



November 10, 2021

Workforce Innovation and Opportunity Act Policy Letter No. 15-23.1

To: Local Workforce Development Board (WDBs), Fiscal Agents, and OhioMeansJobs Center Operators

From: Matt Damschroder, Director

Subject: Incumbent Worker Training (IWT) Guidelines

I. Purpose

The purpose of this policy is to provide guidance on the requirements for IWT.

II. Effective Date

Immediately

III. Rescission

ODJFS, Workforce Innovation and Opportunity Act Policy Letter No. 15-23, Incumbent Worker Training (IWT) Guidelines (March 29, 2016).

IV. Background

IWT under WIOA provides both workers and employers with the opportunity to build and maintain a quality workforce and increase both participants' and companies' competitiveness. It is a type of work-based training and upskilling designed to ensure that employees of a company can acquire the skills necessary to retain employment and/or advance within the company, or to acquire the skills necessary to avert a layoff.

IWT is a business service designed to develop a highly skilled workforce which will result in increased business financial viability, stability, competitiveness, and productivity. To avert the risk of closing, IWT may be developed with a business or business association to maintain their competitive status, incorporate new technology, or prevent downsizing.

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

employment, maintaining 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.

Local workforce development areas (local areas) can use up to 20 percent of their adult and dislocated worker allocations to provide for the federal share of the cost of providing IWT.

V. Definitions

Cohort: a group of trainees to be trained by an employer as part of a single application for IWT.

Incumbent worker: a worker employed with the company for at least six months when the incumbent worker training starts.

Incumbent worker training: training designed to meet the special requirements of an employer (including a group of employers) to retain a skilled workforce or avert the need to lay off employees by assisting the workers in obtaining the skills necessary to maintain or retain employment or have the opportunity for increased earnings potential through promotion.

In-kind contribution: non-cash contribution of goods or services provided by the business.

Layoff aversion: a continuum of strategies targeted to specific employers or industries that are experiencing a decline and have the potential to undergo layoffs or are experiencing a serious skills gap that impacts their ability to compete and retain workers. A layoff is considered to be averted when:

1. A worker's job is saved at an existing employer facing a risk of downsizing or closing; or
2. A worker at risk of dislocation faces a brief gap of unemployment when transitioning to a different job with the same employer or is hired at a new job with a different employer.

Non-Federal Share: the portion of training costs the employer is required to pay for their employee's participation in IWT. The minimum non-Federal share is determined by the size of the employer.

VI. Local Workforce Development Area Requirements

The local area must establish policies and definitions to determine which workers or groups of workers, are eligible for incumbent worker services. The local policy should establish the criteria to be considered for an employer to be eligible for IWT

as well as IWT program requirements, application process and amount of the non-federal share.

The local area shall establish criteria for identifying employers and any targeted industries and economic sectors, using resources such as business services representatives (BSR), Chambers of Commerce or the local media. Further, the local area is required to develop IWT program policies and procedures in a manner that coordinates with the array of business services available through JobsOhio, the Ohio Development Services Agency (DSA), and other state and local stakeholders.

A. Types of IWT

IWT is restricted to skill attainment activities. The training should benefit workers by making them more qualified in their line of business and/or by providing them with skills for new products or processes. It is desired that the training results in credentials or industry recognizable skills that promote the worker's career and increases overall employability.

B. Eligibility of Participating Businesses

Local areas must determine an employer's eligibility to participate in IWT based on the following factors, which help to evaluate whether training would increase the competitiveness of the employees and/or employers:

1. The characteristics of the participants in the program, specifically the extent to which they historically represent individuals with barriers to employment as defined in WIOA sec. 3(24), and how they would benefit from retention or advancement.
2. The relationship of the training to the competitiveness of a participant and the employer.
3. Other factors local areas determine appropriate, which may include, but are not limited to, the following:
 - a. The number of employees participating in the training;
 - b. The employees' advancement opportunities along with wages and benefits (both pre- and post-training earnings);
 - 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; or
 - g. Employer size.

Additional factors identified by the local area must be included in the local policy to ensure consistent application for all employers.

