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## **FINAL GUIDANCE**

### **Employed and Incumbent Worker Training**

#### **OF INTEREST TO**

Workforce Florida, Inc. (WFI), Regional Workforce Boards (RWBs), service providers and other entities engaged in implementing programs under Title I of the Workforce Investment Act of 1998.

#### **SUBJECT**

Employed and Incumbent Worker Training using local formula funds

#### **PURPOSE**

This Guidance updates the requirements and restrictions for —Employed Workerll and —Incumbent Workerll training provided by Regional Workforce Boards using formula WIA Adult and Dislocated Worker funds.

#### **BACKGROUND**

The Workforce Investment Act (WIA) establishes a framework to assist unemployed adults and dislocated workers attain employment that provides a self-sufficient wage. WIA recognizes that employed workers may also require help in order to obtain or retain jobs that lead to self-sufficiency. It allows the use of local formula funds to serve —employed workersll and encourages States to use their state-level funds to develop innovative —incumbent workerll programs. The Florida Legislature has established a statutory commitment to provide incumbent worker training for the purpose of assisting with the continuing education and training needs of existing Florida businesses.

The State has received a waiver from the United States Department of Labor (USDOL) that allows Regional Workforce Boards to use local WIA funds to provide incumbent worker training normally allowable only with state-level funding. The current waiver, *which expires on June 30, 2012*, has specific requirements that are discussed in this guidance.

#### **GUIDANCE**

WIA distinguishes between an ***employed worker*** and an ***incumbent worker*** in several ways.

### ***Employed Worker***

1. An —employed workerll is an individual currently working who has been determined by a one-stop operator to be in need of employment and services in order to obtain or retain employment that allows for self-sufficiency, in accordance with the locally established definition of that term. See WIA Section 134(d)(3)(A)(ii), 20 CFR 663.230, and preamble to the WIA regulations at Federal Register, Vol. 65, No. 156, 49294, pages 49322 – 49323.
2. An employed worker who currently meets the local definition of self-sufficiency, but needs services in order to retain their self-sufficient employment, also may be served if documentation is obtained from the employer that the employee will not be retained unless additional training or services are received.
3. Dislocated workers who have become re-employed in "income maintenance" jobs (a job with a lower rate of pay than the job of dislocation) may also be served as long as the wage earned does not exceed the local criteria for self-sufficiency for dislocated workers.
4. The local definition of —self-sufficiencyll may be different for adult employed workers and dislocated workers.
5. Local One-Stop Centers are required to complete a WIA application and verify that the worker meets program eligibility criteria. An employed worker must receive at least one core service and one intensive service before training is provided.
6. Employed workers must be given the same customer choice options as other WIA clients (except for eligible employed workers who are enrolled in customized training with their employers).
7. Training must be provided in compliance with the Eligible Training Provider and Individual Training Account (ITA) requirements unless it is customized training or On-the-Job Training.
8. WIA —employed workerll services primarily are provided for the benefit of the employed worker but it is recognized that these services may also benefit the employer.

### ***Incumbent Worker***

1. An —incumbent workerll is an employed worker who is served with state-level funds. See WIA Section 134(a)(3)(A)(iv).
2. An incumbent worker does ***not necessarily*** have to meet the eligibility criteria for employed adults or dislocated workers.
3. Obtaining or retaining employment that leads to self-sufficiency is not a prerequisite for incumbent worker training.
4. Incumbent worker training is developed with an employer or employer association to upgrade skills training of a particular group of workers or industry.
5. Under normal circumstances, local boards are not allowed to use local WIA funds to provide incumbent worker training (IWT).
6. Through current waivers obtained from the USDOL, RWBs in Florida have been granted the authority to use up to 20% of their local formula dislocated worker funds to provide incumbent worker training within the guidelines described in the waiver and discussed below.

7. The training program and training provider are selected by the business. The training provider is not required to be on the Eligible Training Provider List (ETPL); and use of an Individual Training Account (ITA) is not required.
8. For locally-funded IWT, age, citizenship/right to work, and compliance with the Selective Service registration requirements still must be met.

