of the IWT program.

Fiscal agents will report incumbent worker expenditures using the incumbent worker code established by the Office of Fiscal and Monitoring Services. Coding exists for both the adult and dislocated worker programs. The accrued expenditures charged to the incumbent worker code for the adult and dislocated worker programs must not exceed 20 percent. ODJFS will monitor costs reported against the incumbent worker training program.

Funds that are not used for the IWT program may be expended respectively on the Adult and Dislocated Worker programs for program activities authorized by WIOA.

## VII. Program Reporting

Area 8 WDB is required to report IWT activities via the Mini Incumbent Worker registration in the Ohio Workforce Case Management System (OWCMS).

The state has streamlined the reporting requirements to a minimal level that should not overburden employers but still allow for an assessment of the effectiveness of Ohio's IWT programs. Local WDBs and planning regions may choose to collect more information if necessary to conduct successful IWT programs. Local WDBs and planning regions choosing to collect and document data elements above and beyond the requirements must ensure that every IWT program is compliant with reporting requirements. Local policies should include local requirements in regards to data elements, documentation and reporting.

IWT programs will be reported in OWCMS with a minimal amount of data required. If local WDBs wish to co-enroll an IWT participant in the local adult or dislocated worker program, a full registration is required in OWCMS which includes all of the data elements needed for WIOA participants, including performance data. Co-enrolled participants must meet all eligibility requirements for adult, dislocated worker, and youth programs.

## VIII. Monitoring

Local workforce development areas are encouraged to develop their own monitoring policies to outline the procedures, frequency and manner in which IWTs will be monitored and how staff persons/monitors will resolve any findings of non-compliance.

Through the state's monitoring system, program monitors will review the local area's implementation of the WIOA IWTs, including a participant file review, during the annual onsite monitoring review for compliance with federal and state laws and regulations. Any issues will be handled through the state's monitoring resolution process.



## IX. Technical Assistance

For additional information, you may send your questions to ODJFS, Office of Workforce Development: [WIAQNA@JFS.OHIO.GOV](mailto:WIAQNA@JFS.OHIO.GOV).

## X. References

Workforce Innovation and Opportunity Act, § 134(d)(4), Public Law 113-128.

NPRM § 680.530 found at 80 Fed. Reg. 20859 (April 16, 2015) (to be codified at 20 C.F.R. § 680.530).

NPRM § 680.780 found at 80 Fed. Reg. 20861 (April 16, 2015) (to be codified at 20 C.F.R. § 680.780).

NPRM § 680.790 found at 80 Fed. Reg. 20862 (April 16, 2015) (to be codified at 20 C.F.R. § 680.790).

NPRM § 680.800 found at 80 Fed. Reg. 20862 (April 16, 2015) (to be codified at 20 C.F.R. § 680.800).

NPRM § 680.810 found at 80 Fed. Reg. 20862 (April 16, 2015) (to be codified at 20 C.F.R. § 680.810).

NPRM § 680.820 found at 80 Fed. Reg. 20862 (April 16, 2015) (to be codified at 20 C.F.R. § 680.820).

2 CFR Part 200, Appendix II

O.A.C. 5101:9-4-07, Procurement and contract requirements. (July 6, 2015).

O.A.C. 5101:9-4-07.1, Procurement methods. (July 6, 2015).

ODJFS, Workforce Innovation and Opportunity Act Policy Letter No. 15-11, Use of ITAs (July 1, 2015).

ODJFS, Workforce Innovation and Opportunity Act Policy Letter No. 15-24, Customized Training Guidelines (March 23, 2016).

Rescission

[Workforce Investment Act Policy Letter No. 09-09.5](#), Layoff Aversion Incumbent Worker Training (IWT) with Local Formula Funds under Waiver Authority (May 14, 2014).