



Workforce Innovation and Opportunity Act Policy
Employment System Administration and Policy

Washington envisions a nationally recognized fully integrated One-Stop system with enhanced customer access to program services, improved long-term employment outcomes for job seekers and consistent, high quality services to business customers. In order to achieve this vision, Employment System Administration and Policy sets a common direction and standards for Washington's WorkSource system through the development of WorkSource system policies, information memoranda, and technical assistance.

Policy Number: 5607, Revision 1
To: Washington WorkSource System
Effective Date: March 25, 2016

Subject: Employer Criteria and Cost Sharing for Training Provided to Incumbent Workers

1. 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)).

2. Background:

Incumbent worker training is designed to increase the competitiveness of the employee and employer.

Per WIOA Section 134(d)(4)(A)(i) and proposed 20 CFR 680.780, LWDBs may reserve and expend up to 20 percent of their combined adult and dislocated worker formula allotments for incumbent worker training.

Per WIOA Section 134(a)(3)(A)(i), the State may use state Rapid Response funds for layoff aversion and WIOA Governor's discretionary funds for statewide incumbent worker training activities.

3. Policy:

a. Incumbent Worker Eligibility Criteria:

An incumbent worker must be:

- i. Employed;

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

Note: Per proposed 20 CFR 680.780, 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.

b. Employer Eligibility Criteria:

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:

- i. 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;
- ii. The quality of the training (e.g., industry-recognized credentials, advancement opportunities);
- iii. The number of participants the employer plans to train or retrain;
- iv. The wage and benefit levels of participants (before and after training);
- v. 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 workforce development area-specific labor market information produced by ESD;
- vi. The employer is:
 - A. in an in-demand industry as defined by WIOA Section 3(23) and determined by ESD labor market information; or
 - B. in an in-balance industry as determined by ESD labor market information; or
 - C. in a declining industry, but there are compelling reasons (e.g., evidence of long-term viability of the employer) justifying investment in incumbent worker training.
- vii. The employer must not have laid off workers and relocated within 120 days of receiving incumbent worker training services;
- viii. The employer is current in unemployment insurance and workers' compensation taxes, penalties, and/or interest or related payment plan.

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

c. Employer Share of Training Costs:

Per WIOA Sections 134(d)(4)(C) and 134(d)(4)(D) and proposed 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 (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

LWDBs must track and document employer cost share contributions.

d. Local Incumbent Worker Training Policies:

LWDBs must develop local incumbent worker training policies per proposed 20 CFR 680.780.

4. 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.

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)]

5. References:

- Public Law 113-128, Workforce Innovation and Opportunity Act of 2014, Sections 3(23) and 134(d)(4)
- Proposed 20 CFR 680.780, 680.790, 680.800, 680.810, 680.820, 682.210(b), and 682.320(b)(4)
- [Training and Employment Guidance Letter \(TEGL\) 03-15](#), Section 11

6. Supersedes:

N/A

7. Website:

http://www.wa.gov/esd/1stop/policies/wioa_title1.htm

8. Action:

Local Workforce Development Boards and their contractors, as well as Employment Security Regional Directors, must distribute this policy broadly throughout the system to ensure that WorkSource System staff are familiar with its content and requirements.

9. Attachments:

None.

Direct Inquiries To:

*Employment System Administration and Policy Unit
Employment System Policy and Integrity Operations Division
Employment Security Department
P.O. Box 9046
Olympia WA 98506-9046
(360) 902-9666
SystemPolicy@esd.wa.gov*