**Approved Waiver related to Incumbent Worker Training offered by local boards** (*expires June 30, 2012*)

RWBs may use up to 20% of their Dislocated Worker formula funds for IWT. **The IWT can only be done by local boards as part of a layoff aversion strategy and the training is limited to skill attainment activities.**

**Action required to use formula funds for Layoff Aversion IWT**

Local boards intending to use local WIA formula funds through the waiver to provide incumbent worker training are responsible for implementing local policy that addresses all provisions found in USDOL Training and Employment Guidance Letters (TEGL) 26-09 and 30-09.

At a minimum, local policies related to this waiver should include the following:

1. Criteria for identifying employers, targeted industries and economic sectors in need of Layoff Aversion IWT.
2. Criteria to determine a layoff risk and when and whether IWT is an appropriate response (see TEGL 30-09 for examples).
3. A process for determining eligibility of incumbent workers served under the waiver. Note that when an RWB provides IWT to a group of workers at a single employer, eligibility for training does not need to be documented at the individual level. Local policy may establish eligibility criteria for groups of workers. Group level determinations only apply to a single company.
4. A procedure that provides documented evidence that a layoff was avoided
5. Details on criteria to determine how the skills attained under the waiver will contribute either to the maintenance of employment or increase in employment security for workers

**Data collection requirements for local employed/incumbent worker activities**

An application must be entered into the State Management Information System, Employ Florida Marketplace (EFM), for each employed or incumbent worker served with local WIA funds. All employed workers and incumbent workers served with local funds must follow the three-tiered service delivery system (core, intensive and training services). The State obtained a separate waiver that eliminates the need to collect the following data elements on locally-served incumbent workers: single parent, unemployment compensation at participation, low income, TANF, other public assistance, homeless/runaway, and offender.

For Incumbent Worker Training Grants issued directly by WFI to employers, the data collection requirements are spelled out in the grant information published at:

<http://www.workforceflorida.com/PrioritiesInitiatives/FundingOpportunities/IWT.php>

## **AUTHORITY**

The [Workforce Investment Act of 1998](#), the [WIA final regulations](#) at 20 CFR Part 652, *et seq.*, [Florida Statutes Chapter 445](#), [Waiver Approval Letter from U.S. Department of Labor dated June 21, 2011](#), [TEGL 26-09, Subject: Workforce Investment Act \(WIA\) Waiver Policy and Waiver Decisions for PY 2009 and 2010](#), [TEGL 30-10, Subject: Layoff Aversion Definition and the Appropriate Use of Workforce Investment Act Funds for Incumbent Worker Training for Layoff Aversion Using a Waiver](#), the [State Workforce Investment Plan, AWI Communiqué 10-01, Subject: Implementation of the recently approved Waivers under the Workforce Investment Act \(WIA\) and the Wagner-Peyser \(W-P\) Act.](#)

## **QUESTIONS AND ANSWERS**

1. *When should a certificate/credential earned by an employed/incumbent worker be recorded?*

**Answer:** A certificate/credential should be recorded for any participant who completes training and receives a certificate/credential. Certificates/credentials may be recorded through the 3<sup>rd</sup> quarter after exit.

2. *What constitutes a Credential countable under the state's Employed Worker Outcome Rate?*

**Answer:** Credentials include, but are not limited to, a high school diploma including special diplomas, GED or other recognized equivalents, post-secondary degrees/certificates; recognized skill standards; and licensure or industry-recognized certificates. See TEGL 17-05 for the federal definition of certificate/credential.

Attainment of Occupational Completion Points (OCPs) as designated by the Florida Department of Education may also be counted as credentials. The OCPs indicate points in particular vocational programs where a student could leave the program and still have learned enough skills to perform a particular job and thus be employable. In addition, some local credentials may be counted. Countable credentials should have a direct correlation to industry standards, employer requirements and should be recorded in EFM as local – employer specific.

In order to get credit for accepted credentials, RWBs should ensure credential information is appropriately recorded in EFM. Credentials can be recorded when activities are closed, when a WIA Case Closure is recorded, and when a follow-up is recorded.

Note that clients served under the local incumbent worker training waiver are included in this outcome.

