

## **Subject: Incumbent Worker Training**

**Policy No: 2023-06**

**EFFECTIVE: 10/31/23**

**Revised:**

### **Purpose:**

To clarify the criteria by which the Benton-Franklin Workforce Development Council (BFWDC) will determine which employers and workers are eligible for incumbent worker training using Workforce Innovation and Opportunity Act (WIOA) Title I formula funds or statewide Rapid Response funds, and the cost sharing required for incumbent worker training WIOA Section 134 (d)(4)).

### **Background:**

Incumbent Worker Training (IWT) under WIOA Title I is designed to either increase the competitiveness of employees and employers or avert employee layoffs. Per WIOA Section 134(d)(4)(A)(i) and 20 CFR 680.780, the BFWDC may reserve and expend up to 20 percent of their combined WIOA Title I Adult and Dislocated Worker formula funds for IWT. The BFWDC may also use WIOA Title I statewide activities funds on Incumbent Worker Training if those funds have been provided by the Governor for that purpose. Per WIOA Section 134(a)(3)(A)(i), the BFWDC may use state Rapid Response funds provided by the State for incumbent worker training to avert layoffs.

**At this time, the BFWDC does not utilize Incumbent Worker Training activities.**

## Policy:

### A. Incumbent Worker Training Criteria

#### 1. Employee Criteria

An Incumbent Worker must be:

- Employed,
- Meet the Fair Labor Standards Act requirements for an employer-employee relationship, and
- Have an established employment history with the employer for six (6) months or more.

If incumbent worker training is provided to a cohort of employees, not every employee in the cohort must have an established employment history with the employer for six months or more as long as a majority (51 percent or more) of the employees being trained meet the employment history requirement.

Per 20 CFR 680.780, incumbent workers do not have to meet the eligibility requirements for career and training services for adults and dislocated workers unless they also are enrolled as participants in the WIOA Title I Adult or Dislocated Worker programs.

#### 2. Employer Criteria

- a) The characteristics of the incumbent workers to be trained, specifically the extent to which they historically represent individuals with barriers to employment as defined in WIOA Section 3(24), and how they would benefit from retention or advancement.
- b) The quality of the training (e.g., industry-recognized credentials, advancement opportunities).
- c) The number of participants the employer plans to train or retrain.
- d) The wage and benefit levels of participants (before and after training).
- e) 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
- f) workforce development area-specific labor market information produced by Employment Security Department (ESD).
- g) The employer:
  - Is in an in-demand industry as defined by WIOA Section 3(23) as determined by ESD labor market information; or
  - Is in an in-balance industry as determined by ESD labor market information; or

- Is in a declining industry, but presents compelling reasons (e.g., evidence of long-term viability of the employer) justifying investment in incumbent worker training.
- Must not have laid off workers within 120 days to relocate to Washington from another state.
- Must be current in unemployment insurance and workers' compensation taxes, penalties, and/or interest or related payment plan.

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

## **B. Employer Share of Training Costs**

Per WIOA Sections 134(d)(4)(C) and 134(d)(4)(D) and 20 CFR 680.820, employers participating in incumbent worker training are required to pay the non-WIOA (non-federal) share of the cost of providing training to their incumbent workers. The employer share is based on the size of the workforce at the location(s) where incumbent worker training has been deemed necessary (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,
- At least 50 percent of the cost for employers with more than 100 employees.

Per WIOA Section 181 (b)(1) and 20 CFR 683.250(a), WIOA Title I funds cannot be spent on the wages of incumbent employees during their participation in IWT. Incumbent worker wages paid by the employer during IWT cannot be included in the cost of training.

## **C. Training**

Training can be provided through community and technical colleges, vocational-technical centers, state colleges and universities, licensed and certified private entities/institutions, industry specific consulting or training organizations, professional associations, or credentialing entities, or the business itself (through in-house trainers). If in-house training is provided, it must be for training to support new skills that will make the employer more competitive or avert layoffs.

