



Ted Strickland, Governor
Helen E. Jones-Kelley, Director

November 6, 2008

Workforce Investment Act (WIA) Transmittal Letter No. 22C

To: WIA Local Workforce Investment Boards (WIBs), Fiscal Agents,
Administrative Entities and One-Stop Operators

From: Helen E. Jones-Kelley, Director

Subject: Incumbent Worker Training with Local Formula Funds under Waiver
Authority

I. Purpose

This issuance is a revision of WIATL 22B, and provides guidance and additional clarification on the waiver authority to use up to 20% of local area adult and dislocated worker formula funds to provide Incumbent Worker Training (IWT).

II. Effective Date

October 1, 2007 through June 30, 2009

III. Background

Waiver authority has allowed local WIBs to transfer up to 20% of local area adult and dislocated worker formula funds for conducting IWT. This policy has been revised as a result of input from local Workforce Investment Board (WIB) Directors and stakeholders in order to enhance and streamline the local IWT program. Due to the success of local incumbent worker training programs during the past year, the state is continuing to utilize the waiver authority.

IV. Guidance Statements

A. Incumbent Worker Training-General Guidelines

Incumbent worker training is generally developed with a business or business association that is expanding capacity, incorporating new technology, or is at risk of closing or downsizing.

Incumbent worker training is a business service designed to develop a highly skilled workforce which will result in increased business financial viability, stability, competitiveness, and productivity. Local WIBs are encouraged to develop their incumbent worker training program policies and procedures in a manner that

coordinates with the array of business services available through the Ohio Department of Development (ODOD) and other state and local stakeholders.

Workers participating in IWT will benefit by enhancing existing skills, learning new skills, earning employer or industry recognized credentials, retaining employment, advancing 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.

WIBs are not required to use this waiver. However, in order to conduct local IWT, local WIBs must request permission to utilize this funding. A WIB must determine the level of funding, up to 20% of their adult and dislocated worker formula funds, that will be needed to provide incumbent worker training services.

Ohio employers, as well as employers in bordering states whose employees are Ohio residents, are eligible to participate in Incumbent Worker Training programs under the waiver authority defined in this policy. A joint strategy should be developed between the WIBs, bordering states, and other stakeholders to explore the possibility of a jointly funded training package among appropriate state and local entities.

IWT under this policy is considered to be a statewide activity. Therefore, self-sufficiency requirements for formula funded adult and dislocated worker programs do not apply. All IWT participants must be authorized to work in the U. S. Documentation may be satisfied by an employer statement that ensures all trainees meet this requirement and documentation must be made available to the WIB upon request.

Local WIBs are encouraged to develop innovative program design strategies to meet the needs of its local area workforce. If a WIB chooses to offer incumbent worker services, it must set criteria to select employers and/or incumbent workers and define its local program requirements and application process.

Local WIBs have several options when determining how best to serve eligible employers. A WIB can arrange training using the traditional array of intensive and training services, including on-the-job training (OJT), customized training, skill upgrade training, occupational skills training (through the issuance of ITAs), or a combination of these training approaches. WIBs may also implement innovative training strategies that best meet the needs of the business community.

ODJFS observes the right to approve variances to this guidance on a case by case basis.

Training Wages

Incumbent worker training is not intended to be a wage subsidy program for employers. Rather, IWT is the provision of training services that lead to the increase of needed skills for participating workers that employers have identified as necessary for their workforce. It is recognized, however, that due to the loss of productivity and other non-training expenses associated with sending workers to training, it may be cost-prohibitive to some employers to invest in training without additional financial assistance.

In circumstances where it is warranted, WIA funds may be used to pay trainee wages for workers participating in IWT, as indicated below. However, local WIBs are encouraged to minimize this level of assistance and pay only those costs directly tied to the training, as the cost of paying training wages greatly increases the investment of WIA funds and may limit the number of employers that may be served in the local programs under this waiver authority.

