
Policy Number: WIOA I-B – 3.6

Effective Date: August 1, 2017

Incumbent Worker Training

PURPOSE: The purpose of this policy is to describe and to detail the regulations concerning incumbent worker training contracts, in accordance with the rules and regulations of Workforce Innovation and Opportunity Act of 2014 (WIOA), the WIOA Final Rule, Training and Employment Guidance Letters (TEGLs) published by the Employment and Training Administration of the U.S. Department of Labor (ETA), and policies of the Arkansas Workforce Development Board (AWDB).

REFERENCE:

WIOA §§ 188(a)(3), 134(c)(3)(G), & 134(d)(4)
20 CFR 680 & 683
Comments in WIOA Final Rule concerning §§677.150(a), 680.320 & 680.790
29 CFR part 2, subpart D
TEGLs 10-16 & 19-16
ADWS Policy No. WIOA I-B – 1.2 (Definitions)
ADWS Policy No. WIOA I-B – 3.3 (Occupational Skills Training)

POLICY:

Incumbent worker training (IWT) is training designed to meet the needs of an employer or group of employers to retain a skilled workforce or avert layoffs. It is conducted with a commitment by the employer(s) to retain or avert the layoffs of the incumbent worker(s) trained [20 CFR 680.790; TEGL 19-16]. IWT is not permitted to be used to provide the occupational training a new hire needs [TEGL 19-16]. It may be used to either:

- Help avert potential layoffs of employees, or
- Obtain the skills necessary to retain employment, such as increasing the skill levels of employees so they can be promoted within the company and create backfill opportunities for less-skilled employees [TEGL 19-16].

Incumbent worker training is unique in that individuals receiving incumbent worker training are not considered participants in the Adult or Dislocated Worker program unless the participant receives other services under the Adult or Dislocated Worker program. Individuals who want to receive other services must be declared eligible for the Adult or Dislocated Worker program, enrolled in the appropriate program, and included in performance indicators. Individuals who do not receive other services do not have to be declared eligible for Adult or Dislocated Worker services, and they are not included in performance indicators [TEGLs 10-16 & 19-16]. Local areas, however, must use Arkansas Job Link to report

demographic information concerning individuals receiving incumbent worker training, as well as information needed to calculate employment in the 2nd and 4th quarters after exit, Median earnings in the 2nd quarter after exit, and Credential Attainment [TEGLs 10-16 & 19-16]. (See TEGL 10-16, Attachment 8 for more information.) For the purposes of calculating performance indicators, the exit date for an individual who has received only incumbent worker training will be the last date of training, as indicated in the training contract [20 CFR 680.780; TEGLs 10-16 & 19-16]. State and local boards may require additional elements to be reported to collect additional information on incumbent workers, which, if collected, should be reported through AJL [20 CFR 680.780; TEGL 10-16].

Local areas may use up to 20% of the combined total of their Adult and Dislocated Worker allocations for incumbent worker training [WIOA § 134(d)(4)(A)(i); 20 CFR 680.800(a); TEGLs 10-16 & 19-16]. The 20% may be used only for IWT activities that are programmatic in nature; administrative activities must be paid out of the Board's administrative funds [TEGL 19-16].

Incumbent worker training may be used for upskilling apprentices or journey workers who already have an established working/training relationship with the RA program [TEGL 19-16]. There is no prohibition on the combination of ITAs with incumbent worker training [Comments in WIOA Final Rule concerning §680.320], but participants receiving any training or other services other than incumbent worker training must be declared eligible for the appropriate training and services [Comments in WIOA Final Rule concerning §680.790]. See ADWS Policy No. WIOA I-B – 3.3 (*Occupational Skills Training*) for information concerning ITAs.

Incumbent worker training is provided through contracts instead of through ITAs [WIOA 134(c)(3)(G)(ii)(III); TEGL 19-16]. Providers of incumbent worker training are not subject to the requirements applicable to entities listed on the eligible training provider list, and they are not included on the state list of eligible training providers and programs. If the State, however, decides to impose performance regulations, local areas must collect required performance data and identify providers that meet required performance levels [20 CFR 680.530].

- Before a local area may provide incumbent worker training, the area must establish policies to determine which workers or groups of workers are eligible for incumbent worker services. IWT policies must be consistent with State and Local plans, as well as with career pathway and sector strategy approaches for in-demand occupations [TEGL 19-16]. The LWDB determines whether an employer is eligible to have its employees receive incumbent worker training rather than determining separate eligibility for particular employees to receive training [Comments in WIOA Final Rule concerning §677.150(a)]. The following conditions must be included in the policies [20 CFR 680.780; TEGL 10-16 & 19-16]:
- The worker must be employed in a situation that meets the Fair Labor Standards Act requirements for an employer-employee relationship [TEGL 19-16].
- The worker must have an established employment history with the employer for at least 6 months, unless the training is being given to a cohort of employees. In that case, not every worker must have been an employee for at least 6 months, but the majority of those being trained must have been employed for at least 6 months. The 6 months may include time spent as a temporary or contract worker performing work for the employer receiving IWT funds. The LWDB must develop a process for documenting the 6-month work history requiring. In addition, the contract between the LWDB and the employer must include this requirement as a term of the contract [TEGL 19-16].