Disqualifying Factors

Businesses that fail to meet any of the following qualifying criteria are not eligible to receive funds for IWT:

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. This information can be found at <https://businesssearch.ohiosos.gov/> or <https://sam.gov/content/home>
2. Businesses shall not have any outstanding tax liability to the state of Ohio that is six months or more past due. Local areas will require businesses to disclose any known outstanding tax liabilities with other states prior to entering into contract. The local area may consider existing out-of-state violations when determining eligibility to receive IWT funds. The local area must document any resolution of outstanding tax liability, which may include letters from the business or from the State from which the tax liability occurred.
3. Ohio businesses must have all the approvals, licenses, or other qualifications needed to conduct business in the state, and all must be current. Should this status change during the time local IWT program activities are occurring and the business is disqualified from conducting business in Ohio, all training under the IWT program must cease.
4. The employer must comply with all applicable federal, state, and local laws and regulations related to providing reasonable working conditions. IWT participants are not permitted to train or work in buildings or surroundings under working conditions that are unsanitary, hazardous, or dangerous to the trainee's health or safety.
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.
 - a. To verify that a business is not relocating employment from another area, a pre-award review must be undertaken and documented by the local area. The review must include the names under which the establishment conducts business, including predecessors and successors in interest; the name, title, and address of the company official certifying the information, and whether WIOA assistance is being sought in connection with past or impending job losses at other facilities of their company. The pre-award review should also include a review of whether appropriate notices have been filed, as required by the Worker Adjustment Retraining Notification (WARN) Act. The review may also include consultations with labor organizations and others in the affected local area(s).

7. Businesses must not have any outstanding civil, criminal or administrative fines or penalties owed to or pending in the state of Ohio.

8. IWT activities will not be permitted when any of the following apply:

- a. Any other individual is on layoff from the same or any substantially equivalent job.
- b. The employer has terminated the employment of any regular, unsubsidized employee or otherwise caused an involuntary reduction in its workforce with the intention of filling the vacancy with the IWT participant; or
- c. The job is created in a promotional line that infringes in any way on the promotional opportunities of currently employed workers.

9. Businesses may be deemed ineligible if they have received payments under a previous WIOA contract and exhibited a pattern of failure to provide workers continued long-term employment as regular employees with wages and working conditions at the same level and to the same extent as similarly situated employees.

C. Eligibility of Incumbent Workers

Local areas must establish policies and definitions to determine which workers, or groups of workers, are eligible for incumbent worker services.

An incumbent worker does not have to meet the eligibility requirements for career and training services for Adults and Dislocated Workers under WIOA, unless they also are enrolled as a participant in the WIOA Adult or Dislocated Worker program.

To qualify as an incumbent worker, the incumbent worker must be:

1. Employed;
2. Meet the Fair Labor Standards Act requirements for an employer-employee relationship; and
3. Have an established employment history with the employer for six months or more (which may include time spent as a temporary or contract worker performing work for the employer receiving IWT funds).

If IWT is being provided to a cohort of employees, not every employee in the cohort must have an established employment history with the employer for 6 months or more, if the majority of employees being trained meets the employment history requirement.

D. Training Provider Considerations

IWT may be provided through ITAs or through contracts for services. If the training is provided through an ITA, all requirements of such ITA must be followed, including

the eligibility requirements for career and training services for adults and dislocated workers and the use of approved eligible training providers under WIOA.

If a contract is used to provide the IWT, this contract must have been established through proper procurement procedures.

The training may be provided by a public or private educational institution, a private training company or private instructor, a company employee, or a combination of training providers.

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.

Training may be conducted at the employer's own facility, at a public or private training provider's facility, online, or at a combination of sites that best meet the needs of the employer and trainees. 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.

E. Procurement of Training

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

1. Local areas may enter into contracts with eligible training providers (ETP) without any additional procurement requirements. Utilization of the state of Ohio's 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 receive IWT assistance on a reimbursement basis. In order for a business to utilize the reimbursement option, the following guidelines must be followed:

a. Businesses may receive reimbursement for their actual training costs incurred under this program, as outlined in this policy.

b. Local area approval of a training plan is required before reimbursement may be provided to a business. The development of training plans is the joint responsibility of the local area and the business.

c. The training plan must identify all of the following:

- i. The provider(s) of training.
- ii. Type of training.
- iii. Planned start and end dates.
- iv. Number of individuals to be trained.

- v. The projected cost of training.
- vii. Any other information required by the local area.

Training costs approved for reimbursement must be allowable as defined by state and local policy. Training plans must be approved by the local area prior to the start date of training. Businesses must agree to provide all documentation required by the local area to be reimbursed for the training.

d. Training providers are not required to be listed on the state's eligible training provider list for the purpose of providing training under paragraph 2 of this section. Local areas may assist businesses in identifying potential providers of training; however, the selection of a training provider is not subject to state or federal procurement requirements.

3. For businesses not following the guidelines in paragraph 2 of this section and that have training needs that cannot be provided by Ohio's eligible training providers, local areas will need to follow proper procurement procedures as identified in rules [5101:9-4-07](#) and [5101:9-4-07.1](#) of the Ohio Administrative Code, or local procurement policies if more restrictive.

F. Allowable and Unallowable Costs for IWT

Allowable costs may include only costs directly related to training. Allowable costs may include:

1. Instructor/trainer salaries.
2. Curriculum development, textbooks, manuals, training software, materials and non-consumables.
3. Training facility costs (off-site training).
4. Other necessary and reasonable costs directly related to training.