- Training wages are for straight time only - no overtime;
- Training wages may be paid only when IWT is arranged between the WIB and the employer; and
- Individuals applying for WIA training directly may not be paid training wages.

Allowable Costs for Incumbent Worker Training Program

Allowable costs may include:

- Instructor / trainer salaries
- trainee wages*
- curriculum development, textbooks, manuals, training software, materials and non-consumables
- other necessary and reasonable costs directly related to training

*See conditions in previous section

Unallowable Costs for Incumbent Worker Training Program

Unallowable costs include but are not limited to:

- foreign travel
- purchase or lease of capital equipment
- encouragement or inducement of a business or part of a business to relocate from any location in the United States
- use of IWT funds to pay for a worker's training or wages before his training period has commenced or after his training period has ended

B. Definitions

For the purpose of this waiver, the following definitions apply:

Incumbent Worker

An employed worker who is in need of additional skills in order to advance, avoid layoff or acquire skills needed by the employer. Incumbent workers do not need to meet the self-sufficiency standard established by the local WIB.

Types of Incumbent Worker Training

Allowable types of training for incumbent workers:

- **Innovative training:** locally-designed training that provides workers with employer-recognized skills but does not fall within the state or federal requirements of customized training, OJT, occupational skills training, or skill upgrade training.
- **Skill upgrade training:** short-term training that enhances occupation-specific skills or basic skills that does not lead to a credential/certificate as defined in USDOL TEGL 17-05.
- **Customized training:** see WIATL 40 for details; minimum employer match of 10% required depending on number of employees.
- **On-the-job training:** reimbursement for the extraordinary cost of training at a rate not to exceed 50% of the employee's hourly wage.
- **Occupational skill training (ITAs):** training that leads to a credential or a certificate as defined in TEGL 17-05 (subject to local policy established by local area boards).

Layoff Aversion IWT

A category of IWT allowable under this initiative that identifies an eligible employer as having a workforce in need of training due to the potential for workforce downsizing or closure.

Workforce Talent Development (WTD) IWT

A category of IWT allowable under this initiative that identifies an eligible employer as in need of training for its workers in order to expand capacity, increase skills and competencies, remain viable and competitive, and/or retrain with new technologies.

C. Eligibility for Participating Businesses

Local Incumbent Worker Training is one of many business services offered through local WIBs, ODOD, and other stakeholders. Based upon a thorough assessment, it may be determined that a business could be better served through a program not funded under this activity. Therefore, it is important to gather sufficient information to determine the appropriate mix of services to meet the business' needs.

There are also businesses that should not participate in this initiative 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 WIB designee. Businesses that fail to meet any of the following six 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.
2. Businesses shall not have any outstanding tax liability to the State of Ohio.*
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 (1) 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.
7. Businesses must not have any outstanding civil, criminal or administrative fines or penalties owed to or pending in the state of Ohio.

* WIBs will require the businesses to disclose any known outstanding tax liabilities with other states prior to entering into contract. The local WIB may consider existing out-of-state violations when determining eligibility to receive incumbent worker training funds.

D. Procurement of Training

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

1. Local WIBs may enter into contracts with training providers registered in Ohio's Eligible Training Provider Online (ETPO) system without any additional procurement requirements. Utilization of the 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. Subrecipients and vendors are not considered to be beneficiaries. In order to utilize this 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, subject to the limitations of section IV.A. of this policy.
 - b. Local WIB 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 WIB designee and the business.
 - c. The training plan must identify the provider(s) of training, type of training, planned start/end dates, number of individuals to be trained, the projected cost of training, and any other information required by the WIB. All training costs must be allowable as defined under section IV.A. of this policy and follow the guidelines of this issuance. Training plans must be approved by the local WIB or a WIB designee prior to the start date of training. Beneficiaries must agree to provide all documentation required by the WIB in order to be reimbursed for the training.
 - d. Training providers are not required to be enrolled in the ETPO system for the purpose of providing training under this policy. WIBs may assist business beneficiaries in identifying potential providers of training; however, selection of a training provider is not subject to state or federal procurement requirements.
3. For businesses not following the guidelines in paragraph D.2 and that have training needs that cannot be offered by Ohio's eligible training providers, local WIBs will need to follow proper procurement procedures as identified in Fiscal Administrative Procedure Manual Transmittal Letter (FAPMTL) No. 14 or local procurement policies if more restrictive.

