

WIOA Policy No. 01-16
WorkForce West Virginia

TO: Workforce Development Boards

FROM: WorkForce West Virginia

DATE: September 22, 2015

SUBJECT: Incumbent Worker Policy

EFFECTIVE DATE: January 20, 2016

I. REFERENCE(S):

Workforce Innovation and Opportunity Act of 2014 (WIOA), Section 3(23); WIOA Section 134(d)(4); Proposed 20 CFR §680.780, §680.790, §680.800, §680.810, §680.820, §682.210(b), and §682.320(b)(3).

II. PURPOSE:

To clarify criteria by which Local Workforce Development Boards (LWDBs) determine which workers, or groups of workers, are eligible for incumbent worker services and the cost sharing required for incumbent worker training projects (WIOA Section 134(d)(4)).

III. BACKGROUND:

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 an established employment history with the employer for 6 months or more. The training must satisfy the requirements in WIOA Section 134(d)(4) and §680.790 and increase the competitiveness of the employee or employer. An incumbent worker does not necessarily have to meet the eligibility requirements for career and training services for adults and dislocated workers under this Act. LWDBs may reserve and expend up to 20 percent of their combined adult and dislocated worker formula allotments for incumbent worker training. States may use state Rapid Response funds [WIOA Section 134(a)(3)(A)(i)] for layoff aversion and WIOA Governor's discretionary funds for statewide incumbent worker training activities.

IV. Action:

LWDBs must consider the following factors when determining the eligibility of employers to receive the WIOA share of funds to provide training to incumbent workers using either, local Adult and/or Dislocated Worker formula funds or WIOA statewide discretionary funds provided by the Governor:

1. 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;

2. The quality of the training (e.g., industry-recognized credentials, advancement opportunities);
3. The number of participants the employer plans to train or retrain;
4. The wage and benefit levels of participants (before and after training);
5. The employer must not have laid off workers within 12 months and must have a commitment to retain or avert the layoffs of the incumbent worker(s) being trained;
6. The employer must not be delinquent in unemployment insurance or workers' compensation taxes, penalties, and/or interest.
7. LWDBs must document these factors in approving an incumbent worker training project with an employer.

Employer Share of Training Costs:

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. Employers will be reimbursed the WIOA (federal) share. 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) 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

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.

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.