### **1. BFWDC Procurement of Training**

When the BFWDC contracts directly with training providers for incumbent worker training on behalf of employers, they must ensure that the terms of that procurement are allowable, consistent at reasonable cost, and are procured consistent with BFWDCs Procurement Policy.

## 2. Employer Secured Training

- a) When in-house training is provided by an employee of the employer, the reimbursement amount is based on the employer share calculation. For example, the employer purchases new machinery, but now must train staff in its use. One employee has been trained to use it, and has the capacity and skill to train others, but calculations indicate it will be costly to devote that employee to the task because they would not be able to perform their own job while training staff. That employee's wages when providing the training would be included in the cost of training, and therefore, part of the cost share calculation.
- b) When the training provider is secured by the employer, procurement is not required. The BFWDC enters into an agreement with the employer to reimburse for the WIOA federal share cost of the training. The agreement with the employer must document, at a minimum:
  - The training being provided.
  - That the cost is reasonable for what is being provided; and
  - The approximate dollar amounts, both paid by the employer and paid by the BFWDC for the federal share.

## D. Incumbent Worker Training (IWT) for Layoff Aversion using State Rapid Response Funds

- An IWT program conducted with rapid response funds must be tied to a layoff aversion strategy for a threat of layoff. For the definition of Layoff Aversion, see Section 4. Definitions in this policy.
- An IWT as part of layoff aversion must be above and beyond the normal training offered by businesses to their employees. Rapid response resources must not supplant private funds in these situations.
- As per WIOA Final Rule commentary on 20 CFR 682.320 as it relates to incumbent worker training and TEGL 19-16, Section 18.A, "Layoff aversion strategies and activities are designed to prevent, or minimize the duration of, unemployment resulting from layoffs."
- Individuals may need assistance to maintain or retain a good job by enhancing their skills or learning new technologies and procedures in an ever-changing economic environment. Without appropriate training that allows existing workers to gain the necessary skills to operate new processes or technologies, employers may find it necessary to lay off workers with obsolete skills.
- The overall goal of layoff aversion is to save jobs. Layoff aversion is intended to prevent or minimize a potential period of unemployment for employees of companies that have announced layoffs or are struggling and at risk for layoffs. Layoff aversion focuses on saving jobs, putting people back to work, shortening the length of layoff, and revitalizing communities.

### 1. Employee Criteria

- a) The worker must be considered for layoff because they do not have marketable, in-demand skills, unless provided with training.
- b) The new skills can be attained in a reasonable period.
- c) There exists a strong possibility of a job, either with the existing employer or a new employer, if new skills are attained.

## 2. Employer Criteria

- a) The company remains open but is phasing out a function that will lead to layoffs unless the workers can be retrained to perform new functions.
- b) A worker's job has changing skill requirements because of external economic or market forces, significant changes in technology or operating processes, rapidly changing industry or occupational job requirements, or emergence of new products.
- c) The changing skill requirements are outside of normal skill growth and upkeep that would be provided by the employer.
- d) Training programs reasonably prepare workers to address these skill gaps.
- e) The employer demonstrates a commitment to retain employees or otherwise provide a tangible benefit to employees who receive IWT.

## 3. How to identify "at risk" Employers

- a) The most common "at risk" indicators include declining sales, supply chain issues, adverse industry or market trends, changes in management philosophy or ownership, and workers lacking in-demand skills.
- b) Establish Early Warning Networks (EWNs); a multi-stakeholder approach to identifying companies at risk early enough to be able to mount an effective layoff aversion strategy. It is encouraged that the BFWDC develop EWNs to assist in identifying companies at risk of closing or layoffs; or
- c) Monitoring trends and understanding the early warning indicators can buy time to develop an alternative to job loss. Economic trend monitoring is used to analyze industry trends within a region. The function of trend monitoring is to identify firms at risk of leaving, or closing, prior to actual decisions by companies to shut down or relocate.