E. Training Provider Considerations

Community colleges, state universities, vocational schools, technical schools, licensed private institutions, and training providers on Ohio's statewide WIA Eligible Training Provider (ETP) list should be used whenever possible. However, WIBs may enter into a contract for services, rather than using an ITA, if there are an insufficient number of eligible training providers on the ETP list to conduct the proposed training.

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.

F. Program Authority and Fund Request Process

Local adult and dislocated worker formula funds appropriated annually for the program year may be used to fund an incumbent worker training program.

A WIB may request the incumbent worker waiver at any time during the program year (July 1st – June 30th), but is limited to such request once per quarter during the program year. A fiscal agent may request to draw cash throughout the program year from the Office of Fiscal Services.

The last page of this guidance letter is a sample letter showing a request to use adult and dislocated worker funds for a local incumbent worker training program.

G. Fiscal Reporting

Funds contracted to a subrecipient or vendor for an incumbent worker training program are reported as program cost. The fiscal agent must track adult and dislocated worker formula funds used for incumbent worker training. The administrative cost limit remains in effect. However, if funds are given to a subrecipient or vendor for the sole purpose of performing general administrative functions, such as payroll, accounting budgeting, cash management, for the incumbent worker training program, those costs must be reported as administrative. The accrued expenditures charged to the adult and dislocated worker funding streams must not exceed the amount authorized for the incumbent worker training program and will be monitored.

H. Data Elements, Documentation and Program Reporting

Local WIBs are required to report IWT activities via the mini-incumbent worker registration in the Sharing Career Opportunities and Training Information (SCOTI). The reporting of outcomes is also required.

Each project must be categorized as either Layoff Aversion or Workforce Talent Development when recorded in SCOTI. The category definitions are as follows:

Layoff Aversion IWT – a category of incumbent worker training allowable under this local IWT program initiative that identifies the business as having a workforce in need of training due to the potential for workforce downsizing or closure.

Workforce Talent Development (WTD) IWT – a category of incumbent worker training allowable under this local IWT program initiative that identifies the business as in need of training for their workers in order to expand capacity, increase skills and competencies, remain viable and competitive, and/or retrain with new technologies.

The type of training provided is also a required data element. Definitions for each training type are found in Section IV.B. of this issuance. They are as follows:

- Customized Training
- On-the-Job Training (OJT)
- Occupation Skills Training (ITAs)
- Skill Upgrade Training
- Innovative Training*

- *Any training that does not follow the state or federal requirements of customized, OJT, ITAs, or skill upgrade training must be reported as "innovative Training."*

The following additional data elements are required for reporting:

WIB Number	County	Business Name
NAICS Code	Worker Name	Date of Birth
Worker SSN (optional)	Training Start Date	Planned End Date
Planned Training Hours	Actual End Date	Actual Training Hours

Worker outcomes must be reported and selected from the following list (multiple selections may be made):

Completed training program	Did not complete training program
Received vocational skill certificate	Received other credential
Worker remained employed with same business after exit	Worker is employed by a different business after exit
Worker received wage increase	Worker received promotion
Worker received other positive outcome	

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 Incumbent Worker Training programs. Local WIBs may choose to collect more information if necessary to conduct successful Incumbent Worker Training programs. Local WIBs choosing to collect and document data elements over and beyond the requirements must ensure that every Incumbent Worker Training program is compliant with reporting rules. Local policies should include local requirements in regards to data elements, documentation and reporting.