- An incumbent worker does not have to meet the eligibility requirements for career and training services for WIOA Title I-B Adults or Dislocated Worker program, unless he or she is also enrolled as a participant in one of those two programs.

In determining the eligibility of an employer or group of employers to provide incumbent worker training, a local area must take into account the following factors: *[WIOA § 134(d)(4)(A)(ii); 20 CFR 680.810; TEGL 19-16]*:

1. The characteristics of the participants in the program (e.g. individuals with barriers to employment)
2. Whether the training improves the labor market competitiveness of the employees or both the employees and the employer
3. Other such factors as the LWDB may determine to be appropriate, which may include:
 - a. The number of employees participating in the training
 - b. The wage and benefit levels of those employees (at present and anticipated upon completion of the training)
 - c. The existence of other training and advancement opportunities provided by the employer
 - d. Credentials and skills gained as a result of the training
 - e. Layoffs averted as a result of the training
 - f. Utilization as part of a larger sector and/or career pathway strategy
 - g. Employer size

Generally, IWT should be provided in private sector employers, but there may be instances where non-profit and local government entities may be the recipients of IWT funds. For example, IWT may be used in the health care industry where hospitals are operated by non-profit or local government entities and a nursing upskilling opportunity is available *[TEGL 19-16]*.

IWT may be used for underemployed workers, such as workers who are working part-time but would prefer full-time employment. Although these workers are employed, they may have accepted reduced hours or low pay in order to have employment. The IWT 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 increase in rates of pay. LWDBs are encouraged to develop contracts such that once incumbent workers advance with the employer, the employer then provides an opportunity to the LWDB to fill the vacant positions with local WIOA participants *[TEGL 19-16]*.

No funds may be provided to employers for work-based training and other work experiences to be used directly or indirectly to assist, promote, or deter union organizing *[20 CFR 680.830]*. No funds may be provided to employers for work-based training and other work experiences to be used directly or indirectly to aid in the filling of a job opening which is vacant because the former employee is on strike, the former employee is being locked out in the course of a labor dispute, or the job is vacant because of an issue in a labor dispute involving a work stoppage *[20 CFR 680.840]*.

No funds may be used to pay a participant to construct, operate, or maintain any part of a facility used for sectarian instruction or as a place for religious worship, with the exception of maintenance of facilities that are not used primarily for sectarian instruction or worship and are operated by organizations providing services to WIOA participants [WIOA § 188(a)(3); 20 CFR 683.255(a)]. Special rules concerning training administered by religious organizations can be found in 29 CFR part 2, subpart D (*Equal Treatment in Department of Labor Programs for Religious Organizations, Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries*) [20 CFR 683.255(b); 20 CFR 683.285(b)].

WIOA funds may not be used for the encouragement or inducement of a business or part of a business to relocate from any location in the United States if the relocation results in any employee losing his or her job at the original location. No individual may be placed in work experience in any business or part of a business that has relocated from any location in the United States until the company has operated at that location for 120 days if the relocation has resulted in any employee losing his or her job at the original location. To verify that a business that is new or expanding and is not relocating, in fact, relocating employment from another area, a standardized Arkansas pre-award review criteria must be completed and documented jointly by the local area and the business (FORM WIOA I-B – 4.1 *Standardized Pre-Award Review Criteria*) [20 CFR 683.260].

No individual may be placed in a WIOA employment activity if a member of that person's immediate family is directly supervised by or directly supervises that individual [20 CFR 683.200(g)]. See ADWS Policy No. WIOA I-B – 1.2 (*Definitions*) for the definition of "immediate family."

Health and safety standards established under Federal and State law otherwise applicable to working conditions of employees are equally applicable to working conditions of participants. To the extent that a State workers' compensation law applies, workers' compensation must be provided to participants on the same basis as the compensation is provided to other individuals in the State in similar employment [20 CFR 683.280].

The employer(s) participating in the Incumbent Worker training program must pay the non-Federal share of the cost of providing training to their incumbent workers [WIOA § 134(d)(4)(C); 20 CFR 680.820]. The LWDB must establish the non-Federal percentage share of the cost of training, taking into consideration such factors as the number of employees participating in the training, the wage and benefit levels of the employees (at the beginning and anticipated upon completion of the training), the relationship of the training to the competitiveness of the employer and employees, and the availability of other employer-provided training and advancement opportunities [WIOA § 134(d)(4)(D)(i)]. The non-Federal share must not be less than the following percentages of the cost of training [WIOA § 134(d)(4)(D)(ii); 20 CFR 680.820; TEGL 19-16]:

1. 10% of the cost for employers with not more than 50 employees
2. 25% of the cost for employers with more than 50 employees and not more than 100 employees
3. 50% of the cost for employers with more than 100 employees

The cost of training may include the amount of the wages paid by the employer to a worker while the worker is attending the incumbent training. The employer's payment for the non-federal share can be cash payments, fairly evaluated in-kind contributions, or both [WIOA § 134(d)(4)(D)(iii); TEGL 19-16]. The employer's share of the costs of training must be reported on the ETA-9130 quarterly financial report [TEGL 19-16].