## E. Reporting Requirements

Incumbent workers being served through an IWT strategy are not required to meet WIOA Adult or Dislocated Worker eligibility requirements, unless they are co-enrolled as participants in one of these programs. Unless they are enrolled in the Adult or Dislocated Worker program, they are not participants for the purpose of inclusion in WIOA performance indicator calculations for state outcomes. However, the BFWDEC is still required to report certain data elements on all individuals who receive only incumbent worker training. See Attachment A for reporting details.

## F. Definitions

**Incumbent Worker** – 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 6 months or more. 20 CFR § 680.780

**Incumbent Worker Training** – Training designed to meet the special requirements of an employer (or group of employers) to retain a skilled workforce or avert the need to lay off employees by assisting workers in obtaining the skills necessary to retain employment and conducted with a commitment by the employer to retain or avert laying off incumbent worker(s) that are trained in order to increase the competitiveness of the employee and/or employer.

**In-Demand Industry Sector or Occupation** – In general, (i) an industry sector that has a substantial current or potential impact (including through 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; or (ii) 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.

The determination of whether an industry sector or occupation is in-demand shall be made by the state board or local board, as appropriate, using state and regional business and labor market projections, including the use of labor market information. [WIOA Section 3(23)]

**Layoff Aversion** – A layoff is averted when: 1) a worker's job is saved with an existing employer that is at risk of downsizing or closing; or 2) a worker at risk of dislocation transitions to a different Page 7 of 8 job with the same employer or a new job with a different employer and experiences no time or a minimal time on unemployment.

## G. References

- WIOA Section 3(23)
- WIOA Section 134(d)(4)
- 20 CFR 680.780, 680.790, 680.800, 680.810, 680.820, 682.210(b), and 682.320(a), (b)(4)

## Attachment A

### Incumbent Worker Training Data Entry

A permanent solution is being developed in ETO to replace the following incumbent worker training data entry “work-around” and a revision to this policy will be issued to communicate that solution when it becomes available. Until such time as that solution is implemented, please use the process described below.

Incumbent workers who are served through WIOA Title I (i.e., Adult Formula, Dislocated Worker Formula, National Dislocated Worker Grant, Governor’s 15% Discretionary, Statewide Rapid Response) grant funds must be affiliated with an employer, training start date, and fund source in order to satisfy requirements of the U.S. Department of Labor’s WIOA-affiliated Participant Individual Record Layout (PIRL).

To meet this requirement, staff are instructed to do the following:

- Select the WIOA Eligibility Application TouchPoint. In the drop-down box, select Full WIOA Eligibility, check the Dislocated Worker box option.
- Under the tabs select the “Employment” tab.
- Under the “Applicant May Be Eligible for:” statement select the Dislocated Worker box the “None of the above” radio button under Dislocated Worker Status. Record the training start date in the Date of Actual Dislocation field and the employer’s name in the Employer of Dislocation Address field on the Employment tab.
- Select the Program Enrollment TouchPoint and enroll the participant in the program that reflects the funding source. For example, if the funding source is WIOA Adult, select that program rather than WIOA Dislocated Worker.
- Select the Individualized, Training and Supportive Service (ITSS) TouchPoint. Enter the Activity Start Date, Projected Activity Start Date, and Projected Activity End Date. Then select the Incumbent Worker Training service from Service Provided drop down menu. Select the Active Program Enrollment to associate the service with the active program and save the TouchPoint. When IWT has been completed, edit the same TouchPoint and enter the Activity End Date and Actual Outcome.

**Important Note:** If multiple funding sources are used for the training, a separate Program Enrollment TouchPoint and ITSS Incumbent Worker Training service are needed for each program funding the training. A new WIOA Eligibility Application is not needed. Each Program Enrollment TouchPoint taken will utilize the same WIOA eligibility application.