Unallowable costs include but are not limited to:

1. Foreign travel .
2. Purchase or lease of capital equipment.
3. Encouragement or inducement of a business or part of a business to relocate from any location in the United States.
4. Use of IWT funds to pay for a worker's training wages.

IWT funds may be used to train employees in management skills such as Six Sigma and LEAN if promotional opportunities or increased wages can be identified post training. IWT funds may not be used for LEAN or Six Sigma training for the purpose of layoff aversion.

IWT funds may not be used to reimburse training costs that are being reimbursed by another State or Federal training program.

G. Cost Sharing Requirements for IWT

Local areas are required to establish policies regarding the non-federal share of the cost of IWT. Employers are required to pay for a significant cost of the training for those individuals in IWT. This can be done through both cash payments and fairly evaluated in-kind contributions.

Examples of in-kind contributions could include but are not limited to the following:

1. Wages paid to trainees during the training period
2. Equipment purchased to be used in the training project
3. Manuals and textbooks
4. Curriculum development
5. Facility usage
6. Travel and lodging costs.

The employer non-Federal share must not be paid by the Federal or State government under another Federal award or State funding opportunity, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs.

The local area shall establish the non-Federal share of such costs taking into consideration such other factors as the number of employees participating in the training, wage and benefit levels of the employees, the relationship of the training to the competitiveness of the employer and employees, and the availability of other employer-provided training and advancement opportunities.

The minimum amount of employer share depends on the size of the employer:

- 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; and
- At least 50 percent of the cost, for employers with more than 100 employees.

Employer size is based on the number of employees currently employed (at the time of the execution of the IWT contract) at the local operation where the IWT program will take place. This applies to all employers, including employers with seasonal or intermittent employee size fluctuations

VII. Fiscal Reporting

Funds contracted to a subrecipient or vendor for an IWT program are reported as program costs.

The fiscal agent must track funds used for IWT by funding stream and by the year of appropriation.

The administrative cost limit remains in effect. No separate amount may be set aside for administration of the IWT program.

Fiscal agents will report incumbent worker expenditures using the incumbent worker code established by the Office of Fiscal and Monitoring Services. Coding exists for both the adult and dislocated worker programs. The accrued expenditures charged to the incumbent worker code for the adult and dislocated worker programs must not exceed 20 percent. ODJFS will monitor costs reported against the IWT program.

Funds that are not used for the IWT program may be expended respectively on the Adult and Dislocated Worker programs for program activities authorized by WIOA.

VIII. Program Reporting

The local area is required to report IWT activities via Ohio's case management system. Even though individuals receiving IWT are not participants for the purpose of inclusion in WIOA primary performance indicator calculations, States and local areas are still required to report certain participant and performance data on all individuals who receive only IWT. The required elements for these incumbent worker individuals are limited to basic information and the elements needed to calculate IWT performance indicators for employment in the 2nd and 4th quarters after exit, Median earnings in the 2nd quarter after exit, Measurable Skill Gains, and Credential Attainment.

Local areas may choose to collect more information, if necessary, to conduct successful IWT programs. Local areas choosing to collect and document data elements above and beyond the requirements must ensure that every IWT program is compliant with reporting requirements. Local policies should include local requirements regarding data elements, documentation and reporting.

If local areas wish to co-enroll an IWT participant in the local adult or dislocated worker program, a full registration is required in the case management system which includes all of the data elements needed for WIOA participants, including performance data. Co-enrolled participants must meet all eligibility and documentation requirements for adult, dislocated worker, and youth programs.

IX. Monitoring

Local areas are encouraged to develop their own monitoring policies to outline the procedures, frequency and manner in which IWTs will be monitored and how staff persons/monitors will resolve any findings of non-compliance.

Through the state's monitoring system, program monitors will review the local area's implementation of the WIOA IWTs, including a participant file review, during the annual onsite monitoring review for compliance with federal and state laws and regulations. Any issues will be handled through the state's monitoring resolution process.

X. Technical Assistance

For additional information, you may send your questions to ODJFS, Office of Workforce Development: WIOAQNA@JFS.OHIO.GOV.

XI. References

Workforce Innovation and Opportunity Act, § 134(d)(4), Public Law 113-128.

2 CFR Part 200, Appendix II

WIOA Regulations at 20 CFR Part 680

TEGL No. 19-16, "Guidance on Services provided through the Adult and Dislocated Worker Programs under the Workforce Innovation and Opportunity Act (WIOA) and the Wagner-Peyser Act Employment Service (ES), as amended by title III of WIOA, and for Implementation of the WIOA Final Rules," dated March 1, 2017

ODJFS, Workforce Innovation and Opportunity Act Policy Letter No. 15-11.3, Use of ITAs (September 27, 2021).