3. *Is the state's Employed Worker Outcome Measure included as part of the new Balanced Scorecard Report and/or will it be tied to Balanced Scorecard Incentives?*

**Answer:** No. The Employed Worker Outcome Measure is not included as part of the Balance Scorecard Report nor is it tied to Balanced Scorecard Incentives. However, the measure does appear on the State's Monthly Management Report.

4. *Can training providers that do not appear on the State Eligible Training Provider List (ETPL) be used to provide training to employed adult workers?*

**Answer:** No, with two exceptions. Training providers that are not on the ETPL may provide on-the-job training or customized training. Also, training for *incumbent* workers under the current waiver does not have to be provided by training providers on the ETPL.

5. *How can we maximize our ability to serve the widest range of employed workers in an effort to help those underemployed, as well as retain good paying jobs in our region?*

**Answer:** Developing separate self-sufficiency definitions for employed adults and dislocated workers allows local boards to provide services to a wider range of employed workers. In local regions where the definition of "priority of service" is contingent upon the local definitions of "self-sufficiency," utilizing definitions which are customized for particular groups maximizes the number of customers that can be served, even when funds are limited.

6. *Is it permissible to use local WIA funds as part of a layoff aversion strategy?*

**Answer:** One of the missions of WIA is to prevent layoffs whenever possible. Thus, it is appropriate for One-Stop staff to assist individuals who have received a layoff notice and have been determined an eligible dislocated worker avert the layoff using the wide range of services at their disposal. Likewise, if an employed adult worker needs training to retain a job that pays a self-sufficient wage, then providing employed worker training to that individual to avert a layoff would be allowable. The RWB would need to document that the individual is at risk of losing the job if the training is not provided. In addition, Florida received a waiver from the Department of Labor (DOL) that permits RWBs to use a percentage of local WIA Funds for Layoff Aversion Incumbent Worker Training - see [TEGL 30-09](#) for a definition of layoff aversion when using IWT waivers.

7. *A dislocated worker in our region became re-employed in an "income maintenance" job, but was not earning what he had been in his previous job. Although now employed, can this person be helped through dislocated worker funds?*

**Answer:** Yes, as long as the dislocated worker's current wage does not exceed the local definition of "self-sufficiency" for dislocated workers. Since the objective in serving dislocated workers is generally to help them come as close as possible to the income earned at the time of dislocation, defining self-sufficiency for employed dislocated workers as a percentage of the wage that was earned at the time of dislocation (e.g., 80 percent or 90 percent) is advisable. Refer to the RWB's local definition for self-sufficiency.

8. *Are there any other sources of WIA funds that local boards may use to serve employed workers?*

**Answer:** Periodically, WFI issues state-level, competitive demonstration grants for specific outcomes; an example includes BEST—*Business Employment Solutions Training* as well as USDOL grants that may be available to assist employed workers.

9. *Are individual applications required for employed workers served with local WIA funds or can the employer provide trainee information?*

**Answer:** For individuals served with local WIA adult and dislocated worker funds, a full EFM application must be completed. While individual intakes are not required if the essential

information can be obtained from the employer's records, documentation of the required general and program-specific eligibility information must be maintained by the one-stop center operator.

10. *What if WIA adult funds are limited? Aren't we required to serve priority population groups first, like unemployed, rather than persons with a job?*

**Answer:** The WIA section 134(d)(4)(E) states that in the event that funds allocated to a region for adult employment and training activities are limited, priority for intensive and training services must be given to recipients of public assistance and low-income. However, since funds are generally limited, the availability of other funds for training (e.g., TANF), the needs of specific groups and other appropriate factors should be considered, as determined by Local Board policy. Priority under this section does not necessarily mean that only public assistance recipients and other low-income individuals may receive WIA-funded adult training services when funds are determined to be limited.

11. *Is there a side-by-side document that compares employed worker and incumbent worker training?*

**Answer:** Yes. The State published a Table that summarizes the distinctions between locally funded employed worker activities and layoff-aversion incumbent worker training (IWT) as well as State-funded IWT.

[http://www.floridajobs.org/pdq/memos/EWT\\_LAIWT\\_StateIWT\\_Distinction.pdf](http://www.floridajobs.org/pdq/memos/EWT_LAIWT_StateIWT_Distinction.pdf)