IWT programs will be reported in Sharing Career Opportunities and Information (SCOTI) with a minimal amount of data required. If local WIBs wish to co-enroll an IWT participant in the local adult or dislocated worker program, a full registration is required in SCOTI which includes all of the data elements needed for WIA participants for performance. Co-enrolled participants must meet all eligibility requirements for Adult, Youth and/or Dislocated Worker programs.

Incumbent worker trainees in an incumbent worker training program under this waiver are not subject to the local WIA Common Measures unless they are co-enrolled in a WIA Adult, Dislocated Worker, or Youth program. Under this waiver, co-enrollment is permissible and is a local decision.

I. Process to Request Permission to Utilize Funds

The fiscal agent's authorized representative must sign and submit a letter via mail or fax to:

Ohio Department of Job and Family Services
Office of Workforce Development
4020 E. Fifth Avenue
P.O. Box 1618
Columbus, OH 43216-1618
Fax: (614) 728-5938

The letter must include:

- allocation for the funding stream
- dollar amount for incumbent worker services assignable by funding stream (adult and/or dislocated worker) and year of appropriation (such as program year and fiscal year)
- a statement that the WIB approved the request
- e-mail address of fiscal agent authorized representative

Within 15 business days, the Office of Workforce Development will notify the fiscal agent and/or administrative entity of the approval by email.

V. Technical Assistance

For additional information, you may send your questions to the Office of Workforce Development, WIAQNA@JFS.OHIO.GOV.

VI. Reference

Office of Workforce Development, Waiver Request Plan, May 9, 2007.
DOL waiver approval letter, November 5, 2007
DOL Training and Employment Guidance Letter (TEGL) 14-00, Change 1, November 19, 2001
DOL Training and Employment Guidance Letter (TEGL) 18-05, March 6, 2006.

Federal Register 20 Code of Federal Regulations, Final Rules, August 11, 2000, Sections 661.400, 661.420(c) and (e), 663.245, 663.145, 665.220, 667.220, 667.262, 663.715, and 667.264

Workforce Investment Act (WIA) of 1998, Public Law 105-220, August 7, 1998, Sections 129(b), 134, 181(e) and 189 (i) (4) (B)

DOL Training and Employment Guidance Letter (TEGL) 13-07, December 11, 2007

Office of Workforce Development Memo, June 2, 2008, John B. Weber

VII. Rescissions

WIATL 22B: Waiver Authority to Use 20% of the Adult and Dislocated Worker Formula Allocation for Incumbent Worker Training Program

Sample Request Letter

Your Agency Letter Head

Date

Ohio Department of Job and Family Services
Office of Workforce Development
4020 E. Fifth Avenue
P.O. Box 1618
Columbus, OH 43216-1618

RE: Incumbent Worker Training Fund Request

Dear:

Local Workforce Investment Area # requests approval to use the following funds and amounts for an incumbent worker training program under the waiver. The local Workforce Investment Board (WIB) approved this request on (date). The fiscal agent representative submitted this request.

Funding Stream	Appropriation Year	Local Formula Allocation	Incumbent Worker Amount	%
Adult	PY'2006	1,220,465.00	244,093	20
Adult	FY'2007			
Adult	PY'2007			
Adult	FY'2008			
Adult	PY'2008	Not applicable	until July 2008	
Adult	FY'2009	Not applicable	until July 2008	
Dislocated Worker	PY'2006	184,739.00	33,253	18
Dislocated Worker	FY'2007			
Dislocated Worker	PY'2007			
Dislocated Worker	FY'2008			
Dislocated Worker	PY'2008	Not applicable	until July 2008	
Dislocated Worker	FY'2009	Not applicable	until July 2008	

You may email me at (email address). You may call me at (telephone #) if you have questions.

Sincerely,

Fiscal Agent Representative